

NOV 27 2009

DEPARTMENT OF
WATER RESOURCES

Ray W. Rigby (ISBN 613)
 Jerry R. Rigby (ISBN 2470)
 Robert H. Wood (ISBN 8229)
 of RIGBY, ANDRUS
 & RIGBY, Chartered
 Attorneys at Law
 25 North Second East
 Rexburg, Idaho 83340
 Telephone: (208) 356-3633
 Facsimile: (208) 356-0768

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

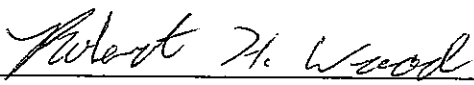
Subcase: 01-139 & 01-140

Case 39576

MOTION TO SET ASIDE FINAL
 ORDER DISALLOWING WATER
 RIGHT CLAIMS

The Claimant, Bannock Jim Slough, moves to set aside the Final Order Disallowing Water Right Claims for water rights 01-00139 and 01-00140, pursuant to Idaho Rules of Civil Procedure 60(b), and to reconsider said rights for recommendation, on the grounds of mistake, inadvertence, and excusable neglect. This motion is supported by the attached memorandum and affidavit.

DATED this 25th day of November, 2009.


 Robert H. Wood

CERTIFICATE OF MAILING

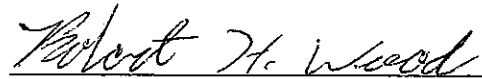
I certify that on November 25, 2009, I mailed the original and copies of this objection, including all attachments, to the following persons:

Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

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

United States Department of Justice
Environment and Nat'l Resources Div
550 W. Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise, ID 83711-4449



Robert H. Wood

Ray W. Rigby (ISBN 613)
Jerry R. Rigby (ISBN 2470)
Robert H. Wood (ISBN 8229)
of RIGBY, ANDRUS
& RIGBY, Chartered
Attorneys at Law
25 North Second East
Rexburg, Idaho 83340
Telephone: (208) 356-3633
Facsimile: (208) 356-0768

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: 01-139 & 01-140
	)	
	)	MEMORANDUM IN SUPPORT OF
Case 39576	)	MOTION TO SET ASIDE FINAL
	)	ORDER DISALLOWING WATER
	)	RIGHT CLAIMS
	)	
_____	)	

The Claimant, Bannock Jim Slough, moves to set aside the Final Order Disallowing Water Right Claims for water rights 01-00139 and 01-00140 on the grounds of mistake, inadvertence, and excusable neglect, pursuant to the Idaho Rules of Civil Procedure.

BACKGROUND

Bannock Jim Slough is a collective group of irrigators seeking to form a Canal Company to represent their water rights. Negotiations among the group to form a canal company have been ongoing for several years. They have only recently decided on a business agreement that all members of the group agree on.

Approximately three years ago, water rights 01-00139 and 01-00140 were recommended

**Memorandum in Support of Motion to Set Aside Final Order Disallowing Water Rights
Claims - Page - 1**

sb/BannockJim.mem

to be disallowed by the Idaho Department of Water Resources. They were recommend disallowed because the group had not yet formed a proper canal company. While the Claimants were aware the rights had been recommended as disallowed, they were not aware that an objection had not been filed. Their first priority at the time was to design a business agreement acceptable to all members of the group. Agreeing on a business agreement has been a difficult task for the group, and at times negotiations have been strained. Because of the difficulty of the negotiations, Claimants must have missed any notice that an objection had not been filed. Neither the Claimants nor their Counsel were aware that the final order regarding the disallowance of these claims was imminent, and as such, they were attempting to finish structuring their business agreement before proceeding with any other transactions. Neither the Claimants nor Counsel intentionally ignored the recommendation to disallow the water rights.

Notwithstanding the information given above, water rights 01-00139 and 01-00140 are extremely important to the Claimants' daily operations as irrigators. Water right 01-00139 is extremely valuable as it provides 12 cfs to claimants, and has a priority date of June 1st 1889. Water right 01-00140 provides 3.20 cfs and has a priority date of May 1st 1905. These rights have historically been used in these amounts, and are vital to the Claimants' operations. The loss of these rights would cause irreparable harm to the Claimants as they would lack sufficient water for their needs without these rights.

These rights have not been protested by any third parties.

