

RECEIVED

NOV 29 2006

DEPARTMENT OF
WATER RESOURCES

2006 NOV 28 PM 4:18

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 NOS.: 22-2303B,
	)	22-7032, 22-7198, 22-7225, 22-7324,
	)	22-7593, 22-7672, 22-13505 and 22-13506

I. PROCEDURAL BACKGROUND

A *Motion to File Late Response to Objection* was filed on September 29, 2006 by the State of Idaho. A hearing was held November 8, 2006.

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*, the State of Idaho explained that the responses it seeks to file in these cases in Basin 22 are almost identical to those it timely filed in Basin 21. Although the State of Idaho calendared the deadlines for Basin 22, the deadline for responses was inadvertently missed. The lateness of the State of Idaho's *Response* was not intentional or willful. In addition, the State of Idaho set forth a meritorious position.

III. CONCLUSION

The lateness of the State of Idaho's responses was not willful. Additionally, the State of Idaho 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 November 8, 2006.

DATED: November 28, 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 November 28, 2006, with sufficient first-class postage to the following:

AMERICAN FALLS RESERVOIR

Represented by:
C. THOMAS ARKOOSH
301 MAIN STREET
PO BOX 32
GOODING, ID 83330
Phone: 208-934-8872

BETTY J JENSEN
BYU IDAHO
DOUGLAS K SAKOTA
FREMONT MADISON IRRIGATION
GUY A ERIKSON
HOWARD JENSEN FARMS
ISLAND WARD CANAL COMPANY
JOSEPH J JENSEN
KEITH ERIKSON
KENNETH & DOUGLAS SAKOTA
LA JEAN PIEPER
MADISON SCHOOL DISTRICT #321
REXBURG IRRIGATION COMPANY
RICHARD PIEPER
TETON ISLAND FEEDER CANAL CO

Represented by:
JERRY R. RIGBY
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
JOHN K. SIMPSON
1010 W JEFFERSON, STE 102
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396
Phone: 208-436-4717

MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
TWIN FALLS, ID 83301-6167
Phone: 208-733-0700

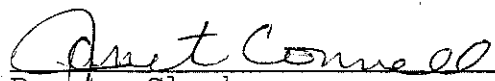
UNITED STATES OF AMERICA
USDI BUREAU OF RECLAMATION
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

MINIDOKA IRRIGATION DISTRICT
Represented by:
W. KENT FLETCHER
PO BOX 248
BURLEY, ID 83318
Phone: 208-678-3250

REXBURG IRRIGATION COMPANY
C/O DONALD DAY
975 S 5500 W
REXBURG, ID 83440
Phone: 208-356-6405

KENNETH T & DOUGLAS K SAKOTA
KENNETH T SAKOTA
PO BOX 163
REXBURG, ID 83440

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098


Deputy Clerk