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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

Case No. 39576

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**ORDER GRANTING STATE OF
IDAHO'S MOTION TO FILE 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 4, 2007 by the State of Idaho. A hearing was held on the *Motion* on May 11, 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).

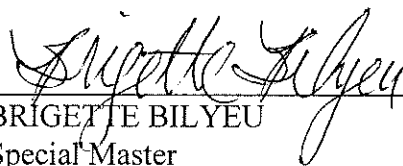
In support of the *Motion*, the State of Idaho explained that the *Notice of Completed Administrative Proceedings* filed by IDWR on February 20, 2007 made extensive changes to the elements of these water rights. The State of Idaho argued that recent case law under *United States v. Pioneer Irrigation District.*, Docket No. 31790 (March 9, 2007) and a scrivener's error in the *Notice of Completed Administrative Proceedings* referring to the date of a state contract with Idaho Power Co. require a late objection. 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, good cause exists for filing a late objection. Additionally, the State of Idaho has set forth a meritorious position on the ownership issue.

Therefore, the *Motion to File Late Objection* is **granted**. The *Objection* will be filed with the court dated May 11, 2007.

Dated: May 15, 2007.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING STATE OF IDAHO'S MOTION TO FILE LATE OBJECTION was mailed on May 16, 2007, with sufficient first-class postage to the following:

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