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DEPARTMENT OF
WATER RESOURCES

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	SPECIAL MASTER'S
	)	RECOMMENDATION REGARDING
Case No. 39576	)	PREJUDICE ON MOTION TO FILE
	)	LATE CLAIM
	)	
	)	WATER RIGHT NO.: 23-00011D
	)	

I. PROCEDURAL HISTORY

On October 10, 2007, the SRBA Court received a *Motion to File Late Notice of Claim* from Joseph L. Motes Jr. for water right 23-00011D. A hearing on the *Motion* was held on January 15, 2008 before presiding Judge John M. Melanson. An *Order of Reference Appointing Brigitte Bilyeu Special Master for Further Proceedings on Motion to File Late Claim* was issued January 17, 2008.

In the *Order of Reference*, Judge Melanson ruled that both "good cause" for the untimeliness and a "meritorious position" had been demonstrated by Mr. Motes. However, Judge Melanson asked this Special Master to take up further proceedings to determine prejudice to other parties, if any. A hearing was held on April 2, 2008. The Idaho Department of Water Resources was present and reported on the likelihood of prejudice to other parties.

II. STANDARD OF REVIEW

The SRBA Administrative Orders provide that *Motions to File a Late Notice of Claim* are to be reviewed under the criteria of I.R.C.P. 55(c) and 60(b). *SRBA Administrative Order 1 (AO1)* § 4 (d)(2)(d).

III. FINDINGS

Judge Melanson has previously determined that Mr. Motes has shown both "good cause" and

SPECIAL MASTER'S RECOMMENDATION
REGARDING PREJUDICE ON MOTION TO FILE LATE CLAIM
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a "meritorious position." Judge Melanson asked for findings regarding "prejudice to other parties" if the late claim is allowed. The SRBA Court places emphasis on the element of prejudice to other parties in basins where the reported "irrigation and other purposes" water rights have been litigated and decreed. The SRBA Court recently noted that a late claim on a fully decreed source potentially puts parties with rights on the same source in the position of re-litigating issues that have already been decided, or in the position of addressing new issues that should have been properly raised at the time the source of the subject claim was initially report and litigated. *Order of Reference* (Subcase No. 34-13811) (October 28, 2003)

The water right at issue here is in Basin 23. Many of the water rights in Basin 23 have been litigated and decreed. It is, therefore, important to determine whether allowing a late claim would prejudice existing water rights. The Idaho Department of Water Resources is very familiar with the water rights in Basin 23. IDWR reported that it has considered the potential impact of this late claim on other water rights and believes the likelihood of prejudice to other parties is remote.

IV. CONCLUSIONS OF LAW

Based on IDWR's Report, this Special Master concludes that the likelihood of prejudice to other parties in the SRBA and in Basin 23 is remote. Furthermore, once the *Director's Report* for this water right is filed, other parties will have an opportunity to object.

THEREFORE, IT IS RECOMMENDED that the *Motion to File Late Claim* be **granted** for water right number 23-11D.

DATED: April 7, 2008.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

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In Re SRBA	)	CERTIFICATE OF MAILING
	)	
Case No. 39576	)	
_____	)	Water Right (s) : 23-00011D

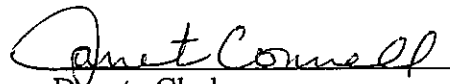
CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S ECOMMENDATION REGARDING PREJUDICE ON MOTION TO FILE LATE CLAIM was mailed on April 8, 2008, with sufficient first-class postage prepaid to the following:

Director of IDWR
PO Box 83720
Boise, Idaho 83720-0098

Motes Revocable Trust
C/O Joseph L Motes Jr
6608 Vanderbilt Ave
Dallas, TX 75214

Joseph L Motes
2828 E Pinehaven
Island Park, Idaho 83429


Deputy Clerk