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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	)	ORDER ON MOTION TO SET ASIDE
	)	PARTIAL DECREE AND SETTING
	)	SUBCASE DEADLINES
Case No. 39576	)	
	)	SUBCASE NO.: 21-4130
	)	
	)	
_____	)	

I. PROCEDURAL BACKGROUND

The SRBA District Court issued a *Partial Decree* for this water right on February 2, 2007. On February 27, 2007, Kevin Barney filed a *Motion to Set Aside Partial Decree*. A hearing on the *Motion* was held on May 9, 2007. There was no opposition to the motion.

This subcase involved a unique procedural history. The Idaho Department of Water Resources reported that it recently discovered additional information about the priority for this right during the resolution of a neighboring claim. Therefore, IDWR asked that the *Partial Decree* be set aside and that IDWR be permitted to file an *Amended Director's Report*.

II. STANDARD OF REVIEW

The SRBA Administrative Orders do not provide a standard to be applied for filing late objections or an *Amended Director's Report* once a *Partial Decree* has issued. 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 the untimeliness of the objection and the existence of a "meritorious position." I.R.C.P. 55(c).

III. FINDINGS

The court has considered the facts alleged for "good cause" for the untimeliness of the objection and the information provided by IDWR.

Under the circumstances, the court finds that the untimeliness of the objections was not willful. This Special Master finds "good cause" under the Rule 55(c) standard. In addition, the court concludes that sufficient evidence was presented to show a meritorious position as to the priority date. This water claim should be examined to see whether the elements are accurate.

IV. CONCLUSION

In conclusion, this Special Master finds "good cause" for the untimeliness of the *Objection*. In addition, sufficient facts were alleged to raise a meritorious position as to the elements. Considering the policy of preferring to determine cases on their merits and the record on file in this subcase, the Idaho Department of Water Resources is given leave to file an *Amended Director's Report*.

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

May 31, 2007	5:00 pm	Deadline to File Amended Director's Report
June 29, 2007	5:00 pm	Deadline to File Objection
July 13, 2007	5:00 pm	Deadline to file Response
July 18, 2007	9:00 am	Status Conference

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

Dated May 14, 2007.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION TO SET ASIDE PARTIAL DECREE AND SETTING SUBCASE DEADLINES was mailed on May 14, 2007, with sufficient first-class postage to the following:

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