

RECEIVED

JAN 05 2007

DEPARTMENT OF
WATER RESOURCES

2007 JAN -3 PM 2:34

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

Case No. 39576

) ORDER GRANTING MOTION TO
) FILE LATE OBJECTION AND
) SETTING DEADLINES

) SUBCASE NOS.: 21-10019
)

I. PROCEDURAL BACKGROUND

An *Objection* was filed on July 10, 2006 by Charles Kane. The SRBA District court treated the *Objection* as a *Motion to File Late Objection*. A hearing was held on the *Motion* on December 20, 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*, counsel for Mr. Kane explained why this *Objection* was late. The *Director's Report* for Basin 21 was sent while Mr. Kane was in the hospital for heart bypass surgery. After Mr. Kane was released from the hospital, he read the *Director's Report*, realized the *Objection* was late, and filed this *Motion*. The lateness of the *Objection* was therefore, not willful. Mr. Kane bases his *Objection* on a 1965 warranty deed which he asserts refers to this right. No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection.

III. FINDINGS

Mr. Kane did not file a timely *Objection* to the *Director's Report* because he was hospitalized. Mr. Kane 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 December 20, 2006.

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

January 26, 2007 **5:00 pm** Deadline to file Response to Objection

To be held Before Settlement Meeting with Parties
March 7, 2007

March 7, 2007 **11:00 am** Scheduling Conference
Location: Snake River Basin Adjudication
253 3rd Ave. North
Twin Falls, Idaho 83301

DATED: January 2, 2007.



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 January 03, 2007, with sufficient first-class postage to the following:

CHARLES KANE

Represented by:
BECK, DANIEL
410 MEMORIAL DR., STE 201
IDAHO FALLS, ID 83405

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

CHARLES KANE
3761 HWY 87
ISLAND PARK, ID 83429
Phone: 208-558-0220


Deputy Clerk