

2004 FEB -9 PM 4: 10

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

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. 39576

)
) ORDER GRANTING MOTION
) TO FILE LATE OBJECTION

)
) WATER RIGHT NOS.: 29-00146
)
)
)

I. PROCEDURAL BACKGROUND

On January 9, 2004, the SRBA Court received correspondence from Fawn A. Potter asking to file a late objection. The correspondence was treated as a *Motion to File Late Objection*. A hearing on the *Motion* was held on February 3, 2004.

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).

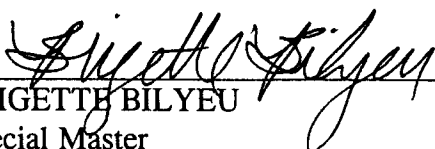
In support of the *Motion*, Mr. Potter explained that he has long irrigated a portion of land that was shown by survey to belong to someone else. Soon after learning about the survey, Mr. Potter purchased the land. Mr. Potter seeks to file a late objection in order to object to the exclusion of this newly purchased property. He seeks to increase the acreage to 13.6 acres. No parties to the SRBA opposed Mr. Potter's *Motion*, and there is no showing prejudice would result from allowing the late objection.

III. FINDINGS AND CONCLUSIONS

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 or disputed the assertion of "good cause." Under the circumstances, the court finds that the untimeliness was not willful. As to "meritorious position," this Special Master finds that Mr. Potter has asserted a meritorious position as to the changes in the acreage he seeks to make. Considering the policy of preferring to determine cases on their merits and considering the record on file in this subcase, the *Motion to File Late Objection* is **granted**.

Therefore, IT IS ORDERED that the *Motion to File Late Objection* is **granted** for water right number 29-00146.

DATED February 9, 2004.


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 was mailed on February 09, 2004, with sufficient first-class postage to the following:

BRENDA LEA POTTER
FAWN A POTTER
PO BOX 212
LAVA HOT SPRINGS, ID 83246
Phone: 208-776-5669

DIRECTOR OF IDWR
~~PO BOX 83720~~
BOISE, ID 83720-0098


Deputy Clerk