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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	)	ORDER ON MOTION TO FILE A
	)	LATE OBJECTION AND SETTING
	)	SUBCASE DEADLINES
Case No. 39576	)	
	)	SUBCASE NOS.: 31-335A, 31-372
	)	AND 31-4009
_____	)	

I. PROCEDURAL BACKGROUND

Claims to 31-335A, 31-372 and 31-4009 were filed by Carl Lundholm. The SRBA District Court issued *Partial Decrees* for water rights 31-335A, 31-372 and 31-4009 on February 22, 2002. On March 31, 2005 Mr. Lundholm filed a *Motion to Set Aside Partial Decree* and a *Motion to File Late Objection* for each subcase. The *Motions* assert that Mr. Lundholm has good cause for the untimeliness of the objections and a meritorious position.

In support of the *Motions*, Mr. Lundholm submitted the *Affidavit of Carl W. Lundholm*. Mr. Lundholm asserts that he became seriously ill during the time objections were due in basin 31. Therefore, he did not file objections or appeal the *Partial Decrees*. He further asserts that he has a meritorious position relating to acreage.

A hearing on the *Motions* was held on May 11, 2005. There was no opposition to the motions.

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 I (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 the untimeliness of the objection 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). 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).

III. FINDINGS

The court has considered the facts alleged for “good cause” for the untimeliness of the objections. Mr. Lundholm states he had a very serious illness which lasted for a number of years. Here, there was no opposing party that raised a question of prejudice. Under the circumstances, the court finds that the untimeliness of the objections was not willful. This Special Master finds “good cause” under the lower Rule 55(c) standard.

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 reviewing the affidavit in support of the motion, the court concludes that sufficient evidence was presented to show a meritorious position. These water claims should be examined to see whether the elements contained in the *Director's Report* are accurate.

IV. CONCLUSION

In conclusion, this Special Master finds "good cause" for the untimeliness of the *Objections* by Mr. Lundholm. In addition, sufficient facts were alleged to raise a meritorious position as to the elements. Considering the policy of preferring to determine cases on their merits and considering the affidavit and record on file in these subcases, the *Motion to File Late Objection* is **granted**.¹ The *Objections* previously lodged shall be filed and dated May 11, 2005.

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

June 24, 2005	5:00 pm	Deadline to file Response
June 29, 2005	9:30 am	Status Conference
Location: Snake River Basin Adjudication 253 3 rd Ave. North Twin Falls, Idaho 83301		

Dated May 17, 2005.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

¹ This Special Master notes that Mr. Lundholm has also asked that the *Partial Decrees* for these rights be set aside. The Special Master is prepared to rule on that *Motion*, however, the SRBA District Court prefers to have one *Special Master's Report and Recommendation* at the conclusion of the proceedings that includes a recommendation for the elements of each water right. This Special Master presumes without deciding, that sufficient grounds exist to support setting aside these *Partial Decrees* under I.R.C.P. 60(b)(5). A full decision on that question shall issue after the late objections have been considered.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION TO FILE A LATE OBJECTION AND SETTING SUBCASE DEADLINES was mailed on May 17, 2005, with sufficient first-class postage to the following:

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