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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	)	ORDER GRANTING MOTION TO
	)	FILE LATE OBJECTION AND
Case No. 39576	)	SETTING DEADLINE
	)	
_____	)	SUBCASE NOS.: 21-12897, 21-12907,
		21-12920, 21-12922, 21-12924, 21-12928,
		21-12953, AND 21-12962

I. PROCEDURAL BACKGROUND

A *Motion to File Late Objections or Alternatively to Participate* was filed in the above listed subcases by the parties who collectively are referred to as the Surface Water Coalition on August 30, 2007. A hearing was held on the *Motion* on October 10, 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*, the Surface Water Coalition explained that it filed the *Motion* and sought to file late objections as soon as it became aware that “groundwater recharge” was at issue. The Surface Water Coalition filed similar objections on a timely basis in Basin 22. The lateness of the objection was therefore, not willful. In addition, the Surface Water Coalition set forth a meritorious position, seeking to determine whether the claimed purpose of use for “groundwater recharge” and the priority dates from 1885 to 1897 are appropriate.

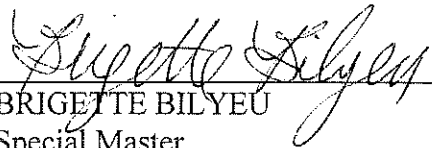
III. FINDINGS

The untimeliness of the *Objections* to the *Director’s Report* was not willful. In addition, a meritorious position was asserted. Therefore, the *Motion to File Late Objections* is **granted**. The *Objections* will be filed with the court dated October 10, 2007.

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

November 21, 2007 5:00 pm Deadline to file Response to Objections

DATED: October 17, 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 October 17, 2007, with sufficient first-class postage to the following:

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