

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

2005 JAN 18 PM 4 08

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 ON MOTION TO FILE
	)	LATE OBJECTION
Case No. 39576	)	
	)	
_____	)	WATER RIGHT NOS.: 23-00009B

I. PROCEDURAL BACKGROUND

This water claim was filed by Rex G. Maughan in 1989. The *Director's Report* for this claim was filed on June 11, 2004. The deadline for Objections to the *Director's Report* was August 13, 2004. A timely *Objection* was filed by the United States Bureau of Land Management on August 10, 2004. On November 9, 2004, the SRBA Court received a *Motion for Leave to File Late Objection and for Expedited Hearing* from Dawn Blakely and the *Affidavit of Dawn Blakely*. Mr. Blakely seeks to file a late Objection.

A *Memorandum in Opposition to Dawn Blakeley's Motion for Leave to File Late Objection and for Expedited Hearing* was filed by Rex Maughan on November 24, 2004. A *Memorandum in Support of Filing Objection* was filed by Dawn Blakely on November 30, 2004. A *Supplement to Memorandum in Opposition to Dawn Blakely's Motion for Leave to File Late Objection and for Expedited Hearing, in Response to Dawn Blakely's Memorandum in Support of Filing Late Objection* was filed by Rex Maughan on December 1, 2004. A hearing on the *Motion* was held on December 1, 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 provide 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 Idaho 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 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).

III. ANALYSIS

In support of the *Motion*, Mr. Blakely asserted that he and his father and grandfather have used all of the waters from the source of this claim for more than 50 years. *Affidavit of Dawn Blakely* at 1, ¶ 1. Mr. Blakely has irrigated with water from Kelly Creek for more than 40 years. *Id* at ¶ 2. Mr. Blakely was unaware of this claim by Rex Maughan to Kelly Creek water at the time Objections were due. *Id* at 2, ¶ 3.

Claimant Rex G. Maughan opposed the *Motion to File Late Objection*. Mr. Maughan asserts that Mr. Blakely failed to assert "good cause" for the untimeliness of the *Objection*. Mr. Maughan cited several cases for the proposition that Mr. Blakely's *Motion* failed to show good cause

More on point is a recent SRBA case discussing the legal standard for "good cause" and a "meritorious position." In *Order on Motion to Set Aside Partial Decree and File Late Objections* (A.L. Cattle) (January 31, 2001), Judge Burdick held that 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) which is a more lenient standard than that 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) alleging 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).

A. Good Cause

Mr. Maughan asserts that Mr. Blakely did not allege good cause for filing the late objection. This Special Master looks to the facts asserted in the *Affidavit of Dawn Blakely* to determine whether good cause exists. Mr. Blakely does not explain what steps, if any, he took to investigate competing claims on his source of Kelly Creek. Mr. Blakely merely states that he was "unaware of the claim made by Rex Maughan to the waters of Kelly Creek, or he would have made this objection much earlier."

This Special Master has previously found "good cause" existed where a party has a systematic process of reviewing claims and *Director's Reports* but failed to find a particular claim and failed to file a timely objection. *Order on Motion to File Late Objection* (Subcase No. 31-00066A et.al.) (July 29, 2002) Here, however, there are no facts alleged that show that the movant attempted to protect his water right with a system of reviewing competing claims. A court must look at whether the default, or here, the failure to timely object was willful.

Mr. Blakely apparently did not take any steps to review the *Director's Report* for all subcases in basin 23. In a contested motion, failing to review the *Director's Report* is essentially a willful default.

Next, the court must consider whether allowing a late objection will prejudice Mr. Maughan. Undoubtedly Mr. Maughan would incur litigation expenses for defending against a late objection. But there was no showing that those expenses or efforts would be different than if the

objection had been timely filed. Given the notice provided for *Director's Reports* to non-claimants, and given the lack of information as to whether Mr. Blakely made any effort to review the *Director's Report* for competing claims, the failure to timely object was willful.

B. 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. In the instant case, the Special Master does not reach the issue of "meritorious position." A movant must show both "good cause" and a "meritorious position" in order to prevail on a *Motion for Late Objection*. Here, the Special Master finds that the facts were insufficient to show "good cause" for the lateness of the objection. Therefore, the court does not address the meritorious position question.

IV. FINDINGS AND CONCLUSIONS

The court has considered the facts alleged for "good cause" for the untimeliness of the objections. Under the circumstances, the court finds that the untimeliness was willful.

Therefore, IT IS ORDERED that the *Motion to File Late Objection* is **denied** for water right number 23-00009B.

DATED January 18, 2005.



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 January 18, 2005, with sufficient first-class postage to the following:

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