

1-28

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**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

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RECEIVED

JAN 31 2011

**DEPARTMENT OF
WATER RESOURCES**

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LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON, OF COUNSEL

September 8, 2010

VIA FACSIMILE (208) 736-2121

Clerk of the Court
Snake River Basin Adjudication
Twin Falls, Idaho 83303-2707

Re: Subcase Nos. 29-4445 and 29-13278

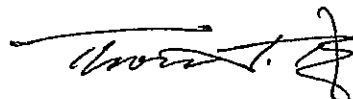
Dear Clerk:

Please find enclosed a Motion to File Late Objection, together with SRBA Standard Form-1 Objections, for water right numbers 29-4445 and 29-13278. I understand Special Master Bilyeu's clerk will schedule a hearing on this motion. There are no other parties to these subcases, and I don't anticipate anyone else will participate in the hearing, so it should take only a few minutes.

I apologize for filing these objections late and regret having to add to Special Master Bilyeu's already full calendar. I inadvertently failed to calendar the objection deadline on my calendar, and was on vacation with my family the week prior through the objection deadline, not realizing that I missed the deadline until today while reviewing that file.

Please call if you have any questions.

Sincerely,



THOMAS J. BUDGE

Enclosures

cc: Bob Rowland

Thomas J. Budge, ISB No. 7465
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED
201 E. Center Street
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Attorney for Rowlands, Inc

RECEIVED
JAN 31 2011
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 39576

Subcase Nos. 29-4445 and 29-11278

MOTION TO FILE LATE OBJECTION

Rowlands, Inc., respectfully moves the Court pursuant SRBA Administrative Order 1 ("AO1") section 10(g)(j) for permission to file late objections to the Director's Reports for water right nos. 29-445 and 29-11278. For the reasons set forth below, it would be fair, just and reasonable to allow the filing of these late objections.

LEGAL STANDARD

AO1 does not provide a standard for reviewing motions to file late objections. However, the SRBA Court has historically reviewed motions to file a late objection by the same standard as motions to file a late claim, which are reviewed according to the criteria for setting aside a default judgment under Rule 55(c) of the Idaho Rules of Civil Procedure. *Order on Motion to Set Aside Partial Decrees and File Late Objections*, SRBA Subcases 65-7267 *at al.* (January 31, 2001); AO1 4(d) (late claims reviewed under I.R.C.P. 55(c) criteria). Rule 55(c) allows courts to set aside default judgments simply for "good cause shown." I.R.C.P. 55(c). The "good cause" standard is a more lenient threshold than the Rule 60(b) standard for setting aside a non-default judgment. *McFarland v. Curtis*, 123 Idaho 931, 935, 854 P.2d at 279 (Ct. App. 1993). The Rule 55(c) standard takes into account 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. *McFarland*, 123 Idaho at 936, 854 P.2d at 279. The lenient standard for allowing late objections recognizes that there is a preference for having cases decided on the merits: “the general rule is to incline toward granting relief from the default and bring about a judgment on the merits.” *Orange Transp. Co. v. Taylor*, 71 Idaho 275, 281 (citing *Cutler v. Haycock*, 32 Utah 354, 362, 90 P. 897).

ARGUMENT

SRBA claim numbers 29-4445 and 29-11278 both provide for industrial water use at a milk plant that has been operated by the Rowland family since the turn of the twentieth century. Water use at the milk plant was made under the “constitutional method” without a permit and license. This has forced Rowland to locate evidence to substantiate use of water at the milk plant as claimed under water right numbers 29-4445 and 29-11278.

An adjudication agent for the Idaho Department of Water Resources (IDWR), Michael Holliday, made a site visit of the milk plant last fall during which Bob Rowland showed him the milk plant, explained how water was used at the milk plant, and explained his understanding as to the quantities of water used at the milk plant. Mr. Holliday asked Mr. Rowland to try and locate documents or other evidence to verify his explanation of water use at the milk plant. This has proven quite difficult.

The IDWR issued Director’s Reports for claim numbers 29-4445 and 29-11278 in late November, 2009, recommending that both claims be disallowed. Although Mr. Holliday toured the milk plant and does not dispute that milk processing occurred there, he reported that he felt he did not have enough concrete data concerning the priority date and quantity of these water rights to issue a formal recommendation; therefore, the rights were by default recommended as disallowed.

In light of the disallowance, Mr. Rowland continued his efforts to locate additional information to support claims number 29-4445 and 29-11278. He has contacted and spoken with prior plant managers. Just recently he was able to obtain effluent records from the milk plant to the City of Pocatello water treatment facility, copies of which are attached hereto as Appendix C. This information supports his claim numbers 29-4445 and 29-11278 and provides a meritorious position for the late objections sought to be filed by this motion.

The deadline to file an objection to the Director’s Reports for claim numbers 29-4445 and 29-11278 was Monday, January 24, 2011. Counsel for Rowlands inadvertently failed to note the

objection deadline on his calendar, and was out of town on a family vacation the week prior to the deadline and through the date of the deadline. Upon returning from vacation and reviewing his case load, counsel for Rowlands discovered he had by mistake missed the deadline for filing late objections. Thus, the failure to timely file the attached objections was not willful.

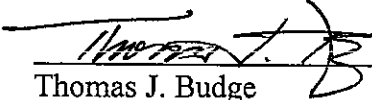
To date, no other party has filed an objection or otherwise participated in these subcases. Therefore, the filing of these late objections Rowlands four (4) days after the deadline will not prejudice any opponent.

CONCLUSION

For the reasons set forth above, Rowlands, Inc., respectfully asks this court to allow the filing of the late objections attached hereto as Appendix A and Appendix B.

DATED this 28th day of January, 2011.

RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED



Thomas J. Budge

CERTIFICATE OF MAILING

I certify that on this 28th day of January, 2011, I mailed the original and copies of this **Motion to Allow the Filing of Late Objections**, including all attachments, to the following persons:

1. Original to:

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

2. Copy to Claimant:

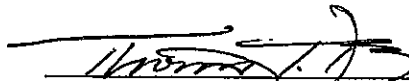
Don LeRoy Miller
1835 Teton View Drive
Rexburg, ID 83440

3. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

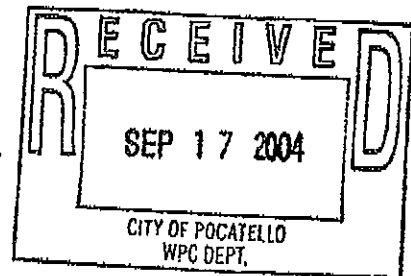
Chief, Natural Resources Division
Office of the Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449

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



THOMAS J. BUDGE
Attorney for the Movant

CITY OF POCA TELLO
WATER POLLUTION CONTROL DEPARTMENT
(208) 234-6254



INDUSTRIAL WASTEWATER SELF-MONITORING REPORT FORM

PERMITEE Rowland's Inc.

Flow Measuring Equipment
Calibration Last Verified
Date: March 16, 2004

PERMIT NO. RD 965491

DISCHARGE LOCATION: Adjacent to Wastewater Treatment plant

Monitoring Period From August 1, 2004

To August 31, 2004

INDUSTRIAL FLOW

COMMENTS:
Contact Andy Rowland at
719-567-4634 with questions

METER READINGS:

BEGINNING: 6,149,400

ENDING: 6,804,200

TOTAL FLOW: 654,800

AVERAGE FLOW: 21,123

MAXIMUM FLOW:

MINIMUM FLOW:

I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person(s) who manage the system or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations

Andrew B. Rowland

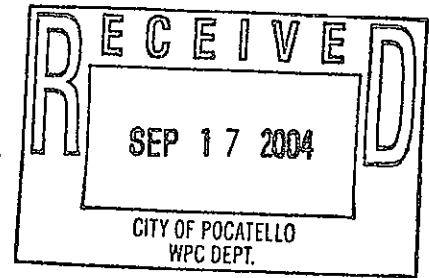
Print Name of Individual Completing Form

A handwritten signature in dark ink, appearing to read "Andrew B. Rowland".

Signature

13-Sep-04

CITY OF POCA TELLO
WATER POLLUTION CONTROL DEPARTMENT
(208) 234-6254



INDUSTRIAL WASTEWATER SELF-MONITORING REPORT FORM

PERMITEE Rowland's Inc.

Flow Measuring Equipment

Calibration Last Verified

PERMIT NO. RD 965491

Date: March 16, 2004

DISCHARGE LOCATION: Adjacent to Wastewater Treatment plant

Monitoring Period From August 1, 2004 To August 31, 2004

INDUSTRIAL FLOW

COMMENTS:

Contact Andy Rowland at
719-567-4634 with questions

METER READINGS:

BEGINNING: 6,149,400

ENDING: 6,804,200

TOTAL FLOW: 654,800

AVERAGE FLOW: 21,123

MAXIMUM FLOW:

MINIMUM FLOW:

I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person(s) who manage the system or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations

Andrew B. Rowland

Print Name of Individual Completing Form

A handwritten signature in cursive script, appearing to read "Andrew B. Rowland".

Signature

13-Sep-04

CITY OF POCA TELLO
WATER POLLUTION CONTROL DEPARTMENT
(208) 234-6254

INDUSTRIAL WASTEWATER SELF-MONITORING REPORT FORM

PERMITEE Rowland's Inc.

Flow Measuring Equipment
Calibration Last Verified

PERMIT NO. RD 965491

Date: May 13, 2003

DISCHARGE LOCATION: Adjacent to Wastewater Treatment plant

Monitoring Period From July 1, 2003

To July 31, 2003

INDUSTRIAL FLOW

COMMENTS:

METER READINGS:	
BEGINNING:	1,527,859
ENDING:	300,881

TOTAL FLOW:	773,002
AVERAGE FLOW:	24,936
MAXIMUM FLOW:	
MINIMUM FLOW:	

Total flow reported is greater than actual flow due to blockage at weir which raised the water level and resulted in a false flow rate. Blockage was cleared. Contact Andy Rowland at 719-567-4634 with questions

I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person(s) who manage the system or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations

Andrew B. Rowland

Print Name of Individual Completing Form

Copy

Signature

August 12, 2003

SENT VIA MAIL 13 AUG 03

CITY OF POCA TELLO
WATER POLLUTION CONTROL DEPARTMENT
(208) 234-6254

INDUSTRIAL WASTEWATER SELF-MONITORING REPORT FORM

PERMITEE Rowland's Inc.

Flow Measuring Equipment

Calibration Last Verified

PERMIT NO. RD 965491

Date: May 13, 2003

DISCHARGE LOCATION: Adjacent to Wastewater Treatment plant

Monitoring Period From June 1, 2003

To June 30, 2003

INDUSTRIAL FLOW

COMMENTS:

METER READINGS:	
BEGINNING:	902,870
ENDING:	1,527,859

Total flow reported is greater than actual flow due to blockage at weir which raised the water level and resulted in a false flow rate. Blockage was cleared.

TOTAL FLOW:	624,989
AVERAGE FLOW:	20,833
MAXIMUM FLOW:	
MINIMUM FLOW:	

I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person(s) who manage the system or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations

BOB ROWLAND

Print Name of Individual Completing Form


Signature

July 7, 2003