

APR 07 2004 DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
Department of Water Resources
FILED
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**SUBCASE NOS.: 29-4060, 29-13311,
29-13317, 29-13318, and 29-13319**

The *Director's Report* was filed for these claims and the deadline for *Objections* was November 14, 2003. Timely *Objections* were filed by Portneuf Marsh Valley Canal Co., Ltd., Kenneth Andrus, Lava Irrigation Co. Inc., Marsh Valley Development, Mc Cammon Ditch Co. Ltd. and the United States Bureau of Land Management. On February 19, 2004, a late *Objection* was filed by Lynn W. Stewart relating to season of use. The court treats this as a *Motion to File Late Objection*. A hearing on the *Motion to File Late Objection* was held on March 17, 2004. Mr. Stewart did not submit any affidavits or testimony.

In support of the *Motion*, however, Mr. Stewart argued that he was confused about the deadline for objections because he received multiple communications from the court and IDWR. Mr. Stewart also asserted that he did not receive a *Notice of Filing Director's Report* for his water right in Basin 29. Each *Notice of Filing Director's Report* contains the deadline for filing objections.

Lynn W. Stewart pursued his own water rights in the SRBA, including his claim to subcase no. 29-13299. Mr. Stewart did not file timely objections to the *Director's Report* for these subcases and seeks to be allowed to file late objections. Portneuf Marsh Valley Canal Co. and the United States Bureau of Land Management opposed the *Motion*. Mr. Stewart did not submit evidence explaining good cause for the untimeliness of his objections, or to support a meritorious

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.

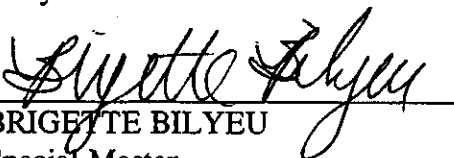
V. MERITORIOUS POSITION

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:

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