

In Re SRBA
Case No. 39576

WATER RIGHT NOS.: 29-13406

Page 1

an *Order on Motion to Enforce Settlement* was issued May 26, 2005. The *Order on Motion to Enforce Settlement* held that the *Portneuf River Settlement Agreement Basin 29: Portneuf River* was binding on the Caspersons for both subcases 29-13406 and 29-13407. A later order held that since subcase 29-13406 was not included in the *Portneuf River Settlement Agreement*, the Caspersons were not bound as to that subcase. *Order on Motion to Reconsider* (Subcases 29-13406 and 29-13407)(July 12, 2005).

Portneuf Irrigating Company, Portneuf Marsh Valley Canal Company and Marsh Valley Development Company moved to file late responses. A hearing was held July 13, 2005.

III. STANDARD OF REVIEW

The SRBA Administrative Orders do not provide a standard to be applied for filing late objections or responses. 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 to file late objections or responses are similar to motions to file a late answer. Motions for late objections and responses have been reviewed in the SRBA under the same criteria of Rule 55(c). The proponent of a motion for late response, 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 (here a response) 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).

III. GOOD CAUSE

Movants argue they have “good cause” for filing late responses because the Caspersons did not serve them with the *Objection* and because they thought subcase 29-13406 was resolved by the *Order on Motion to Enforce Settlement*.

The *Certificate of Mailing* on the *Objection* shows the Caspersons properly served all parties to subcase 29-13406. The Caspersons were not required to serve non parties. Notice to parties to the SRBA who are not parties to a subcase is proper through the SRBA Docket Sheet. Notice of the *Amended Director's Report* and the deadlines in the *Order Granting Motion to File Amended Notice of Claim, Setting Subcase Deadlines and Scheduling Conference* (April 26, 2005) was placed on the SRBA Docket Sheet in May. The fact the Caspersons did not serve non-parties to the subcase with their *Objection* does not constitute “good cause” for filing late responses under the facts of this case.

However, the *Order on Motion to Enforce Settlement* issued May 26, 2005 was in effect when responses were due June 24, 2005. The *Order on Motion to Enforce Settlement* appeared to have resolved subcase 29-13406. The movants' reliance on that *Order* constitutes “good cause” for the untimeliness of the responses.

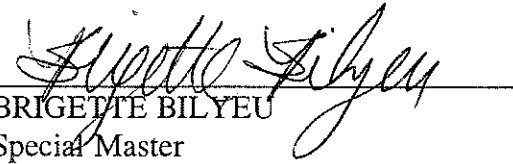
VI. MERITORIOUS POSITION

Movants are not required to prevail on the merits during a motion for late response, but must show evidence of a meritorious position. The movants seek to respond to the priority date of 1932 asserted by Caspersons in their *Amended Claim*. The movants apparently support the 1962 priority date contained in the *Amended Director's Report*. The *Amended Director's Report* is entitled to *prima facie* weight. Therefore, sufficient evidence exists to show a meritorious position on priority date.

V. CONCLUSION

The *Motions to File Late Responses* are **granted**. The result of this order is that the movants are now parties to this subcase, and the clerk may now file the *Responses* of Portneuf Irrigating Company, Portneuf Marsh Valley Canal Company and Marsh Valley Development Company. This *Order* is not a ruling on the priority date, and the parties may go forward on that issue .

DATED: July 22, 2005.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of ORDER GRANTING MOTION TO FILE LATE RESPONSE was mailed on July 22, 2005 with sufficient first-class postage prepaid to the following:

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

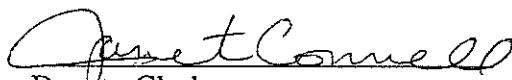
Brett & Nancy Casperson
8893 E Maughan Road
Lava Hot Springs, Idaho 83246

James A Spinner
PO Box 6009
Pocatello, Idaho 83205

Jerry R. Rigby
PO Box 250
Rexburg, Idaho 83440-0250

Randall C Budge
PO Box 1391
Pocatello, Idaho 83204-1391

Randolph Calvin Stone
PO Box 910
Burley, Idaho 83318


Deputy Clerk