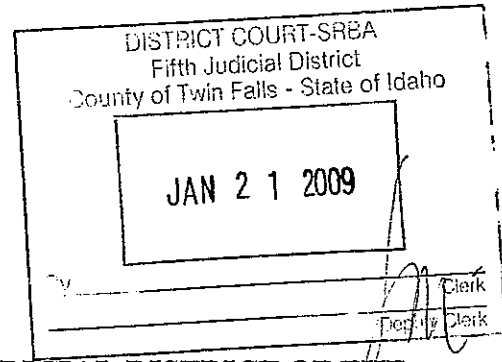


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DEPARTMENT OF
WATER RESOURCES



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

) ORDER OF REFERENCE APPOINTING
) THEODORE BOOTH SPECIAL MASTER
) FOR FURTHER PROCEEDINGS ON
) MOTION TO FILE LATE CLAIM
)

) For Water Right Claim(s): 72-16778; 72-16779;
) 72-16780; 72-16781; 72-16782; 72-16783; 72-
) 16784; 72-16785; 72-16786; 72-16787; 72-16788
) and 72-16789;

This matter came before this Court pursuant to a *Motion to File a Late Claim* filed in each of the above-captioned subcases. The *Motions* were filed on behalf of various claimants through the same counsel and the claims are similar in that they seek carriage loss for rights previously decreed in the SRBA. (Except for claim 72-16778 which is an irrigation claim filed in order to satisfy a grazing permit condition). The *Motions* were heard January 20, 2009. Counsel for Valley Sun, LLC appeared in opposition to the *Motions* and represented that a written appearance would be forthcoming.

Following a review of the file and after hearing the comments made in open court, the Court finds that the claimant has demonstrated an excuse for the untimely filing of the subject late claims which is an element of the "good cause" standard for filing a late claim as required by *SRBA Administrative Order 1 (AOI)* 4.d.(2)(d) and I.R.C.P. 55(c). However, the questions of prejudice to other parties, if any, that may arise by the late claim(s) and meritorious position were not specifically resolved. The underlying claims to which the instant claims seek carriage loss were previously decreed in the SRBA as well as decreed in a prior adjudication. The instant claims, except 72-16778, seek additional quantities based on beneficial use to compensate for

carriage loss. The argument is that the historical use has not increased but rather the full quantities were not captured in the SRBA decrees. Further, that the claims are non-consumptive because the porous ground permits full return of the carriage water to the source. Because all contested claims in Basin 72 have been previously resolved the Court requires further proceedings to determine whether the criteria of I.R.C.P. 55(c) have been met to avoid prejudice to other parties who timely filed their claims.

THEREFORE, THE FOLLOWING ARE HEREBY ORDERED:

This matter is referred to Special Master Theodore Booth for further proceedings to determine the degree of prejudice, if any, to other parties on the same claimed source as well as meritorious position based on the status of the claims. If the Special Master finds no such prejudice and a meritorious position, then to recommend to this Court that the late claim be granted.

The Special Master shall set proceedings in conformity with *AOI*, section 9, notwithstanding the provisions of I.R.C.P. 53(d)(1), and exercise the power to regulate all proceedings in every hearing and to do all acts and take all measures necessary or proper for the efficient performance of his duties under this *Order*.

IT IS SO ORDERED.

DATED: January 21, 2009


John M. Melanson
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF REFERENCE APPOINTING THEODORE BOOTH SPECIAL MASTER FOR FURTHER PROCEEDINGS ON MOTION TO FILE LATE CLAIM was mailed on January 21, 2009, with sufficient first-class postage to the following:

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