APPLICATION

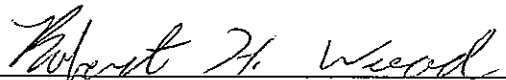
I.R.C.P. 60(b)(1) gives the court the discretion to relieve a party or their legal

representative from a final judgment, order, or proceeding for the reasons of mistake, inadvertence, surprise, or excusable neglect. The rule is not specific as to what kinds of mistake, inadvertence, surprise or excusable neglect must be shown in order for the moving party to be granted relief by the court. *Ausman v. State*, 124 Idaho 839, 864 P.2d 1126, Idaho, 1993. Nor does the rule state that it applies to any specific area of civil law or to any specific types of judgments or orders. *Id.* At 1130. This rule is simply a general rule of civil procedure, and whether or not a court grants a motion under this rule is entirely discretionary. *Id.*

In the case before the court, a mistake was made as to when the Claimants and their Counsel should have filed their objection with the Court. As shown above, the Claimants have been involved in a heavily disputed negotiation over a business agreement for several years. As such, the mistake was made to not file the objection in a timely manner. However, in this case no harm would be caused to any parties if the court exercises its discretion to set aside the final order disallowing the Claimants' claims. No third parties objected to the rights. Also, the Claimants will be adversely affected if the order is not set aside, so that Claimants may file an objection with the Court.

Therefore, the Court should set aside the Final Order disallowing these claims so that Claimants may file a Motion to File a Late Objection and a Late Objection with the Court.

DATED this 25th day of November, 2009.


Robert H. Wood

CERTIFICATE OF MAILING

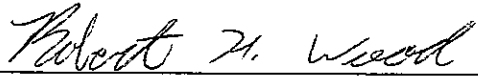
I certify that on November 25, 2009, I mailed the original and copies of this objection, including all attachments, to the following persons:

Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

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

United States Department of Justice
Environment and Nat'l Resources Div
550 W. Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise, ID 83711-4449


Robert H. Wood

Ray W. Rigby (ISBN 613)
Jerry R. Rigby (ISBN 2470)
Robert H. Wood (ISBN 8229)
of RIGBY, ANDRUS
& RIGBY, Chartered
Attorneys at Law
25 North Second East
Rexburg, Idaho 83340
Telephone: (208) 356-3633
Facsimile: (208) 356-0768

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: 01-139 & 01-140
	)	
Case 39576	)	AFFIDAVIT IN SUPPORT OF
	)	MOTION TO SET ASIDE FINAL
	)	ORDER DISALLOWING WATER
	)	RIGHT CLAIMS
	)	
	)	

STATE OF IDAHO)
 ss
County of Madison)

Tim McGarry, being first duly sworn, deposes and says:

1. I am above the age of 18 and reside at 6505 West 3800 South, Rexburg, Idaho 83440.
2. I am the President of Bannock Jim Slough, Inc., The facts herein stated are based upon your affiant's personal knowledge.
3. For the past three years the members of Bannock Jim Slough have been in negotiations over how to form the canal company, and the members are in the final stages of finalizing the formation of the company.
4. As a member of Bannock Jim Slough, I was not aware that an objection had not been

Affidavit in Support of Motion to Set Aside Final Order Disallowing Water Right Claims

Page - 1

sb/bannockjim.aff

filed to the recommendation that the water rights be disallowed, nor was I aware that a final order disallowing the rights was imminent.

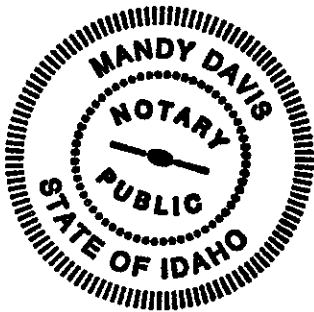
5. Water Rights 01-00139 and 01-00140 have been historically used in the amount and manner in which they were claimed in the Snake River Basin Adjudication.

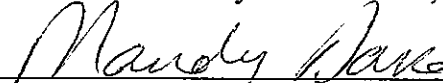
6. Said water rights are imperative to the operations of the members of Bannock Jim Slough. If these rights are disallowed, the members of Bannock Jim Slough will suffer irreparable harm.

DATED This 25th day of November, 2009


Tim McGarry

SUBSCRIBED AND SWORN To before me this 25th day of November, 2009.




Notary Public for Idaho
Residing at: St. Anthony, Idaho
Commission Expires: 6/24/2011