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**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

	)	
	)	Subcase No: 65-23481
IN RE: Snake River Basin Adjudication	)	
Case No. 39576	)	ALLEN RANCH LLP'S MOTION
	)	TO ALTER OR AMEND SPECIAL
	)	MASTER'S REPORT AND
	)	RECOMMENDATION ON MOTION
	)	TO FILE LATE NOTICE OF
	)	CLAIM

COMES NOW, Allen Ranch LLP ("Allen") and submits its Motion to Alter or Amend the Special Master's Report and Recommendation. Allen's motion is directed only to that portion of the Special Master's Report and Recommendation that addresses the irrigation component of the late claim. Allen requests that the irrigation component of the late claim be allowed to proceed.

INTRODUCTION

Allen Ranch LLP ("Allen") filed a Motion to File a Late Notice of Claim on March 26, 2012. The motion was heard by the District Court on June 19, 2012. The Court referred the matter to Special Master Theodore R. Booth who conducted a hearing on September 4, 2012. Allen's late claim encompasses a stockwater component and an early and late season irrigation component. Special Master Booth recommended the motion be granted as to the stockwater component, but recommended the motion not be granted as to the irrigation component. The Special Master's

recommendation as to the irrigation component was based on law of the case in the SRBA, *res judicata*, and provisions in the Payette Adjudication Partial Decree.¹ *See* Special Master's Report and Recommendation at p. 9.

ARGUMENT

The Special Master's Recommendation that Allen's Motion To File a Late Notice of Claim be disallowed was based exclusively on the determination that it was not meritorious because of *res judicata*, certain language in the Payette Adjudication Partial Decree, and the District Court's ruling in Subcase 65-02794 (the "Florence Decision"). Allen does not dispute that there is a certain logic to the Special Master's recommendation based solely on the information referenced in the Report and Recommendation. However, Allen would note that the Special Master's analysis is so restrictive that it is doubtful any motion to file late claim in the Payette Adjudication could ever be successful, i.e., no motion to file a late notice of claim could ever pass muster under the Special Master's reasoning.² Notwithstanding this, Allen believes that other rulings in the SRBA, other applicable doctrines, and other language in the Payette Adjudication Partial Decree clearly demonstrate a meritorious position such that the motion to file a late notice of claim should be allowed. When all the relevant information is considered, Allen submits it has met the criteria under I.R.C.P. 55(c). This is particularly true since the effect of the Special Master's recommendation results in forfeiture of Allen's historical early and late season irrigation right, a result disfavored by Idaho case law. In addition, to the extent judicial economy is a factor, since the Special Master recommends Allen's stockwater claim be allowed, it would seem practical for the irrigation component to move forward in conjunction with the stockwater component.

¹ The Special Master's Report and Recommendation for the irrigation component was based exclusively on the meritorious position criteria under I.R.C.P. 55(c). The Report and Recommendation found that the claimant had met the other two criteria, i.e. the willfulness and no prejudice to the objector criteria.

As noted by the Special Master, Allen acknowledged at the hearing that prior rulings by the SRBA District Court may dictate that Allen's irrigation late claim be limited to a priority date after the date of the 1931 decree in *Allen v. Withers*. However, Allen pointed out that in Subcases 74-15015 and 74-15861, January 12, 2009 (the "Riggan Decision") arising from the Lemhi Decree, the Court granted a motion to file late notice of claims. In that case, the District Court held the late claims were subject to a priority date reflective of language in the Lemhi Decree that "Beneficial use rights from surface waters are those rights which were commenced by diversion and appropriation of the water for a beneficial use prior to May 20, 1971." See Order Conditionally Granting Motion to File Late Notice of Claim, Subcase 74-15015, dated January 9, 2009 ("Riggan Decision").

As it turns out, the exact same language was used in the Payette Decree. See Finding No. 6 (p. 12) in Exhibit "B" to the Special Master's Report and Recommendation. That Finding, in the Payette Adjudication Partial Decree, states "*Beneficial use rights from surface water sources are those rights which were commenced by diversion and application of the water to a beneficial use prior to May 20, 1971.*" Further, the Order in Subcase 65-2794 (Florence Decision), which was the Payette Adjudication order cited in the Special Master's Report and Recommendation, notes the District's Court's intent to be consistent with the treatment of late claims in the Lemhi General Stream Adjudication. See December 1, 2010 Order in Subcase 65-2794 at p. 4. If the District Court is to be consistent, the same analysis used in the Florence Decision should be applied to Allen's motion since the language in both the Payette Decree and the Lemhi Decree is exactly the same. Although changes to the Allen priority date may be appropriate, *stare decisis* would hold that Allen has demonstrated a meritorious position for its claim based on the SRBA District Court

² It should be noted that Basin 65 is now closed to motions to file late notice of claims.

precedent established in the Riggan Decision.

There is other support for Allen's meritorious position. The Special Master's Report and Recommendation cites to specific language in the Payette Adjudication Partial Decree as support for the recommendation to deny Allen's motion. The specific language is contained in Conclusion of Law No. 1 at p. 173 of the Proposed Findings of Water Rights in the Payette River Drainage Basin (April 6, 1979). *See* Exhibit "B" to the Special Master's Report and Recommendation. The relevant portion of Conclusion No. 1 refers to the fact that certain rights have been forfeited pursuant to I.C. § 42-1411 (as it read in 1979) for failure to claim the rights in the Payette Adjudication. However, the statement in the Payette Adjudication Partial Decree declaring certain rights to be forfeited did not indicate that forfeited rights were not subject to the long recognized resumption-of-use doctrine. Because a water right has been statutorily forfeited does not mean the right has been extinguished under all circumstances. The resumption-of-use doctrine is an exception and defense to forfeiture. *See Sagewillow, Inc. v. Idaho Department of Water Resources*, 138 Idaho 831, 70 P.3d 669 (2003) (detailing the history of the resumption-of-use doctrine).

The application of the resumption-of-use doctrine is also consistent with Idaho jurisprudence that recognizes forfeiture is highly disfavored. *McRay v. Rosenkrance*, 135 Idaho 509, 20 P.3d 693 (2001); *Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 982 P.2d 917 (1999); *In re Boyer*, 73 Idaho 152, 161, 248 P.2d 540, 545 (1952) ("Forfeitures are abhorrent and all intendments are to be indulged against a forfeiture.") Notwithstanding the language from the Payette Adjudication Partial Decree referenced in the Special Master's Report and Recommendation, the resumption-of-use doctrine as applied to Allen's late claim is relevant given Allen's historical use and demonstrates a meritorious position supporting granting Allen's motion.

Granting Allen's motion would be consistent with the SRBA Court's ruling in Subcase 72-

CERTIFICATE OF SERVICE

I hereby certify I served the original and true and correct copies of the foregoing **ALLEN RANCH LLP'S MOTION TO ALTER OR AMEND SPECIAL MASTER'S REPORT AND RECOMMENDATION ON MOTION TO FILE LATE NOTICE OF CLAIM** was this 26th day of October, 2012 served upon the following individuals and in the corresponding manner:

1. Original to: (Via Facsimile)

Clerk of the District Court
Snake River Basin Adjudication
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2. Copies to: (Via First Class U.S. Mail)

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