

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED 4

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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.: 29-10320
)
)
)

I. PROCEDURAL BACKGROUND

On August 5, 2004, the SRBA Court received a *Motion to File Late Objection* from Kenneth Andrus. A hearing on the *Motion* was held on August 25, 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).

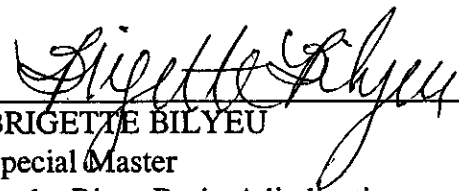
In support of the *Motion*, Mr. Andrus argued that when the *Director's Report* recommendation for this right issued, he did not know that it was connected to his water right. Therefore, he objected to his own water right on a timely basis, but did not object to this right. IDWR reported that the quantity element for this right is related to Mr. Andrus' rights due to the fact that these rights had a common owner at one time. No parties to the SRBA opposed the *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. Andrus has asserted a meritorious position as to the changes he seeks to make.

Therefore, IT IS ORDERED that the *Motion to File Late Objection* is granted for water right number 29-10320.

DATED August 27, 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 August 27, 2004, with sufficient first-class postage to the following:

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