

Claimant Name:

Elizabeth Mathieu Revocable Living Trust

Attorney Name & Address:

James P. Speck, ISB#2067

Speck & Aanestad

A Professional Corporation

120 East Avenue

P.O. Box 987

Ketchum, Idaho 83340

Phone: (208) 726-4421

FAX: (208) 726-0752

E-mail: jim@speckandaanestad.com

RECEIVED

JUL 16 2009

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

)
)
)
)
)
)

A. Subcase 37-297A

MOTION TO FILE LATE
OBJECTION

Elizabeth Mathieu Revocable Living Trust (the "Claimant"), by and through its undersigned counsel of record and pursuant to Idaho Rules of Civil Procedure 7 and 55(c), hereby files this Motion to File Late Objection to Water Right 37-297A. This Motion is supported by the Affidavit of James P. Speck in Support of Motion to File Late Objection and Motion to File Amended Notice of Claim filed contemporaneously (the "Affidavit").

Claimant seeks an order from the Court granting leave to file a late objection to the nature of use, quantity, and period of use of this irrigation water right (a copy of the proposed Objection is attached hereto as **Exhibit A**). At the same time, Claimant has filed a Motion to File Amended

Notices of Claim for the same water right changing a portion of the right presently claimed and recommended for irrigation to diversion to storage, aesthetic storage and aesthetic purposes on the basis of Idaho Code Section 42-1425 for “accomplished transfers.”

The factual grounds for this Motion are set forth in the Affidavit. In his *Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcase Nos. 65-07267, *et al.* (Jan. 31, 2001) (“A.L. Cattle”), Presiding Judge Burdick succinctly explained the standard governing motions to file late objections as follows:

In subcases for which partial decrees have not been entered, the legal standard for filing a late objection to a water right claim in the SRBA has been historically determined pursuant to the standard set forth in *AOI* for filing late claims since *AOI* does not expressly provide a standard for reviewing late objections. A motion to file a late claim is determined pursuant to I.R.C.P. 55(c), which provides the standard for setting aside the entry of a default. *See AOI* § 4d(d)(d) (late claims reviewed under I.R.C.P. 55(c) criteria) and (k) (leave to amend a notice of claim shall be freely given when justice so requires). In determining whether to set aside the entry of a default under I.R.C.P. 55(c), Idaho Courts apply a “good cause” for untimeliness standard. I.R.C.P. 55(c). The “good cause” standard is a more lenient threshold than the Rule 60(b) standard. *McFarland v. Curtis*, 123 Idaho 931, 935, 854 P.2d, 274 (1993). The I.R.C.P. 55(c) standard takes into account the following factors:

- 1) whether the default was willful;
- 2) whether setting side the judgment would prejudice the opponent; and
- 3) as with a Rule 60(b) motion, whether a meritorious position has been presented.

A.L. Cattle at 6-7.

Importantly, this Court has significant discretion to grant a motion to file a late objection, and its decision will not be reversed on appeal unless an abuse of discretion clearly appears. *Memorandum Decision and Order on Challenge*, Subcase Nos. 47-16433, *et al.*, at 9 (J. Melanson, March 22, 2005) (“*Bedke I*”). In doubtful cases, relief should be granted to reach a judgment on the

merits. *Bedke I* at 10. Default judgments are disfavored. *A.L. Cattle* at 8.

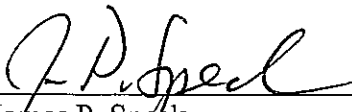
The submission of this Objection after the deadline is not "willful." Instead, it is due the relatively recent determination that a pond sitting on three adjacent subdivision lots since prior to November, 1987 is too large to qualify as just an "irrigation holding pond" and, therefore, requires water rights for the storage of water in the pond. The sole purpose of the Objections is to create subcases for contested water rights which, in turn, will be the subject of the Motion to File Amended Notices of Claim as described above. Assuming the motions are granted, the Court can then set by a scheduling order deadlines for amended director's reports, objections to the amended director's reports and responses to the objections. In that way there will be no prejudice to any other party to the SRBA.

