

RECEIVED
OCT 25 2005
DEPARTMENT OF
WATER RESOURCES
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____
2005 OCT 21 AM 11 40

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
	)	
	)	SUBCASE NO.: 25-00278
_____	)	

I. PROCEDURAL BACKGROUND

An *Objection* was filed on September 14, 2005 by Richard Sheppard. The SRBA District court treated the *Objection* as a *Motion to File Late Objection*. The *Motion* seeks to increase the quantity element. A hearing was held on the *Motion* on October 19, 2005.

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 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. Sheppard explained that he thought he had filed an objection when he sent a Notice of Error to the Idaho Department of Water Resources. In addition, Mr. Sheppard asserts that he has historically used more water than the quantity recommended in the *Director's Report*. He seeks to increase quantity. No parties to the SRBA opposed Mr. Sheppard's *Motion*, and there is no showing prejudice would result from allowing the late objection.

III. FINDINGS

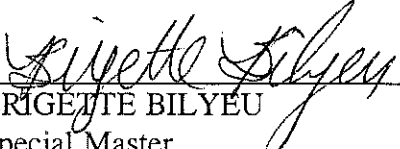
Mr. Sheppard failed to file a timely *Objection* to the *Director's Report* because he thought he had done so when he filed the Notice of Error. There was no opposition to the *Motion*. Therefore, the *Motion to File Late Objection* is **granted**. The *Objection* will be filed with the court dated October 19, 2005.

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

November 25, 2005	5:00 pm	Deadline to file Response to Objection
June 14, 2006	10:30 am	Status Conference / Scheduling Conference
		Location: Snake River Basin Adjudication
		253 3 rd Ave. North
		Twin Falls, Idaho 83301

Parties may participate by phone for the Status Conference by dialing 1-225-383-1099 and when prompted enter participant code 926509.

DATED October 21, 2005.


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 October 21, 2005, with sufficient first-class postage to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

JUNE SHEPPARD
RICHARD G SHEPPARD
3837 E 850 N
RIGBY, ID 83442
Phone: 208-745-6114


Deputy Clerk