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DEPARTMENT OF
WATER RESOURCES

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	)	Subcase 63-04037
	)	
Case No. 39576	)	ORDER GRANTING MOTION TO FILE
	)	LATE OBJECTION
	)	
	)	

On May 30, 2006, the claimant of the above-captioned water right, Bluegrass LLC, by and through its attorney, Scott L. Campbell, filed a *Motion and Memorandum to File Late Objection and Request for Expedited Hearing (Motion)*.¹ Also filed were the *Affidavit of David Hendrickson* and the *Affidavit of Robert Donnelly*. The *Motion* states that it is based upon *Administrative Order 1 (AOI)* § 6(f)(2) (procedure for obtaining an expedited hearing) and *AOI* § 10(j) (procedure regarding the filing of a motion to file late objection on a previously "unobjected to" recommendation). Although the movant has asked for an expedited hearing, the *Motion* is being granted without hearing or oral argument. I.R.C.P. 7(b)(3). In this regard, this Special Master notes that *AOI* § 10(j) does not mandate the reporting of the *Motion* in the Docket Sheet nor is a hearing required. *Administrative Order 1* § 10(j) applies in situations where a motion is made to file an objection to a previously "unobjected to" water right. In this particular subcase objections have already been timely filed. The purpose of *AOI* § 10(j) is to protect someone who may have reviewed and agreed with the Director's Report for a particular water right claim, but did not file a response because no timely objections were filed. In that situation, Docket Sheet notice of a motion to file late objection is crucial.

STANDARD APPLIED TO LATE OBJECTIONS

In the *Order on Motion to Set Aside Partial Decrees and File Late Objections, Subcase 65-07267 et al* (January 31, 2001), then Presiding Judge Burdick explained the standard regarding motions to file late objections as follows:

¹ Regarding the movant's request for expedited hearing, it is noted that the Certificate of Mailing attached to the *Motion* does not show that the *Motion* was sent to all persons on the Court Certificate of Mailing for Expedited Hearings as required under *AOI* § 6(f)(2).

In subcases for which partial decrees have not been entered, the legal standard for filing a late objection to a water right claim in the SRBA has been historically determined pursuant to the standard set forth in *AOI* for filing late claims since *AOI* does not expressly provides a standard for reviewing late objections. A motion to file a late claim is determined pursuant to I.R.C.P. 55(c), which provided the standard for setting aside the entry of a default. See *AOI* § 4d(2)(d) (late claims reviewed under I.R.C.P. 55(c) criteria) and (k) (leave to amend a notice of claim shall be freely given when justice so requires). In determining whether to set aside the entry of a default under I.R.C.P. 55(c), Idaho Courts apply a "good cause" for untimeliness standard. I.R.C.P. 55(c). The "good cause" standard is a more lenient threshold than the Rule 60(b) standard. *McFarland v. Curtis*, 123 Idaho 931, 935, 854 P.2d, 274 (1993). 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) as with a Rule 60(b) motion, whether a meritorious position has been presented

McFarland v. Curtis 123 Idaho at 936, 854 P.2d at 279.

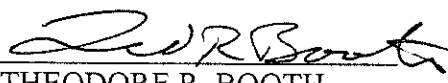
Based on the file and record herein, and upon the representations of counsel in the *Memorandum*, and upon the *Affidavits* on file, this Special Master finds the following:

- 1) The claimant's failure to timely file an objection was not willful.
- 2) The granting of the *Motion* will not prejudice the parties who have heretofore filed objections because: a) the objection is only 39 days late; b) initial hearings have not been set and no action has been taken on the other objections, and c) the response period has not yet expired.
- 3) A meritorious position has been presented in that the objection appears to involve the same issues that are presented in the other objections; mainly the issue regarding the use of the geothermal energy found in the water.

ORDER

In accordance with the foregoing, and good cause appearing, the *Motion to File Late Objection* is hereby **granted**. The clerk of the court is instructed to file the previously lodged objection. The claimant is ordered to serve a copy of the objection upon the parties to this subcase, if not done so already.

Dated May 31, 2006.


THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

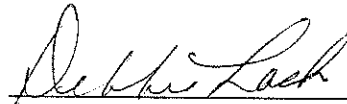
I certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE LATE OBJECTION was mailed May 31, 2006, with sufficient first-class postage to the following:

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