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DEPARTMENT OF
WATER RESOURCES

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 RESPONSE
Case No. 39576	)	
	)	WATER RIGHT NO.: 21-00172
	)	

I. PROCEDURAL BACKGROUND

A *Response* was filed on August 22, 2006 by Seeley Brothers. The SRBA District Court treated the *Response* as a *Motion to File Late Response*. A hearing was held September 13, 2005.

II. 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).

In support of the *Motion*, Seeley Brothers explained that it had timely mailed the *Response* to the court. A copy of the *Response* was timely received by IDWR and date stamped July 14, 2006. It was clearly not willful that the *Response* by Seeley Brothers was late. In addition, the water use asserted by Seeley Brothers sets forth a meritorious position.

III. CONCLUSION

The Seeley Brothers did not willfully file a late *Response*. It appears that the original *Response* may have been lost in the mailing process. Additionally, Seeley Brothers asserted a meritorious position. There was no opposition to the *Motion*. Therefore, the *Motion to File Late Response* is **granted**. The *Response* will be filed with the court dated September 13, 2006.

DATED: September 26, 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 RESPONSE was mailed on September 26, 2006, with sufficient first-class postage to the following:

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