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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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

JUN 26 2009

Clerk
Deputy Clerk

In Re SRBA

Case No. 39576

) SPECIAL MASTER'S
) RECOMMENDATION REGARDING
) PREJUDICE ON MOTION TO FILE
) LATE CLAIM

) WATER RIGHT NOS.: 29-4443, 29-4444,
) and 29-4445

I. PROCEDURAL HISTORY

On January 28, 2009, the SRBA Court received *Motions to File Late Notice of Claim* for water rights 29-4443, 29-4444, and 29-4445 from Bob Rowland. A hearing on the *Motion* was held on April 21, 2009, 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 April 28, 2009.

In the *Order of Reference*, Judge Melanson ruled that both "good cause" for the untimeliness and a "meritorious position" had been demonstrated by the claimant. However, Judge Melanson asked this Special Master to take up further proceedings to determine prejudice to other parties, if any, that may arise by the late claim. First, these claims are located in Basin 29, which is a completed basin. Further, the source for two of the claims is the Portneuf River, which is subject to a Comprehensive Settlement Agreement. A hearing was held on June 17, 2009. 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 (AOI)* § 4 (d)(2)(d).

III. FINDINGS

Judge Melanson has previously determined that the claimant has shown both "good cause"

SPECIAL MASTER'S RECOMMENDATION
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and a "meritorious position." Judge Melanson 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)

The water rights at issue here are in Basin 29. Many of the water rights in Basin 29 have been litigated and decreed. In addition, many water rights tributary to the Portneuf River are subject to a Comprehensive Settlement Agreement. 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 29. IDWR reported that it has considered the potential impact of these late claims on other water rights. IDWR does not believe these claims would affect the Portneuf River Settlement Agreement. IDWR is unaware of prejudice to other parties that would occur if these late claims are allowed.

IV. CONCLUSIONS OF LAW

Based on IDWR's Report, this Special Master concludes that the likelihood of prejudice to other parties in the SRBA and in Basin 29 is such that the late claims should proceed. IDWR indicated that these late claims would not impact the Portneuf River Settlement Agreement. Furthermore, once the *Director's Report* for these water rights is filed, other parties will have an opportunity to object.

THEREFORE, IT IS RECOMMENDED that the *Motions to File Late Claim* be granted for water rights 29-4443, 29-4444, and 29-4445.

DATED: June 26, 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 RECOMMENDATION REGARDING PREJUDICE ON MOTION TO FILE LATE CLAIM was mailed on June 26, 2009, with sufficient first-class postage to the following:

ROWLAND'S INC

Represented by:

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