

RECEIVED

FEB 28 2007

2007 FEB 23 PM 1:25

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

Case No. 39576

) ORDER GRANTING MOTION
) TO FILE LATE RESPONSE

) WATER RIGHT NO.: 27-12002
)
)
)

I. PROCEDURAL BACKGROUND

The State of Idaho made an oral *Motion to File Late Response* at a Status Conference held on December 13, 2006. The hearing on the *Motion* was held on February 14, 2007.

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 it had timely filed a *Response* to the original *Objection* filed in this water right. An *Amended Director's Report* was filed and the deadline to file a *Response* to the *Amended Director's Report* was inadvertently overlooked. It was clearly not willful that the *Response* was late. In addition, the State of Idaho asserted a meritorious position, and has filed similar *Responses* in several hundred subcases.

III. CONCLUSION

It was not willful that the *Response* filed by the State of Idaho was late. It appears that an *Amended Director's Report* was filed and that the deadline to file an additional *Response* was inadvertently overlooked. 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 date stamped when filed.

DATED: February 23, 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 RESPONSE was mailed on February 23, 2007, 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

UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098

HUNSAKER RANCHING INC

3804 BLACKFOOT RIVER RD
PO BOX 324
SODA SPRINGS, ID 83276
Phone: 208-678-4844