

**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)	Water Right Claim: 71-10886 et al.
)	
Case No. 39576)	ORDER GRANTING MOTIONS TO FILE LATE NOTICES OF CLAIMS
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On July 1, 2005, Claimant Idaho Water Resource Board (Board), by and through its attorney, Mr. Steven Strack, filed *Motions to File Late Notice of Claims* for the above-captioned water right claims. The claimant motioned for an expedited hearing on the matter. That expedited hearing was granted in open court on July 19, 2005. The Shoshone-Bannock Tribes, by and through its attorney, Mr. William F. Bacon, filed an *Objection to Filing Late Claims*. Hearing was held on the *Motions to File Late Notice of Claims* on July 19, 2005, in Caldwell, Idaho. Mr. Strack appeared to support the *Motions to File Late Notices of Claims*. Ms. Heidi Gudgell, appearing for the Nez Perce Tribe, and Ms. Vanessa Boyd Willard, appearing for the United States, concurred in Mr. Strack’s remarks. Mr. Bacon appeared opposing the *Motions*.

Under *Administrative Order 1*, a motion to file a late notice of claim is determined pursuant to I.R.C.P. 55(c), which provides the standard for setting aside the entry of a default. See *AOI* § 4d(2)(d) (late claims reviewed under I.R.C.P. 55(c) criteria). The Court, therefore, applies a “good cause” standard to motions to file late notices of claims. In determining whether to set aside the entry of a default under I.R.C.P. 55(c), Idaho Courts apply a “good cause” for untimeliness standard. I.R.C.P. 55(c). The “good cause” standard is a more lenient threshold than the Rule 60(b) standard. *McFarland v. Curtis*, 123 Idaho at 935, 854 P.2d at 279. The I.R.C.P. 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.
- 3) as with a Rule 60(b) motion, whether a meritorious position has been presented.

In this case, the Shoshone Bannock Tribes argue that, 1) the *Motions* are not timely, and would result in prejudice; 2) the time period for filing claims in the basins has expired according to the

Court's order dated December 21, 1998, and are almost 7 years late; 3) the late claims are substantially the same as those dismissed with prejudice in 2002, and the Shoshone-Bannock Tribes would not have motioned the Court to dismiss their substantially similar claims.

This Court has considered the objections of the Shoshone-Bannock Tribes and concludes as follows: Any allegations of untimeliness are without merit. These late claims are for newly created water rights, only established on March 24, 2005, when the Governor of Idaho signed House Bill 154 (2005), creating a new code section I.C. 42-1507, which establishes minimum instream flows and directs the Board to file the claims in the SRBA. The claims are part of the Nez Perce Agreement, which is currently before the Court. Since these claims did not exist until 2005, it would have impossible for the claims to have been filed at any prior time. Any allegations of prejudice are without merit as well. Parties will have the opportunity to object to the claims after they are reported by the Idaho Department of Water Resources in a forthcoming *Director's Report*. Additionally, the claimed priority dates are April 1, 2005, the claims are non-consumptive, and they are subordinated as set forth in I.C. § 42-1507. Finally, the claimant has presented a meritorious position. The creation of these instream minimum flow water rights was authorized by the Idaho Legislature and the Governor of Idaho. Idaho Code § 42-1501 recognizes such rights as beneficial uses.

Therefore, the Court finds that good cause exists for the *Motions to File Late Claims* to be granted.

THEREFORE, IT IS ORDERED, that the *Motions to File Late Notices of Claims* for the above water rights are **granted**.

The original Notices of Claim, as well as any required filing fees, and a copy of this **Order** will be forwarded to the Idaho Department of Water Resources for further action.

IT IS SO ORDERED.

Dated July 27, 2005

/s/ John Melanson
JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication