

2004 APR 6 PM 2 00

position for the objections. Mr. Stewart asserted that he was confused because of multiple communications from the court and IDWR, and that he failed to receive a *Notice of Filing Director's Report for Basin 29*. *Notices of Filing Director's Report for Basin 29* were sent to all claimants of water rights in the basin. *Affidavit of Service, Notice of Filing Director's Report for Basin 29*. (July 29, 2003) Each *Notice of Filing Director's Report* contains the deadline for filing objections. The *Affidavit of Service, Notice of Filing Director's Report for Basin 29* states that Lynn W. Stewart was served with the *Notice*.

III. 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 Objections* 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 the untimeliness of the objection and the existence of a meritorious position. I.R.C.P. 55(c) The SRBA 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.

See, 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).

IV. GOOD CAUSE

Although Mr. Stewart stated that he missed the objection deadline because he was confused by multiple correspondence and because he failed to receive a *Notice of Filing Director's Report*, the information was not presented as evidence. The *Affidavit of Service, Notice of Filing Director's Report for Basin 29* (July 29, 2003), however, shows that the *Notice of Filing Director's Reports* created no confusion, and clearly set forth the deadline for objections. This Special Master finds there was insufficient proof of "good cause" under the Rule 55(c) standard.

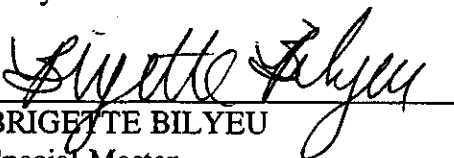
V. MERITORIOUS POSITION

A movant is not required to prevail on the merits during a motion for late objection, but must show evidence of a meritorious position. Although Mr. Stewart presented argument at the hearing, there was no evidence presented to show that the objection he seeks to file asserts a meritorious position. The Special Master concludes that there is insufficient evidence to show a meritorious position as to the irrigation season.

VI. CONCLUSION

In conclusion, this Special Master finds insufficient evidence was presented to show "good cause" for the untimeliness of the *Objections*. In addition, insufficient facts were alleged to raise a meritorious position. The *Motion to File Late Objection* by Mr. Stewart is **denied**. This decision in no way limits Mr. Stewart's participation in subcase 29-13299. The court notes that Mr. Stewart is already a party to the season of use issue in related subcase 29-13299. Thus, he is entitled to fully participate on the issue as a party.

DATED April 6, 2004.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION TO FILE LATE OBJECTION was mailed on April 06, 2004, with sufficient first-class postage to the following:

MC CAMMON DITCH CO LTD

Represented by:
JAMES A. SPINNER
PO BOX 6009
POCATELLO, ID 83205
Phone: 208-232-4471

LYNN W STEWART

8574 BOB SMITH ROAD
LAVA HOT SPRINGS, ID 83246
Phone: 776-9770

LAVA IRRIGATION CO LIMITED

Represented by:
JERRY R. RIGBY
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

MARSH VALLEY DEVELOPMENT
PORTNEUF MARSH VALLEY CANAL CO

Represented by:
RANDALL C BUDGE
PO BOX 1391
201 E CENTER, STE A2
POCATELLO, ID 83204-1391
Phone: 208-232-6101

PORTNEUF IRRIGATING COMPANY

Represented by:
RANDOLPH CALVIN STONE
PO BOX 910
BURLEY, ID 83318
Phone: 208-878-8382

USDI BLM

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098

KENNETH ANDRUS

6948 E OLD OREGON TRAIL RD
LAVA HOT SPRINGS, ID 83246
Phone: 208-776-5380