

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

	)	Subcase No. See Exhibit A
	)	(A.L. Cattle)
<b>In Re SRBA</b>	)	
	)	<b>ORDER ON MOTION TO SET ASIDE</b>
	)	<b>PARTIAL DECREES AND FILE LATE</b>
<b>Case No. 39576</b>	)	<b>OBJECTIONS</b>
	)	
	)	<b>ORDER OF REFERENCE TO SPECIAL</b>
_____	)	<b>MASTER CUSHMAN</b>

Motion to Set Aside Partial Decrees: **Denied.**

Motion to File Late Objections to Undeclared Claims: **Referenced to Special Master for Further Proceedings.**

**Appearances:**

Mr. Norm Semanko, Esq., Boise, Idaho, for A.L. Cattle, Inc.

Mr. Larry Brown, Esq., Boise, Idaho, for United States Department of Justice, for United States Department of Interior, Bureau of Land Management.

Mr. Peter Ampe, Esq., Boise, Idaho, Deputy Attorney General, for the State of Idaho

**I.  
Procedural Background**

1. On June 30, 2000, A.L. Cattle, Inc. ("A.L. Cattle"), filed a *Motion to File Late Objections and Set Aside Partial Decrees* ("*Motion*") to the 110 water right claims covered by the above-captioned subcases.<sup>1</sup> A.L. Cattle also lodged a memorandum in support of its *Motion*, together with the filing of the *Affidavit of Agnes L. Brailsford*. The United States Department of the Interior, Bureau of Land Management ("United States"),

---

<sup>1</sup>The list of 116 claims in which the motion was originally filed was subsequently amended to 110 claims.

is the claimant for the subject claims.<sup>2</sup> The *Motion* seeks to set aside partial decrees previously entered for those water right claims in which partial decrees have been entered and to file late objections to those same water right claims. The *Motion* seeks to file objections to those subject claims that have not been partially decreed.

2. On September 14, 2000, the United States lodged a memorandum in opposition to A.L. Cattle's *Motion*, together with attached exhibits.

3. On October 30, 2000, this Court held a scheduling conference on the matter. At the scheduling conference, the parties indicated that an evidentiary hearing was not required and that the matter could be decided on the pleadings. *See Reporters Transcript, October 30, 2000, Re: Scheduling Conference on A.L. Cattle, Inc.'s Motion to File Late Objections and Set Aside Partial Decrees*, pp. 6-9. Judge Wood also indicated to the parties that he would not be ruling on the *Motion* and that the successor judge would have to rule on the *Motion*.

4. On November 15, 2000, A.L. Cattle lodged a reply memorandum, together with an amendment to Exhibit A containing the revised list of claims.

5. On December 15, 2000, the Honorable Roger S. Burdick replaced the Honorable Barry Wood as presiding judge of the SRBA.

## **II. Matter Deemed Fully Submitted**

The last filing occurred in this matter on November 15, 2000. Roger S. Burdick became the new presiding judge of the SRBA on December 15, 2000. The parties did not request additional briefing, and the Court does not require additional briefing on this matter. Therefore, this matter is deemed fully submitted for decision the next business day on December 18, 2000.

---

<sup>2</sup> The underlying bases for the subject claims are different. Some are based on previously decreed rights, others are beneficial use claims made pursuant to state law as opposed to federal reserved water right claims, and others are "dual based" claims (both federal reserved and state based). In addition some of the claims proceeded through the SRBA uncontested and others were contested. *See infra* section III.

