

RECEIVED

2008 APR -9 PM 3: 04

APR 10 2008

DEPARTMENT OF
WATER RESOURCES

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.: 34-13915
	)	

I. PROCEDURAL HISTORY

On July 17, 2007, the SRBA Court received a *Motion to File Late Notice of Claim* from Phillip J. Davies for water right 34-13915. A hearing on the *Motion* was held on October 16, 2007 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 October 19, 2007.

In the *Order of Reference*, Judge Melanson ruled that "good cause" for the untimeliness of the claim had been demonstrated by Mr. Davies. However, Judge Melanson asked this Special Master to take up further proceedings to determine whether a meritorious position had been alleged and to determine prejudice to other parties, if any. Hearings were held January 9, 2008, and April 9, 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).

SPECIAL MASTER'S RECOMMENDATION
REGARDING PREJUDICE ON MOTION TO FILE LATE CLAIM
G:/BASIN FOLDERS/34MRR/13915.RECOMMEND.MOTN.LATE CLAIM.GRANTED
4/9/08

III. FINDINGS

The *Order of Reference* 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), *Order of Reference* (Subcase 34-13915)(October 19, 2007)

The water right at issue here is in Basin 34. Many of the water rights in Basin 34 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 34. 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 because this is a groundwater claim, because the volume is relatively small and because the priority is a relatively late date. Therefore, this Special Master finds the likelihood of prejudice to other parties is remote.

The *Order of Reference* noted that there was reference to this water right having little use since 1991. The *Order of Reference* thus asked for finding on whether a “meritorious position” had been alleged. To answer that question, the claimant provided the *Affidavit of Phillip J. Davies* and the *Affidavit of Jeremy Davies*. Those two affidavits state that this water claim relates to a sawmill operation owned by Mr. Phillip Davies. The sawmill operation was suspended in 1991, and Phillip Davies has not operated the sawmill since that time. However, from 1991 until 2003, Phillip Davies’ nephew, Jeremy Davies, used the water from the well to perform maintenance on the property including irrigating trees, shrubbery, and grass. Jeremy Davies also used the well to water livestock. This water use continued into the year 2003. The claim was filed in July of 2007. Therefore, this Special Master finds a “meritorious position” was alleged.

IV. CONCLUSIONS OF LAW

Based on the file and *Affidavits* of record, this Special Master finds a “meritorious position” was alleged. Based on IDWR’s report, this Special Master concludes that the likelihood of prejudice

to other parties in the SRBA and in Basin 34 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 34-13915.

DATED: April 9, 2008.



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

2008 APR -9 PM 3:05

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)

CERTIFICATE OF MAILING

Case No. 39576)

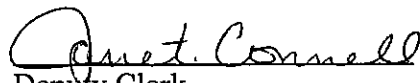
Water Right (s) : 34-13915

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S
RECOMMENDATION REGARDING PREJUDICE ON MOTION TO FILE LATE CLAIM
was mailed on April 9, 2008, with sufficient first-class postage prepaid to the following:

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

Phillip James Davies
Represented by:
Steve L Stephens
260 Grand Ave
PO Box 736
Arco, Idaho 83213


Deputy Clerk