

RECEIVED

MAY 28 2010

DEPARTMENT OF  
WATER RESOURCES

John M. Marshall, ISB #5628  
John Marshall Law PLLC  
575 W. Bannock Street, Suite B  
Boise, Idaho 83702  
Telephone: 208-991-2701  
Facsimile: 208-906-8043  
[john@jmarshalllaw.com](mailto:john@jmarshalllaw.com)

Attorneys for MAN Farms, LLC

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

Subcase No.: 02-2371

**MOTION TO FILE LATE  
OBJECTION**

MAN Farms, LLC requests an order from the Court permitting it to file a late objection to the Idaho Department of Water Resources' Recommendation for water right 02-2371. Although, the Recommendation currently lists Farm Development Corp. as the owner, MAN Farms owns the right by virtue of having acquired the ground to which the right is appurtenant. A notice of non-opposition to this motion by Farm Development accompanies this motion. The Standard Form 1 Objection that accompanies this motion identifies the concerns with the recommendation.

Where a partial decree has not been entered, a motion to file a late objection may be granted upon a showing of good cause pursuant to Idaho Rule of Civil Procedure 55(c) (which deals with setting aside the entry of a default). *Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcases 65-7267 *et al.*, slip op. at 6 (January 31, 2001). The Rule 55(c) good cause standard takes into account the following factors:

- (1) whether the default was willful;
- (2) whether setting aside the judgment would prejudice the opponent; and
- (3) whether a meritorious position has been presented.

*Id.* at 7 (citing *McFarland v. Curtis*, 123 Idaho 931, 936, 854 P.2d 274, 279 (1993)).

MAN Farms can show good cause for the Court to grant this Motion. MAN Farms' failure to file an objection before the objection deadline was not willful. MAN Farms only recently retained counsel to review its SRBA recommendations, which it had not received because it had not submitted a change of ownership to IDWR when it acquired the property. Counsel has identified a significant issue with the Recommendation submitted for right 02-2371, namely, there should not be a remark limiting this right's diversion rate to 71.0 cfs combined with other rights. MAN Farms did not realize this issue existed until counsel's review of the Department's Recommendation for this right and partial decrees and recommendations in similarly situated and related rights.

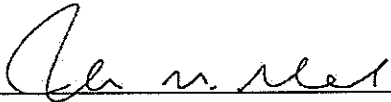
An order granting this Motion will not disrupt proceedings or prejudice other parties because there are no other objectors to water right 02-2371. By contrast, not allowing this objection would result in the likely prejudice to other parties who's rights are referenced in the combined use remark at issue. These parties, who have decrees that do not include the remark, would have an ambiguity cast upon their rights if right 02-2371 were decreed with the combined use remark that includes their rights. Moreover, failure to grant this Motion will prejudice MAN Farms because, without further action, its water right will be decreed with elements and remarks that will prejudice it relative to similarly situated and related water rights.

MAN Farms can show that water right 02-2371 should be decreed without the combined use remark included in the Recommendation. The right is a licensed right, the elements of which

are binding on the State, that does not include the combined use remark that, in effect, reduces the licensed diversion rate. Additionally, other rights diverted from the same pumping system in the same project have been decreed without the combined use remark. Without further action, water right 02-2371 will be decreed with a combined use limit that should not exist. MAN Farms therefore requests that the Court grant this motion for late objection so the issue can be fully vetted in the adjudication process.

DATED May 27, 2010

JOHN MARSHALL LAW PLLC

By:   
John M. Marshall

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 27, 2010, the foregoing was filed, served, or copied as follows:

ORIGINAL FILED

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

☐ U. S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
☐ E-mail

SERVICE

Director of IDWR  
PO Box 83720  
Boise, ID 83720-0098

☒ U. S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☐ E-mail

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

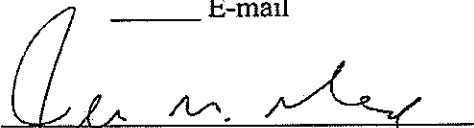
☒ U. S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☐ E-mail

United States Department of Justice  
Environment & Natural Resource Division  
550 West Fort Street, MSC 033  
Boise, ID 83724

☒ U. S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☐ E-mail

Farm Development Corp.  
PO Box 1201  
Boise, ID 83702

☐ U. S. Mail  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☐ E-mail

  
John M. Marshall