

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
NOV 16 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	)	Subcase 36-16749
	)	
Case No. 39576	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION ON MOTION TO
	)	FILE LATE NOTICE OF CLAIM
	)	

On April 6, 2009, the A & B Irrigation District (Claimant), through its attorneys of record, filed a *Standard Form 4, Motion to File a Late Notice of Claim* for the above-captioned water right. The *Motion* was heard by Judge Melanson on July 21, 2009. On July 23, 2009, Judge Melanson issued an *Order of Reference* appointing Theodore R. Booth as special master for the purpose of making findings under the standard for late notices of claim pursuant to I.R.C.P. 55(c). A hearing before Special Master Booth was held on October 27, 2009. Appearing at the hearing were Travis Thompson on behalf of the A & B Irrigation District; and Candice McHugh on behalf of several groundwater districts.

Based upon the comments of the attorney for the Claimant at the hearing, and upon the information set forth in the *Memorandum in Support of Motion to File Late Notice of Claim* and the supporting affidavits, this Special Master finds that the Claimant has sufficiently demonstrated good cause as is required under I.R.C.P. 55(c). Specifically, this Special Master finds: (1) that the Claimant's untimeliness was not willful; (2) that a meritorious position has been presented; and (3) that there is very little likelihood of prejudice to other parties in allowing the claimant to proceed with its claim.

Counsel for the various groundwater districts expressed concern at the hearing that the subject late claim is really an attempt to convert enlargement water right 36-11508 (which is owned by Mr. Gary Hansen) into a beneficial use claim with an earlier priority date. This Special Master disagrees. Although the subject late claim and the

enlargement claim 36-11508 cover the same place of use, the rights are not derived from the same point of diversion. Water right 36-11508 has a point of diversion that consists of a privately drilled and owned well; whereas water right claim 36-16749 is derived from a separate well drilled and owned by the A & B Irrigation District. It is the opinion of this Special Master that the A & B Irrigation District is operating independently of Mr. Hansen in this matter to claim its water rights and therefore the actions in the SRBA of Mr. Hansen are not binding upon the A & B Irrigation District in asserting its water right claims.

Accordingly, IT IS RECOMMENDED that the *Motion* be **granted**, and that the late claim be forwarded to IDWR for investigation and reporting in a late claims director's report.

Dated NOV. 16, 2009



THEODORE R. BOOTH
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 NOTICE OF CLAIM was mailed on November 16, 2009, with sufficient first-class postage to the following:

ABERDEEN AMERICAN FALLS GROUND
BINGHAM GROUND WATER DISTRICT
BONNEVILLE JEFFERSON GROUND
JEFFERSON CLARK GROUNDWATER
MADISON GROUND WATER DISTRICT
MAGIC VALLEY GROUND WATER
NORTH SNAKE GROUND WATER

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A & B IRRIGATION DISTRICT
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DIRECTOR OF IDWR
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