### III.

#### The Procedural Status and Basis for the Claims at Issue

For purposes of ruling on the *Motion*, the procedural posture of a particular claim is necessary because it determines the appropriate legal standard to be applied. For example, the applicable legal standard is different for setting aside a partial decree than the standard for filing a late objection to a claim that has not been partially decreed. The underlying basis for a particular claim is also necessary in determining whether to set aside a partial decree. A partial decree based on a licensed right presents different issues than a partial decree based on a beneficial use. Finally, the date a partial decree was entered is also necessary for ruling on the timeliness of the motion. A.L. Cattle filed a “blanket” motion with an appended list of various claim numbers. The *Motion* did not contain specific information regarding the subject claims. Based on SRBA records, the Court has segregated the subject claims as follows:

1. Partial decrees were issued on October 9, 1998, for the following claims: 65-07267, 65-07269. These claims are based on a prior decree and were uncontested in the SRBA.
2. Partial decrees were issued on November 20, 1998, for the following claims: 65-12395, 65-12673, 65-12853, 65-12854, 65-13257, 65-13258, 65-13271, and 65-13276. These claims are based on licenses and were uncontested in the SRBA.
3. Partial decrees were issued on December 24, 1998, for the following claims: 65-20099 and 65-20106. These claims are based on beneficial use and were uncontested in the SRBA.
4. Partial decrees were issued on January 3, 2000, for the following claims: 65-19803, 65-19805, 65-19807, 65-19894, 65-19895, 65-19896, 65-19897, 65-19898, 65-19899, 65-19901, 65-19902, 65-19903, 65-19904, 65-19905,

65-19906, 65-19907, 65-19908, 65-19924, 65-19926, 65-19929, 65-19930, 65-19931, 65-19932, 65-19933, 65-19934, 65-19935, 65-19936, 65-19937, 65-19938, 65-19939, 65-19940, 65-19942, 65-19943, 65-19966, 65-19996, 65-19997, 65-20003, 65-20073, 65-20074, 65-20158, 65-20168, 65-20169, 65-20173, 65-20177, 65-20181, 65-20185, 65-20189, 65-20192, 65-20365, 65-20366, 65-20367, 65-20368, 65-20370, 65-20371, 65-20372, 65-20374, 65-20376, 65-20377, 65-20378, 65-20379, 65-20380, 65-20381, 65-20382, 65-0383, 65-20384, 65-20385, 65-20436, 65-20458, 65-20478, 65-20486, 65-20510, 65-20537, 65-20584, 65-20609, 65-20610, 65-20611, 65-20612, 65-20616, and 65-20631. These water right claims are based on beneficial use. The claims were contested by the State of Idaho only as to priority date. The State's objections to priority dates were resolved pursuant to a stipulation.

5. Partial decrees have not been issued for the following water right claims: 65-19812, 65-19814, 65-19816, 65-19822, 65-19824, 65-19826, 65-19909, 65-19911, 65-19913, 65-19915, 65-19917, 65-19956, 65-19958, 65-19960, 65-19962, 65-19964, 65-20129, and 65-22175. These water right claims are dual based claims which include beneficial use state based claims and federal reserved water rights based on PWR 107. The PWR 107 basis for the claims is currently before this Court on Challenge. A.L. Cattle has not raised any issues pertaining to the PWR 107 basis for the claims. However, any issues pertaining to the state basis for the claims are still pending before Special Master Cushman.

6. A partial decree has not been issued for claim 65-22185. The basis for this claim is beneficial use. The claim was contested.

#### **IV. Relevant Law and Legal Standards**

##### **I.R.C.P. 60(b) STANDARD**

In the SRBA, a motion to set aside a partial decree is treated similar to a motion to set aside a default judgment and determined in accordance with the criteria set forth in I.R.C.P. 60(b). *AOI* § 14d ("Parties seeking to modify a partial decree shall comply with

I.R.C.P. 60(a) or 60(b)). I.R.C.P. 60(b) permits a court to relieve a party from a final judgment, order, or proceeding for the following reasons:

- 1) mistake, inadvertence, surprise, or excusable neglect;
- 2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
- 3) fraud, misrepresentation or other misconduct of an adverse party;
- 4) the judgment is void;
- 5) the judgment has been satisfied, released or discharged; and
- 6) any other reason justifying relief from the operation of the judgment.

I.R.C.P. 60(b).

