

FACTUAL BACKGROUND

Claimants purchased their land and appurtenant water rights in 1975. The water rights were used each year to provide grazing for cattle. Claimants filed a claim in the SRBA, and Claimants presented all relevant information on the water right to the claims investigator.

Claimants were interviewed by the claims investigator and were advised that there was no chance of succeeding in proving the claim. The investigator further told Claimants that proving their right would be an uphill battle with great expense and little chance of keeping their water right. See, Affidavit of Charles P. Traughber, dated December 22, 1994. Claimants were not represented by any counsel at that time.

ARGUMENT AND AUTHORITY

Under SRBA Administrative Order 1, Rules of Procedure 4A(b)(4)(b), motions to file a late notice of claim are reviewed under the criteria of Idaho R. Civ. P. 55(c) and 60(b). Claimants will apply the same standard to this Brief in Support of Motion to File a Late Objection.

Claimants meet the standards imposed by Idaho R. Civ. P. 55(c) and 60(b) and Claimants should be allowed to file their objection. Rule 55(c) allows a Court to set aside default "for good cause shown". Rule 60(b)(1) allows a Court to set aside a judgment for "mistake, inadvertence, surprise, or excusable neglect". Such relief is equitable in nature for which there is no specific time

limit. Such relief must only be requested within a reasonable time. Harper v. Harper, 122 Idaho 535, 835 P.2d 1346 (Ct. App. 1992).

"Excusable neglect" is such conduct that, although constituting neglect, was excusable because a reasonable prudent person might have done the same thing under those same circumstances. Schraufnagel v. Quinowski, 113 Idaho 753, 747 P.2d 775 (Ct. App. 1987); Full Circle, Inc. v. Schelling, 108 Idaho 634, 701 P.2d 254 (Ct. App. 1985); Johnson v. Pioneer Title Co. of Ada County, 104 Idaho 727, 662 P.2d 1171 (Ct. App. 1983).

In doubtful cases, the general rule is that Courts should apply the rules liberally to give a litigant the opportunity to present the merits of his claim. Schraufnagel, 113 Idaho at 755, citing Orange Transportation Co. v. Taylor, 71 Idaho 275, 230 P.2d 689 (1951) and Avondale on Hayden, Inc. v. Hall, 104 Idaho 321, 658 P.2d 992 (Ct. App. 1983). Each case must be considered in light of its unique facts. Baldwin v. Baldwin, 114 Idaho 525, 757 P.2d 1244 (Ct. App. 1988) [finding failure to file an answer to constitute excusable neglect].

This standard does not require an individual to act as a prudent attorney would have, but merely to take such action which would seem reasonable to another lay person. Claimants' mistaken reliance on the opinion of IDWR's investigator meets this test. Claimants are not knowledgeable in the area of water rights. Instead, they relied on the erroneous opinion of a person in a position of authority. It was these statements of the investigator which caused Claimants to reach their decision not to file an

objection to the report at that time. Even though consulting with counsel may have avoided this mistake, that fact alone cannot defeat a Rule 60(b) motion. See Schraufnagel, 113 Idaho at 754.

The Court should also find that IDWR is estopped from opposing Claimants Motion to File a Late Objection. This requested relief is equitable in nature. Idaho courts have the inherent power to entertain actions for equitable relief if they are brought within a reasonable time. Harper v. Harper, 122 Idaho 535, 835 P.2d 1346 (Ct. App. 1992).

Under Idaho law, the elements of estoppel are: 1) the party to be estopped must know the facts; 2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; 3) the latter must be ignorant of the true facts; and 4) he must rely on the former's conduct to his injury. United States v. Ruby Co., 588 F.2d 697 (9th Cir. 1978). Estoppel may be applied against a Government if an affirmative misrepresentation is shown. Id.

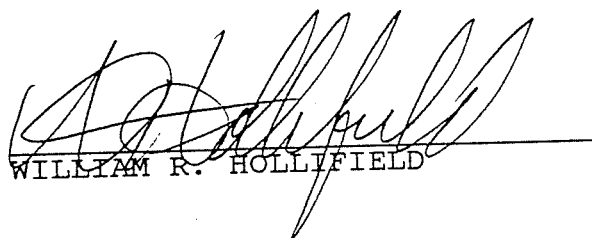
In this subcase, Claimant Charles P. Traugher's affidavit establishes all of the material elements of estoppel. IDWR's investigator received all relevant information and was on the land. Claimants relied on the investigator's affirmative misrepresentation to their injury, believing that he was knowledgeable in this area and Claimants should believe him. If the investigator had not made the affirmative statements, Claimants would have filed a timely objection. Under this rule, IDWR should now be estopped from opposing Claimants' Motion to File a Late Objection.

CONCLUSION

The Court should allow Claimants to file a late objection to the Director's report. The tardiness of the filing was due to excusable neglect. The conduct of IDWR led claimants to act as a reasonable person would in like circumstances. The Court should also find IDWR is estopped from opposing Claimants' motion as Claimants reasonably relied on IDWR's affirmative misrepresentation and such reliance resulted in Claimants' late filing of an objection.

WHEREFORE, Charles W. and Elsie Traughber, through counsel, respectfully request this Court to accept Standard Form 1, Objection filed with the Court on February 7, 1994 as to Water Right No 34-00503A as timely filed.

DATED This 11th day of January, 1995

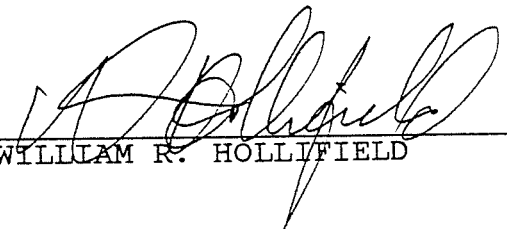

WILLIAM R. HOLLIFIELD

CERTIFICATE OF MAILING

WILLIAM R. HOLLIFIELD hereby certifies that on the 17th day of January, 1995, he served the foregoing document by placing true and correct copies thereof in the United States Mail, postage prepaid, addressed as follows:

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