

RECEIVED
JUL 23 2014
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JUL 22 2014	
By _____	Clerk
_____	Deputy Clerk

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 No. 74-15911
	)
Case No. 39576	)
	) ORDER GRANTING MOTION FOR
	) RECONSIDERATION
	)
	) ORDER SETTING ASIDE ORDER
	) DENYING MOTION TO FILE LATE
	) OBJECTION AND FINAL ORDER
	) DISALLOWING WATER RIGHT
	) CLAIM
	)
	) ORDER GRANTING MOTION TO FILE
	) LATE OBJECTION
	)
	) ORDER OF REFERENCE
	)

I.

PROCEDURAL BACKGROUND

1. On December 31, 2013, the Director of the Idaho Department of Water Resources filed his *Director's Report For Late Claims in IDWR Basins 01, 21, 22, 25, 29, 31, 37, 45, 47, 61, 63, 65, 74, 75, 85 and 86* ("*Director's Report*"). The *Director's Report* included a recommendation that the above-captioned claim be decreed disallowed on the grounds that no lawful appropriation has been shown.

2. No objection to the Director's recommendation was timely filed. However, on June 13, 2014, Malinda Tracy ("Tracy") filed a *Motion to File Late Objection*. This Court entered an *Order* denying Tracy's *Motion to File Late Objection* on July 1, 2014, as well as a *Final Order* disallowing the claim.

3. On July 11, 2014, Tracy timely filed a *Motion for Reconsideration*, asking this Court to reconsider its decision. Accompanying the *Motion for Reconsideration* is a letter from the Postmaster of the Salmon Post Office dated July 8, 2014 (“Postmaster Letter”). The Postmaster Letter explains that although the *Director’s Report* for the above-captioned claim was served on Tracy, it was mishandled by the local postal carrier and delivered to the wrong mailbox – the mailbox of a neighboring vacant lot. This information was not discovered by Tracy until after this Court entered its *Order* denying the *Motion to File Late Objection*.

4. A hearing on the *Motion for Reconsideration* was held on July 21, 2014. No party appeared in opposition to the *Motion*.

II. ANALYSIS

Under Idaho law, the decision to grant or deny a request for reconsideration rests in the discretion of the trial court. *Carnell v. Barker Mgmt., Inc.*, 137 Idaho 322, 329, 48 P.3d 651, 658 (2002). In this case, the Court in an exercise of its discretion finds that reconsideration of its decision to deny Tracy’s *Motion to File Late Objection* and disallow the above-captioned water right claim is appropriate under the circumstances.

This Court denied Tracy’s *Motion to File Late Objection* on the grounds that (1) the record establishes that Tracy was duly served with process of the *Director’s Report*, and (2) Tracy failed to provide an adequate reason why no timely objection was filed. For those reasons, the Court found that Tracy failed to satisfy the good cause standard set forth in Idaho Rule of Civil Procedure 55(c). However, the Postmaster Letter provides new facts that bear on the correctness of the Court’s decision. While Tracy was served with a copy of the *Director’s Report*, the Postmaster Letter establishes that the *Director’s Report* was mishandled by the local postal carrier and delivered to the wrong mailbox, along with various other of Tracy’s mail. The fact that the mail was misdelivered was not discovered by Tracy until after this Court entered its *Order* denying Tracy’s *Motion to File Late Objection*, and was thus not available to Tracy or the Court for consideration when the *Order* was entered.

In light of this new evidence, the Court in an exercise of its discretion will reconsider its decision and find that Tracy has satisfied the good cause criteria set forth in Rule 55(c) for the reasons set forth on the record at the July 21, 2014, hearing. The Court also notes that the

Motion for Reconsideration is unopposed. Therefore, the Court will grant Tracy's *Motion to File Late Objection*.

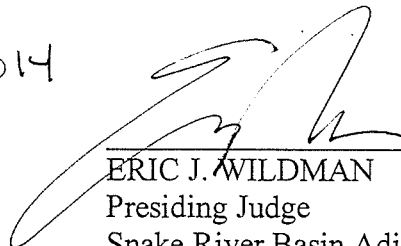
**III.
ORDER**

BASED ON THE FOREGOING, THE FOLLOWING ARE HEREBY ORDERED:

1. Tracy's *Motion for Reconsideration* is **hereby granted**.
2. This Court's *Order Denying Motion to File Late Objection* and *Final Order Disallowing Water Right Claim* entered in the above-captioned matter on July 1, 2014, **are hereby set aside**.
3. Tracy's *Motion to File Late Objection* is **hereby granted**.
4. It is hereby ordered that this matter is referred to Special Master Terrance Dolan to preside over this contested subcase and to conduct all proceedings necessary to issue a recommendation, consistent with *SRBA Administrative Order 1* ("AOI").

IT IS SO ORDERED.

Dated July 22, 2014



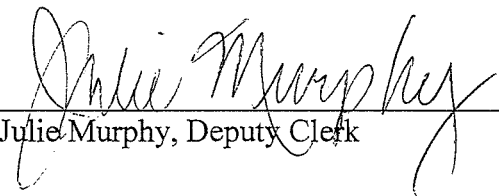
ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER GRANTING MOTION FOR RECONSIDERATION / ORDER SETTING ASIDE ORDER DENYING MOTION TO FILE LATE OBJECTION AND FINAL ORDER DISALLOWING WATER RIGHT CLAIM / ORDER GRANTING MOTION TO FILE LATE OBJECTION / ORDER OF REFERENCE**, were mailed on July 22, 2014, by first-class mail to the following:

DIRECTOR OF IDWR
PO Box 83720
Boise, ID 83720-0098

Malinda Tracy
Vincent Tracy
3 Prairie Rd
Salmon, ID 83467


Julie Murphy, Deputy Clerk