**MISTAKE, INADVERTENCE, SURPRISE, AND EXCUSABLE NEGLIGENCE; I.R.C.P. 60(b)(1)**

Pursuant to I.R.C.P. 60(b)(1) whether a party's conduct in allowing a default to be entered constitutes "excusable neglect" is determined by comparing the alleged "excusable neglect" against what might be expected of a reasonably prudent person under similar circumstances. *Johnson v. Pioneer Title Co.*, 104 Idaho 727, 732 P.2d 1171, 1176 (Ct. App. 1983)(citing *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981)). The Court must weigh each case in light of its unique facts. *Id.* (citing *Orange Transportation Co., Inc. v. Taylor*, 71 Idaho 275, 230 P.2d 689 (1951)). Where "mistake" is alleged as grounds for relief, the mistake must be factual rather than legal and must also be conduct that might be expected of a reasonably prudent person under the circumstances. *Reeves v. Wisenor*, 102 Idaho at 272, 629 P.2d at 668.

**MERITORIOUS DEFENSE STANDARD**

In addition to satisfying one of the criteria set forth in I.R.C.P. 60(b), the movant must also allege facts, which if established, would constitute a meritorious defense. The legal standard of what must be shown to satisfy the meritorious defense requirement has been discussed several times by the Idaho Appellate Courts. *See McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (1993); *Hearst Corp. v. Keller*, 100 Idaho 10, 592 P.2d 66

(1979); *Thomas v. Stevens*, 78 Idaho 266 (1956). The meritorious defense standard requires that a movant:

- 1) allege facts,
- 2) which if established,
- 3) would constitute a defense to the action, and
- 4) the facts supporting the defense must be detailed.

The detailed factual requirement also goes beyond the mere general notice requirement that would ordinarily be sufficient if pled prior to default. *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981). The policy behind pleading a meritorious defense is founded on the doctrine that “it would be an idle exercise for a court to set aside a default judgment if there is in fact no justifiable controversy.” *McFarland*, 123 Idaho at 934, 854 P.2d at 277 (quoting *Hearst Corp.*, 100 Idaho at 12, 592 P.2d at 68).

#### **TIME LIMITATIONS**

I.R.C.P. 60(b) also requires that a motion to set aside be made within a reasonable time and, for I.R.C.P. 60(b)(1), (2), (3) and (6), not more than six months after the judgment, order, or decree. The Idaho Supreme Court has held that the time limits in Rule 60(b) are mandatory, and consequently, any attempt to modify or set aside a judgment or order pursuant to subdivisions (1), (2), (3), or (6) will not be allowed where the applicable time limit under the rule has clearly expired. *Gordon v. Gordon*, 118 Idaho 804, 800 P.2d 1018 (1990) (citing *Catledge v. Transport Tire Co.*, 107 Idaho 602, 691 P.2d 1217 (1984)). The time limit is also applied as a matter of course in the SRBA.

#### **I.R.C.P. 55(C) STANDARDS**

In subcases for which partial decrees have not been entered, the legal standard for filing a late objection to a water right claim in the SRBA has been historically determined pursuant to the standard set forth in **AOI** for filing late claims since **AOI** does not expressly provide a standard for reviewing late objections. A motion to file a late 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) and (k) (leave to amend a notice of claim shall be freely given when justice so

requires). 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*, 123 Idaho at 935, 854 P.2d at 279. The I.R.C.P. 55(c) standard takes into account the following factors:

- 1) whether the default was willful;
- 2) whether setting aside the judgment would prejudice the opponent; and
- 3) as with a Rule 60(b) motion, whether a meritorious position has been presented.

*McFarland*, 123 Idaho at 936, 854 P.2d at 279.

#### **THE STANDARD APPLIED TO *PRO SE* LITIGANTS**

A.L. Cattle is currently represented by counsel. However, at the time the objections were due, A.L. Cattle avers that it was acting *pro se*. The general rule in Idaho is that *pro se* litigants are held to the same standards and rules as those represented by attorneys. *Ade v. Batten*, 126 Idaho 114, 118, 878 P.2d 813, 817 (Ct. App. 1994) (citing *Golay v. Loomis*, 118 Idaho 387, 393, (1990); *Golden v. Condor, Inc. v. Bell*, 112 Idaho 1086, 739 P.2d 385 (1987)). In *Schraufnagel v. Quinowski*, 113 Idaho 753, 747 P.2d 775 (Ct. App. 1987), the Idaho Court of Appeals appeared to apply a more liberal standard under Rule 60(b) for a *pro se* litigant, but ultimately concluded:

What constitutes excusable neglect or just how a reasonable [sic] prudent person should act under similar circumstances are comparative terms and the decisions as to when a default and a default judgment may be set aside and answer permitted, may appear at times to be somewhat in conflict. . . .

