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Department of Water Resources

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED
2003 APR 8 PM 3 18

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	)	ORDER GRANTING AMENDED
	)	MOTION TO FILE A LATE
Case No. 39576	)	OBJECTION
	)	
	)	SUBCASE NOS.: 37-20810, 37-20811,
	)	37-20812, 37-20813, 37-20814, 37-20815,
	)	37-20816 and 37-20817

I. PROCEDURAL BACKGROUND

These water claims were filed by the predecessor to the John Lezamiz Family Limited Partnership, Ltd. (hereafter "Lezamiz") The *Director's Report* was filed on August 8, 2002 and the deadline for *Objections* was October 11, 2002. The predecessor-in-interest to Lezamiz did not file timely objections. On January 24, 2003, a *Motion to File Late Objection* was filed. An *Amended Motion to File Late Objection* was filed March 27, 2003. The *Amended Motion* asserts that Lezamiz and the predecessor-in-interest Kelvin Jones have good cause for the untimeliness and a meritorious position.

In support of the *Motion*, claimant submitted the *Affidavit of Kelvin Jones in Support of Motion to File Late Objection*. Kelvin Jones asserts that he did not notice the 5.22 cfs limitation in the *Director's Report*. Because of this oversight, he failed to object prior to the deadline. He further asserts that the combined use limitation of 5.22 cfs is incorrect because it is based on an estimate of the irrigation system capacity that is erroneous.

A hearing on the *Motion* was held on April 2, 2003. There was no opposition to the motion.

II. STANDARD OF REVIEW

The SRBA Administrative Orders do not provide a standard to be applied for filing late objections. However, the court's administrative rules set forth that *Motions to File a Late Notice*

of Claim are to be reviewed under the criteria of I.R.C.P. 55(c) and 60(b). *SRBA Administrative Order 1 (AO1)* § 4 (d)(2)(d).

According to case law and the Rules of Civil Procedure, a court applies the criteria of I.R.C.P. 55(c) when determining whether to allow the filing of a late answer. Motions for Late Objection have been reviewed in the SRBA under the same criteria of Rule 55(c). The proponent of a Motion for Late Objection, like a party seeking to file an untimely answer, must show both “good cause” for untimeliness and the existence of a “meritorious position.” I.R.C.P. 55(c).

The SRBA has recently affirmed the legal standard of what must be shown to satisfy “good cause” and “meritorious position.” The legal standard for “good cause” for untimeliness of an objection is determined under the standard for setting aside the entry of a default under I.R.C.P. 55(c). The “good cause” standard under Rule 55(c) is more lenient than the standard under Rule 60(b). 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) whether a meritorious position has been presented.

Order on Motion to Set Aside Partial Decrees and File Late Objections (A.L. Cattle) (Jan. 31, 2001). The legal standard for showing a meritorious defense includes:

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

The policy behind requiring a meritorious position is that it is an idle exercise for a court to allow a late pleading if there is no justiciable controversy. *McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (1993); *Order on Motion to Set Aside Partial Decrees and File Late Objections* (A.L. Cattle) (Jan. 31, 2001).

III. FINDINGS

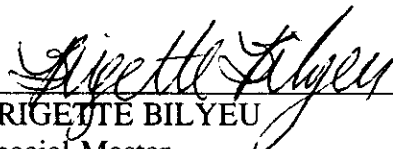
The court has considered the facts claimant alleges for “good cause” for the untimeliness of the objections. Here, there was no opposing party that raised a question of prejudice. Under the circumstances, the court finds that the untimeliness was not willful. This Special Master finds “good cause” under the lower Rule 55(c) standard.

A movant is not required to prevail on the merits during a motion for late objection, but must show evidence of a meritorious position. In reviewing the affidavit in support of the motion, the court concludes that sufficient evidence was presented to show a meritorious position. These water claims should be examined to see whether the 5.22 cfs limitation contained in the *Director's Report* is erroneous.

IV. CONCLUSION

In conclusion, this Special Master finds "good cause" for the untimeliness of the *Objections* by Lezamiz. In addition, sufficient facts were alleged to raise a meritorious position as to the quantity limitation. Considering the policy of preferring to determine cases on their merits and considering the affidavit and record on file in these subcases, the *Amended Motion to File Late Objection* is **granted**.

DATED: April 8, 2003.

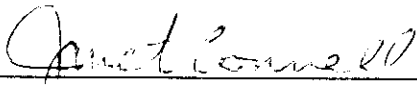

BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE LATE OBJECTION AND NOTICE OF HEARING was mailed on April 8, 2003, with sufficient first-class postage prepaid to the following:

Director of IDWR
PO Box 83720
Boise, ID 83720-0099

John Lezamiz Family Limited Partnership, Ltd.
Represented by:
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Po Box 32
Gooding, Idaho 83330



Deputy Clerk