

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

MAY - 7 2009

By _____
Clerk

Deputy Clerk

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

**SPECIAL MASTER'S REPORT AND
RECOMMENDATION ON MOTION TO
FILE LATE CLAIM**

WATER RIGHT NO.: 27-12180

I. PROCEDURAL BACKGROUND

On August 6, 2008, the SRBA Court received a *Motion to File Late Notice of Claim* from Gemco Limited Partnership. A hearing on the *Motion* was held on November 18, 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 on November 25, 2008. In the *Order of Reference*, Judge Melanson ruled that both “good cause” for the untimeliness and a “meritorious position” had been demonstrated. However, Judge Melanson asked this Special Master to take up further proceedings to determine prejudice to other parties, if any.

II. STANDARD OF REVIEW

The SRBA Administrative Orders do not provide a standard to be applied for filing late objections. However, the court's administrative rules set forth that *Motions to File 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).

Judge Melanson has previously determined that “good cause” and “meritorious position” have been shown. Judge Melanson asked for findings regarding “prejudice to other parties” if these late claims are allowed. The SRBA Court places emphasis on the element of prejudice to other parties in basins where the reported water rights have been litigated and decreed. The SRBA Court recently noted, “ 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 reported and litigated.” *Order of Reference* (Subcase No. 34-13811) (October 28, 2003) The Water rights at issues are in Basin 27. It is, therefore, important to determine whether allowing a late claim would prejudice existing water rights in Basin 27.

The Idaho Department of Water Resources reported that the other parties in Basin 27 subcases are engaged in settlement discussions relating to *Objections* by the United States and the Shoshone-Bannock Tribes. Those settlement discussions led to a deadline for filing late claims in Basin 27. However, IDWR noted that this *Motion* was filed before the deadline. In addition, this claim is for industrial and commercial uses. Therefore, this right is not thought to be related to the irrigation and stockwater claims involved in the United States and Tribal *Objections*. IDWR states that it is therefore unlikely this late claim would cause prejudice to other parties in Basin 27.

III. FINDINGS AND CONCLUSIONS

Based on IDWR’s report, this Special Master concludes that prejudice to other parties in the SRBA and in Basin 27 is unlikely. This *Motion for Late Claim* was filed before the deadline. Additionally, the asserted purpose of use is industrial and commercial. Therefore, both IDWR and this Special Master conclude that it is not likely that this late claim would prejudice other parties in Basin 27.

IDWR reported that this water right will be included in its annual *Director’s Report* for late claims in 2009. When the *Director’s Report* is filed, the claimant will have an opportunity to object if necessary.

Therefore, IT IS RECOMMENDED that the *Motion to File Late Notice of Claim* be **granted** for water right 27-12180.

Dated: May 7, 2009.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT AND RECOMMENDATION ON MOTION TO FILE LATE CLAIM was mailed on May 07, 2009, with sufficient first-class postage to the following:

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