**Each case must be examined in light of the facts presented, and the circumstances surrounding the same.**

. . .

In doubtful cases, the general rule is to incline toward granting relief from the default and bring about a judgment on the merits.

*Id.* (quoting *Orange Transportation Co. v. Taylor*, 71 Idaho 275, 280-81, 230 P.2d 689, 692-93 (1951)). Accordingly, the standard is the same for *pro se* litigants as well as for those represented by counsel. Ultimately, each case rises and falls on its own particular set of circumstances. One of the factors to take into consideration is that the SRBA

presents its own unique circumstances in that a significant number of the parties to the SRBA appear *pro se*. To otherwise give special consideration to a *pro se* litigant in determining whether or not to set aside a partial decree seriously impairs the administration and progress of the SRBA. Ultimately, because of the monumental scope of the SRBA, if the SRBA is to be completed, there must be some semblance of finality for those water right claims that have been partially decreed, whether a *pro se* litigant is involved or not.

#### **CONSIDERATION FOR DECIDING A CASE ON THE MERITS**

The standards for setting aside a default and setting aside a default judgment both take into account the preference for having a case decided on its merits. In making the determination, the Court must take into consideration that judgments by default are not favored and that the general rule in doubtful cases is to grant relief from the default in order to reach a judgment on the merits and that procedural rules other than those which are jurisdictional should be applied to promote disposition on the merits. *Reeves*, 102 Idaho at 272, 629 P.2d at 668 (citing *Hearst Corp. supra*). This is a factual determination and is discretionary with the Court. *Johnson*, 104 Idaho at 732, 662 P.2d at 1176.

The SRBA presents its own unique set of circumstances. In a non-SRBA case, the entry of a default or default judgment typically occurs when a party fails to take some required action. Although *AOI* incorporates the standards for setting aside a default and a default judgment and applies these standards by analogy, water right claims that proceed uncontested through the SRBA are not entirely analogous to a default situation. First, uncontested claims are prosecuted by claimants who are usually active in their subcase but face no objectors. Second, although uncontested, the claims are still in fact “decided on the merits.” Idaho’s statutory scheme for the SRBA, together with *AOI* procedure, set forth a comprehensive process for adjudicating both uncontested and contested state based claims. This process affords additional procedures and safeguards not otherwise present in non-SRBA cases.

To illustrate, a claim of a water right is filed in accordance with Idaho Code § 42-1409. IDWR then investigates the nature and extent of the claim. I.C. § 42-1410. The director then prepares and files a director’s report for the claim. I.C. § 42-1411. The



director's report constitutes prima facie evidence of the nature and extent of the water right. I.C. § 42-1411(4).<sup>3</sup> Either the claimant or any other party to the SRBA can file objections and/or responses to objections to the director's report. I.C. § 42-1412. The objecting party has the burden of going forward with evidence to rebut the director's report as to all issues raised by the objection. I.C. § 42-1411(5).

Director's reports that are uncontested are typically decreed as reported. I.C. § 42-1411(4). Although this is normally what occurs, the SRBA Court retains discretion to apply law to the facts and render its own conclusion regarding uncontested water rights. *State v. Higginson*, 128 Idaho 246, 258, 912 P.2d 614, 626 (1995). The district court can also delay entry of a partial decree for the uncontested portions of the director's report if the court determines that the unobjected claim may be affected by the outcome of a pending contested matter. I.C. § 42-1412(7). Ultimately, the claim is subject to a final review by the court prior to the entry of the partial decree.

