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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.: 21-00170
_____	)	

I. PROCEDURAL BACKGROUND

A *Motion for Leave to File a Late Standard Form Objection* was filed by Seeley Brothers on November 13, 2006. A hearing was held on the *Motion* on January 31, 2007.

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*, Alvin Seeley explained why this *Objection* was late. A notice of error was filed prior to the *Director's Report*. Mr. Seeley thought that document was sufficient for his objection. Additionally, Mr. Seeley did not know there was a clerical error on the acreage limitation until just before he filed this motion. IDWR concurred that a clerical error had been made on the acreage. The lateness of the *Objection* was therefore, not willful. No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection.

III. FINDINGS

Mr. Seeley did not file a timely *Objection* to the *Director's Report* because he thought he had filed one when he filed the notice of error. He was not initially aware of the clerical error on the acreage. Mr. Seeley 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 January 31, 2007.

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

February 23, 2007	5:00 pm	Deadline to file Response to Objection
March 14, 2007	3:00 pm	Status Conference Location: Snake River Basin Adjudication 253 3 rd Ave. North Twin Falls, Idaho 83301

DATED: February 14, 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 February 14, 2007, with sufficient first-class postage to the following:

SEELEY BROTHERS

Represented by:

LYNN HOSSNER

PROS ATTY FREMONT CNTY

109 NORTH SECOND WEST

ST ANTHONY, ID 83445

Phone: 208-624-3782

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098