

2007 MAY -8 PM 1: 43

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,
Case No. 39576	)	CONTINUING SCHEDULING
	)	CONFERENCE, SETTING
	)	DEADLINES AND RESETTING
	)	STATE'S MOTION FOR LATE
	)	OBJECTION
	)	
	)	SUBCASE NOS.: 37-2128, 37-2471,
	)	37-2472, 37-20709, and 37-20710

I. PROCEDURAL BACKGROUND

A *Motion to File Late Objections* was filed on May 1, 2007 by Idaho Power Company. A hearing was held on the *Motion* on May 2, 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 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*, Idaho Power explained that the *Notice of Completed Administrative Proceedings* filed by IDWR on February 20, 2007 made extensive changes to the elements of these water rights including changing the ownership from Idaho Power to a split between Idaho Power Co. and the State of Idaho for equitable title and legal title to the State of Idaho. Idaho Power Co. argued that the original *Director’s Report* and the Swan Falls Agreement support its contention that Idaho Power is the sole owner of these rights. No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection.

III. FINDINGS

Under the circumstances of this case, the changes made in the NCAP are so extensive that the filing of the NCAP establishes good cause for filing a late objection. Additionally, Idaho Power Co. has set forth a meritorious position on the ownership issue. The *Director’s Report* for these water rights originally recommended Idaho Power Co. as the owner. Although there was apparently no sale of property or of any water rights, the recommendation on ownership was changed in the NCAP. Thus a meritorious position has been alleged.

Therefore, the *Motion to File Late Objection* is **granted**. The *Objection* will be filed with the court dated May 2, 2007.

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

May 11, 2007

2:00 pm

Continued Scheduling Conference and
State’s Motion to File Late Objection

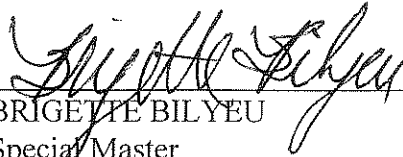
Location: Snake River Basin Adjudication
253 3rd Ave. North
Twin Falls, Idaho 83301

Please Note that the State of Idaho’s Motion for Late Objection is also Re-scheduled.

May 11, 2007	10:00 am	Deadline to File Late Objection
June 22, 2007	5:00 pm	Deadline to File Response to Objection

Parties may participate by phone for the Scheduling Conference and the State's Motion to File Late Objection by dialing 1-225-383-1099 and when prompted enter participant code 926509.

Dated: May 8, 2007.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING AND SETTING was mailed on May 08, 2007, with sufficient first-class postage to the following:

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