

2004 MAR -3 PM 3: 44

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	)	ORDER GRANTING MOTION
	)	TO FILE LATE OBJECTION
Case No. 39576	)	
	)	
	)	WATER RIGHT NOS.: 29-2261
	)	and 29-7402
	)	

I. PROCEDURAL BACKGROUND

On December 2, 2003, the SRBA Court received correspondence from Wayne and Patricia Avery. The correspondence was treated as a *Motion to File Late Objection*. The Averys seek to file a late objection to the point of diversion. A hearing on the *Motion* was held on February 27, 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*, Patricia Avery explained that the legal description claimed for the point of diversion was based on a Global Positioning System (G.P.S.) reading conducted by the Idaho Department of Water Resources. An objection to the point of diversion was not filed timely because of that original G.P.S. reading. After the U.S. filed an objection to the point of diversion, IDWR conducted a field investigation and took a second G.P.S. reading. Based on this second reading the Averys seek to file a late objection.

No parties to the SRBA opposed the Avery'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 good cause for untimeliness of objections. 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 numbers 29-2261 and 29-7402.

IT IS ORDERED that the following deadlines shall govern further proceedings:

March 26, 2004	5:00 pm	Deadline to file a Motion to File Amended Claim
April 9, 2004	5:00 pm	Deadline to file Amended Director's Report
April 16, 2004	5:00 pm	Deadline to file Objection
April 23, 2004	5:00 pm	Deadline to file Response
May 12, 2004	10:30 am	Initial Hearing by Phone

Parties may participate by phone by dialing 1-225-383-1099 and when prompted enter participant code 926509.

DATED March 3, 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 March 03, 2004, with sufficient first-class postage to the following:

USDI BLM

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