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DEPARTMENT OF
WATER RESOURCES

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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 GRANTING MOTION TO
	)	FILE LATE OBJECTION AND
Case No. 39576	)	SETTING DEADLINE
	)	
	)	SUBCASE NO.: 27-04020
	)	

I. PROCEDURAL BACKGROUND

An *Objection* was filed on July 27, 2006 by William Bart Conlin, Inc. The SRBA District court treated the *Objection* as a *Motion to File Late Objection*. The *Motion* seeks to amend the notice of claim for this water right by increasing the acreage. A hearing was held on the *Motion* on September 6, 2006.

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 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 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. Conlin explained that he did not originally realize that the irrigation component of his claim had not been recommended. When he learned at the Initial Hearing that his irrigation use was not recommended, he immediately sought the filing of a late objection. The lateness of the objection was therefore, not willful. In addition, Mr. Conlin explained that he has irrigated the 10 acres in question since about 1955. Therefore a meritorious position on the irrigation claim has been alleged. No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection.

III. FINDINGS

Mr. Conlin failed to file a timely *Objection* to the *Director's Report* because he did not understand the different uses of this water right. 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 September 6, 2006.

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

October 27, 2006 5:00 pm Deadline to file Response to Objection

DATED September 7, 2006.


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 AND SETTING DEADLINE was mailed on September 07, 2006, with sufficient first-class postage to the following:

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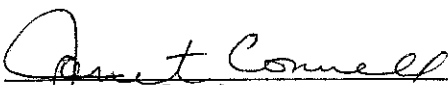
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