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Department of Water Resources

**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

Case No. 35976

Case Nos.:33-69, 33-70,33-71, 33-72,
33-73, 33-74, 33-76, 33-78, 33-79, 33-
80, 33-81, 33-82, 33-2057,33-2083, 33-
2086, 33-2090, 33-2091, 33-7018

**OPPOSITION TO MOTION FOR
EXTENSION OF TIME TO FILE
OBJECTIONS TO AMENDED
DIRECTOR'S REPORT**

Mays Land and Livestock Inc. ("Mays") and Blaine County Canal Company ("BCCC"), through their attorneys Givens Pursley LLP hereby submit their Opposition to Motion for Extension of Time to File Objections to Amended Director's Report ("Motion for Extension of Time") filed with the Court by Sagewillow, Inc. with respect to the above-captioned claims. For the following reasons, Sagewillow's motion should be denied.

Through a series of status conferences conducted by the Court, the parties agreed to, and the Court set, objection and response deadlines for the above subcases following the Department's submission of amended director's reports. Those deadlines were October 17, 2003 for the filing of objections and October 31, 2003 for the filing of responses. *See Amended Trial Scheduling Order*, July 22, 2003.

Sagewillow did not file objections with the Court by the October 17, 2003 deadline. Instead, on October 27, 2003, ten days after the established deadline, Sagewillow filed its Motion for Extension of Time accompanied only by Standard Form Objections for the above-captioned claims. Sagewillow did not seek prior leave of the Court to an extension of that deadline. Because the deadline has passed without Sagewillow having sought such an extension its motion is improperly characterized because it seeks to “extend” a deadline that already has passed. Rather Sagewillow must seek the Court’s permission to file a late objection. Sagewillow is not entitled to file a late objection under Idaho Code 42-1412(1), SRBA procedural decisions, or the Idaho Rules of Civil Procedure.

Idaho Code 42-1412(1) provides that “any claimant who desires to object to a water right . . . shall file an objection with the district court within the time specified. . . .” Where that deadline has passed, a party must by motion, seek leave of the court to file a late objection, which motion is evaluated under the standards of I.R.C.P. 55(c). *See e.g., In re: SRBA, Case No. 39576, Subcases 55-02373 et al (LU Ranching Co.) Memorandum Decision and Order on Motion to Set Aside Partial Decrees* (May 1, 2001) (“*LU Ranching*”).

Rule 55(c) provides that “for good cause shown,” the court may set aside a default judgment. This standard takes into account whether: 1) the default was willful; 2) setting aside the judgment would prejudice the opponent; and 3) “as with a Rule 60(b) motion, whether a meritorious position has been presented.” *LU Ranching*, at 12, *citing McFarland*, 123 Idaho 931, 854 P.2d 274 (1993). Sagewillow fails to meet this standard, and the Court should deny Sagewillow’s motion.

First, on the face of Sagewillow’s motion, the Court should conclude that Sagewillow’s failure to file timely objections *was* willful—it certainly was not inadvertent—and it does not

establish “good cause” for allowing the objection deadline to pass. The Motion for Extension states simply that “all of the information necessary for the preparation of said Amended Reports [sic] was unavailable until [October 27, 2003],” indicating that regardless of the court-established October 17, 2003 deadline, Sagewillow intended to not file objections until such information was available.

Sagewillow’s Motion, fails to indicate what information Sagewillow might have been awaiting, let alone why such information could be deemed “necessary” for preparation of Sagewillow’s objections. Indeed it is difficult to conceive what information suddenly might be “necessary” to prepare objections to the Director’s Reports. The Director’s Reports were filed with the Court on October 1, 2003. Sagewillow had two weeks to review them and prepare objections. As this Court is aware, nearly ten years of litigation already have clearly framed the issues, facts and law applicable to these water right claims. Sagewillow certainly cannot claim it was surprised by Director’s Reports that reconfirm facts and conclusions as to forfeiture made by the Department years ago. No new information was necessary for Sagewillow to review and object to the Director’s Reports.

Moreover, the proffered objections simply reassert the full acreage originally claimed, and recite merely that the “Claimant acquired the property where this right historically was used in 1989 and by 1993 had fully resumed the use of this water right without injury to other water rights.” This bare (and long-held) position statement utterly fails to suggest that the proffered objections have benefited in any way from some newly-acquired necessary information.

Second, Sagewillow has not alleged any facts suggesting it has a meritorious position if the late objections were permitted. As recognized by this Court, assuming Sagewillow had alleged such facts, “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.” *LU Ranching* at 9 (citing *McFarland*, 123 Idaho at 934, 854 P.2d at 277). As with the motion filed by LU Ranching, Sagewillow’s motion (which is unaccompanied by any supporting affidavit or exhibits) is “bereft of any facts or legal arguments on the issue.” *Id.* at 31.

Finally, Mays and BCCC will be severely prejudiced if Sagewillow is permitted to re-open these subcases now after letting the deadline for filing objections pass. Mays and BCCC have been engaged in litigation concerning Sagewillow’s now-belated claims/objections since 1994, incurring significant expense through times of extended economic hardship. They are entitled to the repose contemplated by the Rules of Civil Procedure, I.C. 41-1412.

For the foregoing reasons, Mays and BCCC respectfully submit that Sagewillow’s Motion for Extension be denied.

DATED this 31st day of October, 2003.

Respectfully submitted,

GIVENS PURSLEY LLP

By 

Michael C. Creamer
Attorneys for Mays Land and Livestock Inc.
and Blaine County Canal Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of October 2003, I served a true and correct copy of the foregoing by delivering the same to the following by the method indicated below, addressed as follows:

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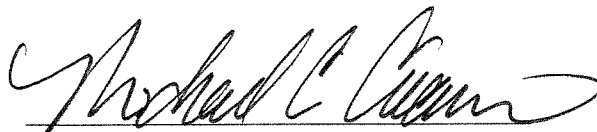
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