

2007 SEP -7 PM 2: 58

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 DEADLINE
	)	
	)	SUBCASE NOS.: 21-141, 21-2035,
	)	and 21-2037

I. PROCEDURAL BACKGROUND

A *Motion to File a Late Objection* was filed in the above listed subcases by Clyde White on July 25, 2007. A hearing was held on the *Motion* on August 22, 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*, Mr. White explained in his *Affidavit* that he reviewed the digital boundary proposed by Conant Creek Canal Co. in conjunction with the filing of his claims. About 333 acres of the 483 farmed by Mr. White are in the service area of Conant Creek. Mr. White believed his land was covered by Conant Creek's Claim. When Mr. White determined the Conant Creek claim or the *Director's Report* failed to include 40 of his acres, he filed this late *Objection*. The lateness of the objection was therefore, not willful. No parties to the SRBA opposed the *Motions*, and there is no showing prejudice would result from allowing the late objections.

III. FINDINGS

The untimeliness of Mr. White's *Objection* to the *Director's Report* was not willful. In addition, Mr. White 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 August 22, 2007.

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

September 21, 2007

5:00 pm

Deadline to file Response to Objections

DATED: ~~August~~ ^{Sept} 7, 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 DEADLINE was mailed on September 07, 2007, with sufficient first-class postage to the following:

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