Finally, the proposed objections together with the Motion to File Amended Notices of Claim state a meritorious position on modification of the water right recommendations. Collectively these Motions will result in the consistent recommendation of the water rights appurtenant to three adjacent subdivision lots which all share the use of the pond sitting on the three lots.

For the foregoing reasons, Claimant respectfully requests that the Court grant its Motion to File Late Objection and to accept for filing the objection attached hereto as **Exhibit A**.

DATED this ^{15th} ~~24~~ day of ^{July} ~~June~~, 2009

SPECK & AANESTAD
A Professional Corporation
Attorneys for Claimant

By: 
James P. Speck

CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of July, 2009, I served a true and correct copy of the foregoing MOTION TO FILE LATE OBJECTION on the following persons in the manner designated below:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

- ☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile, with copy by United States Mail, Postage Prepaid

Elizabeth Mathieu Revocable Living Trust
30 Prescott Ave.
Bronxville, NY 10708

- ☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile, with copy by United States Mail, Postage Prepaid

Chief, Natural Resources Division
Office of the Attorney General, State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

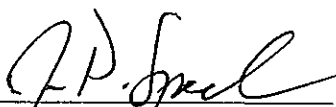
- ☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile, with copy by United States Mail, Postage Prepaid

The United States Department of Justice
Environmental and Natural Resources Division
550 West Fort Street
Box 33
Boise, ID 83724

- ☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile, with copy by United States Mail, Postage Prepaid

Idaho Department of Water Resources
Document Depository
P.O. Box 83720
Boise, ID 83720-0098

- ☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile, with copy by United States Mail, Postage Prepaid


JAMES P. SPECK

~~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

)
)
)
)
)
)

A. Subcase 37-297A

**STANDARD FORM 1
OBJECTION**

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Elizabeth Mathieu Revocable Living Trust

Address: 30 Prescott Ave.
Bronxville, NY 10708

Daytime Phone: (914) 484-2348

Name & Address of Attorney, if any:

James P. Speck
SPECK & AANESTAD
A Professional Corporation
PO Box 987
Ketchum, ID 83340

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Elizabeth Mathieu Revocable Living Trust

Address: 30 Prescott Ave.
Bronxville, NY 10708

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**

Should be:

2. ☐ **Source**

Should be:

3. ☒ **Quantity**

Should be: See paragraph E, below.

4. ☐ **Priority Date**

Should be:

5. ☐ **Point(s) of Diversion**

Should be:

6. ☐ **Instream Flow Description**

Should be:

7. ☒ **Purpose(s) of Use**

Should be: See paragraph E, below.

8. ☒ **Period of Year**

Should be: See paragraph E, below.

9. ☐ **Place of Use**

Should be:

10. **I object because:**

☐ This water should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):** See Claimant's Motion to File Late Objection and Motion to File Amended Notice of Claim and the Affidavit of James P. Speck filed in support thereof.

F.

VERIFICATION (Must be completed)

State of Idaho)

ss.

County of Blaine)

James P. Speck, being first duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, as defined by I.C. § 42-1401A(1) and (6), or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

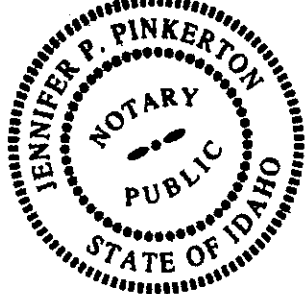
(Signature of person filing objection)

J.P. Speck

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

7/15/09



Jennifer P. Pinkerton

Notary Public for Idaho

Residing at Ketchum, Id.

My Commission expires 2/9/15

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. FAX filings will not be accepted.

You must also send a copy to all of the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on July 15, 2009, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to the claimant of the water right at the following address:

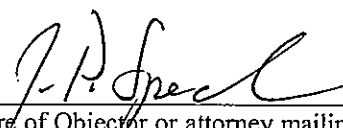
Name: Elizabeth Mathieu Revocable Living Trust
Address: 30 Prescott Ave.
Bronxville, NY 10708

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, Idaho 83711-4449

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, Box 33
Boise, Idaho 83734



Signature of Objector or attorney mailing on
Objector's behalf