

DEPARTMENT OF
WATER RESOURCES

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water rights were held on June 27, 2008 and for all intents and purposes any objections to said water rights have been resolved and the parties are waiting for SF5's to be prepared. Now, more than a year after the objection period has ended, Lindsey Lateral seeks to file late responses based upon its assertion that the Lindsey Lateral may own a portion of water right 63-199B.

NMID is opposing Lindsey Lateral's Motion because good cause has not been shown why Lindsey Lateral waited over a year to file a response to a water right they knew was recommended to NMID. In fact, the Director's Report for Basin 63, Part III was issued on December 15, 2006, and specifically provided that the water right claimed by Lindsey Lateral was Disallowed because it was "Recommended as water rights in the name of Nampa & Meridian Irrigation District." Good cause cannot be shown for Lindsey Lateral's failure to object or respond to NMID's recommendation until nineteen months later.

In addition, NMID is opposing Lindsey Lateral's Motion because Lindsey Lateral lacks standing to participate in NMID's subcases. NMID recognizes the loose requirements of the SRBA to allow a "claimant" to participate, however, Lindsey Lateral cannot overcome the threshold requirement of being a valid "claimant." Lindsey Lateral has made a claim in the SRBA which as been disallowed, but Lindsey Lateral is not a valid, existing entity under the laws of the State of Idaho, does not own any real property, and does not have the authority of its alleged members to own the water right on their behalf. This Court does not have the authority to recommend the claimed water right in the name of the Lindsey Lateral, and therefore, Lindsey Lateral cannot be a valid "claimant" which has standing to participate in these subcases.

II. STANDARD

SRBA Administrative Order 1 does not provide guidance relative to the standards of review of motions to file late objections, although it does provide that motions to file late claims are reviewed under the “good cause shown” criteria of I.R.C.P. 55(c). Additionally,

[w]hether part of good cause or in addition to it, Idaho courts have imposed further requirements. First a party must show that he or she has acted in good faith and exercised due diligence in the prosecution of his or her rights, such as an ordinarily prudent person would exercise under similar conditions. *Council Improvement Co. v. Draper*, 16 Idaho 541, 102 P. 7 (1909), and *Kovachy v. DeLeusomme*, 122 Idaho 973, 842 P.2d 309 (App. 1992). Second, a party must show a meritorious defense to set aside a default. *Thomas v. Stevens*, 78 Idaho 266, 300 P. 2d 811 (1965).

A party who seeks to set aside a default has the burden of supplying detailed facts of the proposed defense. *Smith Electric, Inc. v. Crandlemire*, 199 Idaho 172, 595 P.2d 321 (1979). At a hearing on the motion, a party need not produce documents to prove a defense. It is sufficient if the movant pleads with particularity facts which, if proven, would constitute a meritorious defense. *State v. One 1990 Geo Metro*, 126 Idaho 675, 889 P.2d 109 (App. 1995).

(*Order Granting Motion to File Late Objections, In re SRBA Case No. 39576, Subcases 36-02338, 36-02414, 36-02734, and 36-04011* (Mar. 24, 1997)). Thus, it is apparent that a party moving to file late objections/responses must show good cause for their motion, must show that they acted in good faith and exercised the diligence of an ordinarily prudent person under similar conditions, and must supply detailed facts establishing that their objection is meritorious.

III. ARGUMENT

A. Lindsey Lateral Cannot and Has Not Shown Good Cause.

Lindsey Lateral claims that good cause exists to allow it to file responses more than one year after the objection period ended and more than nineteen months after the recommendations for Basin

63, Part III were issued. Lindsey Lateral suggests that it did not know that an overlap between its claim, which was disallowed, and NMID's claims existed until just recently. However, this is contradicted by the fact that the Director's Report for Basin 63, Part III was issued on December 15, 2006, and specifically provided that the water right claimed by Lindsey Lateral was Disallowed because it was "Recommended as water rights in the name of Nampa & Meridian Irrigation District." Thus, Lindsey Lateral knew as early as December 15, 2006, and probably earlier based upon IDWR's practice of sending out pre-recommendations, that its claimed water right was being recommended in the name of NMID. Yet, Lindsey Lateral did not file a timely objection to NMID's water rights and apparently did not retain an attorney to assist them in evaluating the claims (Failure to retain counsel or to investigate whether to file an objection to NMID's water rights is not exercising due diligence and is not good cause). This Court should reject the suggestion that a party's failure to investigate a claim or failure to hire counsel in an adequate time justifies good cause to wait more than a year to participate.

In addition, there is prejudice to NMID to allow Lindsey Lateral to file late responses at this juncture. NMID has complied with the time lines set forth by the SRBA, has diligently worked to resolve its objections and other parties objections to its claims, and it would be prejudicial to allow such late responses.

B. Lindsey Lateral Lacks Standing to Participate.

NMID recognizes that pursuant to I.C. § 42-1412 any "claimant" can file an objection or response to a water right reported in the Director's Report. NMID also recognizes that Lindsey Lateral is a "claimant" to water right 63-32000 which was disallowed. However, while Lindsey

Lateral is a “claimant” to a disallowed water right, it is not a valid “claimant” which should be recognized by this Court. Whether or not Lindsey Lateral is a valid “claimant” goes to both standing and the portion of the good cause standard which requires a meritorious defense.

First, Lindsey Lateral is not a recognized entity by Idaho’s Secretary of State. Lindsey Lateral is no where to be found on Idaho’s Secretary of State’s website, and is not a recognized entity which as a “claimant” could hold a water right. Second, Lindsey Lateral does not own any land to which the “claimed” water right could be appurtenant. Certainly there are water delivery entities which do not own land but do own water rights on behalf of their landowners/shareholders. However, there has to be some underlying authority for the delivery entity to hold the water right. Here, Lindsey Lateral does not have the authority of its members to hold the water rights in its name. To the contrary, if, for arguments sake, Lindsey Lateral’s position was correct, then each landowner would own a portion of the water right appurtenant to their respective lands. Thus, if the Court were to accept Lindsey Lateral’s arguments then a portion of the disputed water right would be owned by each of the individual landowners that own the real property to which the water right is appurtenant. Those individual landowners would be the owner and Lindsey Lateral would not be the owner of any portion of the water right and it has not shown it is entitled to own any portion of the water right. Lindsey Lateral cannot be a valid “claimant” under I.C. § 42-1412 if it cannot be the owner of the water right it has claimed and thus it has not presented a meritorious defense.

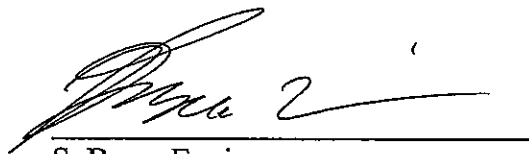
IV. CONCLUSION

For the above-stated reasons, NMID respectfully requests that Lindsey Lateral’s motion to file late responses be denied. Even with the loose requirements for late responses and for standing

in the SRBA, Lindsey Lateral has not demonstrated good cause for its tardiness, and it has not shown that it has valid authority to claim and own any portion of the disputed water rights.

Dated this 28th day of August, 2008.

RINGERT LAW CHARTERED


S. Bryce Farris

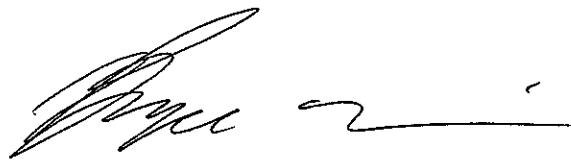
CERTIFICATE OF SERVICE

I certify that on the 28th day of August, 2008, I served copies of this document, including all attachments to the following by U.S. Mail:

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