If a water right is contested, *AOI* provides several opportunities for parties to participate in the case at different levels of the proceedings prior to the entry of a partial decree. Some occur as a matter of right and others are subject to discretion. *See e.g. AOI* 4d (1)(d) (objections and responses); *AOI* 13(a) (motion to alter or amend special master's recommendation); *AOI* 10k (timely motion to participate) and *AOI* 10j (motion to file late objection). Ultimately, the district court also reviews the special master's report and recommendation prior to the entry of the partial decree.

In sum, although there is a preference for having a case decided on its merits, an uncontested water right that proceeds to partial decree is subject to more scrutiny than in a typical non-SRBA case where a default judgment is ultimately entered. In contested cases, parties that do not initially become involved in the subcase are afforded several different opportunities to participate.

In sum, in the SRBA, "deciding a case on the merits" must be placed in the proper context.

---

<sup>3</sup> This analysis does not apply to federal reserved water right claims, which are not investigated by IDWR. However, federal claims that are state law based are investigated and reported by IDWR. The Director's Report also carries prima facie weight.

**V.**  
**Findings, Conclusions, and Discussion**

The water right claims that are the subject of A.L. Cattle's *Motion* are “diminimus” stockwater claims filed by the United States. A claim is considered diminimus if it fits within the definition of domestic and stockwater uses contained in Idaho Code § 42-1401A(5).<sup>4</sup> The sources of the water for the subject claims are located on federal grazing allotments managed by the Bureau of Land Management and located in Basin 65. A.L. Cattle currently holds the grazing permits for these same grazing allotments. A.L. Cattle argues that since private parties (permittees), not the United States, owned the cattle used to perfect the beneficial use water rights on the grazing allotments, the water rights perfected on the grazing allotments are the property of the permittee, not the United States. A.L. Cattle did not timely object to the United States' claims. As reflected in the preceding section III, partial decrees were entered for the majority of the claims at issue.

In accordance with Idaho Code § 42-1411(6), the original Director's Report for Domestic and Stockwater for Reporting Area 15, Basin 65, including claims for domestic and stockwater rights under federal law, was filed by the Idaho Department of Water Resources (IDWR) with the SRBA District Court on April 6, 1998. Also in accordance with Idaho Code 42-1411(6), on that same date, IDWR served notice of the filing of the Director's Report (“Notice”) on each claimant whose water right was listed in the Director's Report. The Notice, sent together with a cover letter, provided instructions to the claimant for reviewing their own water right recommendation as well as recommendations and federal law claims of other claimants.<sup>5</sup> The Notice explained that the Director's Report included small domestic and/or stockwater rights up to 13,000 gallons per day claimed either under state or federal law and that an additional Director's Report for irrigation and all other state law based claims would be filed at a later date. The Notice also instructed that the last day for filing objections to a recommendation was August 6, 1998, and the last day for filing responses to objections was October 6, 1998.

---

<sup>4</sup>These rights are also referred to as “small” domestic and stockwater rights.

<sup>5</sup> IDWR does not investigate and recommend claims made pursuant to federal law. These claims are abstracted and reported in the Director's Report as claimed.

Although A.L. Cattle did not file claims on the grazing allotments, it did file other diminimus domestic and stockwater claims that were reported in the April 6, 1998, Director's Report. As such, A.L. Cattle received the Notice of the filing of the Director's Report together with the above-stated explanatory materials. A.L. Cattle does not contend that it did not receive the Notice. Rather, A.L. Cattle argues that it did not file timely objections to the subject claims because it believed the claims on federal grazing allotments would be reported in the later Director's Report. However, A.L. Cattle does not state the factual basis for this belief. Agnes Brailsford ("Brailsford"), president of A.L. Cattle, states in her affidavit that the reason A.L. Cattle did not timely file objections was because Brailsford believed that the federal stockwater claims would be reported by IDWR at a date later than actually reported and as a result neglected to review the Director's Report for small domestic and stockwater claims. Brailsford also states that because she was informed that A.L. Cattle's claims on the grazing allotments could be filed after the filing of the Director's Report for small domestic and stockwater claims she mistakenly believed that the United States' claims would also not yet have been included in the Basin 65 Director's Report for small and domestic and stockwater claims. As a result, Brailsford did not review the Basin 65 Director's Report for the small domestic and stockwater claims filed by the United States on grazing allotment. At the time the objections to the subject claims were due, Brailsford/A.L. Cattle was acting *pro se*.

