

RECEIVED

OCT 08 2008

DEPARTMENT OF
WATER RESOURCES

Craig D. Hobdey
HOBDEY LAW OFFICE, PLLC
125 Fifth Avenue West
P.O. Box 176
Gooding, Idaho 83303-0176
Telephone (208) 934-4429
I.S.B. #3199

Attorney for Quarter Circle Lazy H, Inc. and Bliss Point Cattle, Inc.

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

Case No. 39576

) Subcase No. 37-04403
)
)
)
)

**RESPONSE TO PAT BENNETT'S
MOTION TO FILE LATE OBJECTION**

COMES NOW, BLISS POINT CATTLE, INC., and QUARTER CIRCLE LAZY H. INC.,
by and through their Attorney, Craig Hobdey and responds to PAT BENNETT'S MOTION TO FILE
LATE OBJECTION as follows:

1. The motion is ill-founded, as there is no justifiable reason for allowing the objection at this late date. There was no actual motion filed, and the filing of the Late Objection should not be allowed for the following reasons:
 - A. Failing the Late Objection was willful;
 - B. Allowing the Late Objection would prejudice the Claimants;
 - C. No meritorious position has been presented.

LEGAL STATUS

2. Bennett's Request to File Late Objection must be reviewed under Idaho Rule of Civil Procedure 55(c). The Court must determine whether granting the Request would cause prejudice, whether or not the proposed Late Objection states a meritorious

RESPONSE TO PAT BENNETT'S
MOTION TO FILE LATE OBJECTION

Page 1 of 4

position, and whether or not such Late Objection was willful. (See for example , Order on Permissive Review and Order of Re-commitment, Subcases 45-12475 et al. (August 3, 2005) (Bedke). A Motion to File Late Objection should be denied if the Movant's failure to timely raise the objection was willful. (A willful act may be described as one done intentionally, knowingly, and purposefully, without justifiable excuse.) (Bedke).

ARGUMENT

3. Unfortunately for Bennett, there was no Motion to File Late Objection filed, therefore there is no way to determine whether or not the the failure to File a timely Objection was willful. There was apparently a letter filed by Bennett proposing to explain the reason for the Late Objection. However the letter cannot be treated as an Affidavit and should be stricken from the record. Even if the letter were allowed, the Motion to File Late Objection is willful. Objections in Basin 37, Part II were to be filed on May 23, 2007. In fact, the recommendations were not sent out until December 4, 2006, apparently after the time Emma Bennett had died. Once the Recommendations were sent out and received Bennett had five months to object and willfully failed to do so. It is now more than sixteen (16) months since the date for filing Objections and therefore the failure to file a timely Objection must be treated as willful.
4. Allowing the Late Objection would unduly prejudice the Claimants. A hearing on Uncontested Recommendations was held on September 18, 2007. Since no one had Objected to their claims, Claimants have assumed, and have operated pursuant to that assumption, with the understanding that their recommendations would receive a partial Decree. Additionally, Claimants have now been forced to hire a counsel to represent them in this matter, which is further prejudice.
5. Finally, the Court has to determine whether or not a meritorious position has been presented. In this matter there does not appear to be a meritorious position. Bennett, in his Late Objection, merely states "quantity should be shared with Pat Bennett." If, in fact, Mr. Bennett has a right in the spring, he should have filed his own claim and have his own recommendation. There is no meritorious position for requiring

Claimants to share any water on a percentage basis with the Objector.

6. Any right that Mr. Bennett may have in Dyer Creek has been forfeited by Bennett. In Bennett's own words, the Claimant's have "diverted all the water out of Dyer Creek for years". If that in fact has taken place then Bennett has no right in Dyer Creek.

CONCLUSION

Bennett has not demonstrated any cause, let alone a good cause, to grant a motion to file late objection pursuant to IRCP 55(c). Claimants would certainly be prejudiced by the granting of said motion which would cause unnecessary time, delay, additional costs and attorney fees. Failure to file a timely Objection was willful and there has been no meritorious position set forth by any proposed Motion to File Late Objection nor any Affidavit in support therefore.

Therefore, Claimants request, that Bennett's Motion to File Late Objection be denied in its entirety and that Claimants be awarded costs and attorney fees for having to defend this frivolous Motion.

DATED THIS 7th day of October, 2008.

HOBDEY LAW OFFICE, PLLC

By: Craig D. Hobdey
Craig D. Hobdey

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of October, 2008, I caused to be served copies of the foregoing RESPONSE TO PAT BENNETT'S MOTION TO FILE LATE OBJECTION by U.S. Mail, postage prepaid to the following:

Original to:
Clerk of the District Court
Snake River Basin Adjudication
PO Box 2707
Twin Falls ID 83303-2707

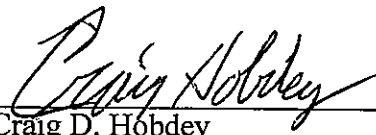
RESPONSE TO PAT BENNETT'S
MOTION TO FILE LATE OBJECTION

Copies to:
Pat Bennett
PO Box 113
Hill City ID 83337

IDWR Document Depository
PO Box 83720
Boise ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise ID 83711-4449

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise ID 83724



Craig D. Hobbey