

2006 OCT 25 PM 3: 20

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.: 27-11954
	)	

I. PROCEDURAL BACKGROUND

An *Objection* was filed on August 16, 2006 by Paul Thomas Blotter. The SRBA District court treated the *Objection* as a *Motion to File Late Objection*. The *Late Objection* is to correct two elements that were erroneously missing in the *Director's Report*. A hearing was held on the *Motion* on October 4, 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*, Mr. Blotter and the Idaho Department of Water Resources explained that the *Director's Report* failed to include the source and point of diversion elements for this right. Mr. Blotter and IDWR wish to correct the mistakes contained in the *Director's Report*. No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection.

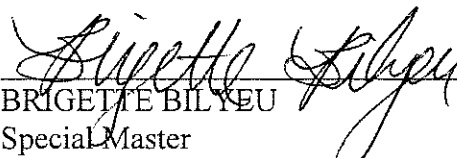
III. FINDINGS

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 4, 2006.

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

November 29, 2006	5:00 pm	Deadline to file Response to Objection
December 20, 2006	9:30 a.m.	Status Conference
Location: Snake River Basin Adjudication 253 3 rd Ave. North Twin Falls, Idaho 83301		

DATED October 25, 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 October 25, 2006, with sufficient first-class postage to the following:

SHOSHONE-BANNOCK TRIBES

Represented by:
JEANETTE WOLFLEY
SPECIAL COUNSEL
SHOSHONE-BANNOCK TRIBE
202 N ARTHUR
POCATELLO, ID 83202
Phone: 208-232-1922

STATE OF IDAHO

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098

PAUL THOMAS BLOTTER

3250 N 1200 E
LOGAN, UT 84321
Phone: 801-750-2949


Deputy Clerk