**THE COURT CANNOT FIND "MISTAKE" OR "EXCUSABLE NEGLECT" TO SET ASIDE PARTIAL DECREES**

For those subject claims that have already been partially decreed (section III, numbered paragraphs 1-4), the Court cannot find mistake or excusable neglect for setting aside the partial decrees. Although Brailsford's affidavit lacks specificity regarding factually the exact basis for her confusion, the Court notes that claimants of diminimus stockwater and domestic water rights had the option of filing their claims within the same time limits set forth for irrigation and other water right claims or deferring their claims to a later date. *See Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses*, case no. 39576 (Jan. 17, 1989); and *SRBA Administration Order No. 10, Order Governing Procedures in the*

*SRBA for Domestic and Stock Water Uses*, (March 22, 1995). However, deferment of a diminimus claim was not mandatory. In 1997, in furtherance of the recommendations set forth by the Interim Legislative Committee on the SRBA, IDWR implemented a policy of bifurcating the issuance of the director's reports whereby director's reports for small domestic and stockwater claims were issued in advance of the director's reports for irrigation and other water rights.<sup>6</sup>

The above-referenced Notice sent to the claimants, including A.L. Cattle, indicated that the Director's Report was only for small domestic and stock claims, up to 13,000 gallons per day and that an additional Director's Report for irrigation and other state law based claims would be filed at a future date. The Notice does not remotely suggest that diminimus claims made by the federal government (United States), on grazing allotments or otherwise, would be reported at a later date. In fact, the Notice suggests just the opposite, as the Notice explains that the United States sometimes claims one right under both state and federal law. Thus the Court cannot conclude that Brailsford was somehow misled by IDWR's Notice.

Also of significance is that A.L. Cattle elected not to defer some of its own diminimus domestic and stockwater claims that have now also been partially decreed. It's apparent to the Court that Brailsford could not have been entirely confused by the bifurcation process. Further, the Court finds that it was not reasonable for Brailsford to expect that the United States would elect to defer its diminimus claims when A.L. Cattle elected not to defer all of its diminimus claims. The Court can find nothing contained in the Notice and information supplied to the claimants, nor does A.L. Cattle direct the Court to anything, that would reasonably lead a person to believe state and federal claims on grazing allotments would be deferred. Without more facts as to how Brailsford was led to conclude that the federal claims would be contained in a later report, the Court cannot determine the reasonableness of Brailsfords confusion. Simply alleging that the "bifurcation process" caused the confusion is insufficient. For the above-stated reasons the Court cannot conclude that Brailsford's failure to review the director's report and file

---

<sup>6</sup> One apparent drawback to the bifurcation process for the unwary is that although a party may elect to defer their claim, the SRBA is still moving forward and decisions may be made that ultimately affect the deferred claim. As such, even if a claim is deferred, the claimant still needs to keep apprised of the SRBA proceedings.

timely objections constituted mistake or excusable neglect for purposes of setting aside partial decrees.

#### **A.L. CATTLE'S MOTION IS UNTIMELY AS TO CERTAIN CLAIMS**

Alternatively, A.L. Cattle's *Motion* is untimely as to those partial decrees listed in section III, paragraphs 1-3. Partial decrees were entered on October 9, 1998; November 20, 1998; and December 24, 1998, respectively. A.L. Cattle's *Motion* was filed on June 30, 2000. As explained in section III, *AOI* 14d. provides:

Parties seeking to modify a partial decree **shall comply with I.R.C.P. 60(a) or 60(b). Partial decrees are final judgments** and cannot be modified by an administrative proceeding except as provided in I.C. § 42-222.

I.R.C.P. 60(b) provides that motions made pursuant to I.R.C.P. 60(b)(1), "mistake, inadvertence, surprise, or excusable neglect," must be made not more than six months after judgment was entered.

Based on the foregoing, as to those claims listed in section III, paragraphs 1-3, A.L. Cattle's *Motion* is not timely.

