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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 DEADLINES
	)	
	)	SUBCASE NOS.: 27-7006

I. PROCEDURAL BACKGROUND

An *Objection* was filed on August 14, 2006 by Winona and William Wissert. The SRBA District court treated the *Objection* as a *Motion to File Late Objection*. A hearing was held on the *Motion* on September 13, 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 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*, Winona Wissert explained that the Wisserts inadvertently overlooked filing the objection. The lateness of the objection was therefore, not willful. Mrs. Wissert also asserted that water was used to irrigate the land to which the objection refers. No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection.

III. FINDINGS

The Wisserts failed to file a timely *Objection* to the *Director's Report* because it was inadvertently overlooked. The Wisserts asserted a meritorious position. 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 13, 2006.

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

October 20, 2006	5:00 pm	Deadline to file Response to Objection
December 13, 2006	11:00 am	Status 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 September 13, 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 DEADLINES was mailed on September 13, 2006, with sufficient first-class postage to the following:

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