#### **MERITORIOUS DEFENSE**

Finally, the respective standards under I.R.C.P. 55(c) and 60(b) both require that the movant plead detailed facts that would constitute a meritorious defense. A.L. Cattle has also not alleged a meritorious defense as to all the subject claims. The partial decrees contained in section III, paragraph 2, are based on previously licensed rights. In a previous decision, the SRBA Court held that if a license is not appealed when issued, any attempt to appeal the license in a subsequent judicial proceeding like the SRBA would constitute an impermissible collateral attack on the license. *See Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue*, subcase 36-02708, *et al.* (Dec. 29, 1999). A.L. Cattle has not acknowledged the existence of these licenses nor alleged a defense for collaterally attacking the licenses.

The partial decrees contained in section III, paragraph 1, are based on prior decrees. The nature of the decrees is not clear from SRBA Records. However, since the water rights claims are alleged to be competing claims (i.e., same beneficial use),

presumably, AL. Cattle or its predecessor in interest was a party or had the opportunity to be a party to the prior action for which the prior decrees were entered. To that extent, A.L. Cattle would be barred from relitigating the case under *res judicata*. A.L. Cattle has not addressed this issue.

The water right claims contained in section III, paragraph 5, are dual based claims, meaning the United States has made alternative basis claims under state law and for federal reserved rights. These claims have not been partially decreed and are currently proceeding before the special master. A.L. Cattle has not raised any issues regarding the PWR 107 basis for the claims. Thus, the federal reserved basis for the claims is not at issue.

As to the state basis for the remaining undecreed claims, A.L. Cattle's defense is that the United States did not own or graze the cattle on the grazing allotments for purposes of appropriating the stockwater right. The SRBA Court has ruled previously that the ownership of a water right on federal grazing lands depends on the nature of the relationship between the party appropriating the stockwater and the federal government. *See Order Denying Joint Motion to Consolidate Subcases, Vacate Order of Reference to Special Master Dolan and Stay Related Subcases*, (subcase 47-04514, et al.) (Jan. 3, 2001); *Order Denying Challenges and Adopting Special Master's Reports and Recommendations (Joyce Livestock)* (subcases 37-04028B, 57-10587B, 57-10588B, 57-10598B, 57-10770B and 72-15929C) (Sept. 30, 1998); and *Memorandum Decision and Order on Challenge, Order Denying Motion to File Amicus Curiae Brief; Order of Recommitment to Special Master Cushman (LU Ranching)* (subcases 55-10288 A & B, et. seq. (April 25, 2000). Although the determination of ownership of the stockwater right on public lands involves common legal issues, the ultimate determination is fact specific and needs to be decided on a case specific basis. A.L. Cattle's *Motion* lacks factual specificity as to the subject claims. However, A.L. Cattle's general allegation, depending on the particular facts of each claim, is the basis for the meritorious defense. The Court must also take into account that the standard for granting leave to file a late claim is less than for setting aside a partial decree. The Court, however, has no basis before it for evaluating the other criteria set forth in I.R.C.P. 55(c), such as the degree of prejudice to the opposing party. Since these subcases (section III, paragraphs 5 and 6)

are pending before Special Master Cushman he should rule on the motion to file late objections for those subject claims which have not been partially decreed. *See Order of Reference* below.

**V.  
Conclusion**

For the above-stated reasons, A.L. Cattle's motion to set aside partial decrees is **denied**. The motion to file late objections to those subject claims that have not been partially decreed are referenced to Special Master Cushman for determination.

**VI.  
Order of Reference**

IT IS HEREBY ORDERED that the following claims are referenced to Special Master Cushman for a ruling on the motion to file late objections:

65-19812	65-19917
65-19814	65-19956
65-19816	65-19958
65-19822	65-19960
65-19824	65-19962
65-19826	65-19964
65-19909	65-20129
65-19911	65-22175
65-19913	65-22185
65-19915	

IT IS SO ORDERED.

Dated January 31, 2001.

---

ROGER S. BURDICK  
Presiding Judge of the  
Snake River Basin Adjudication