

2007 NOV -1 AM 10: 47

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 DEADLINES
	)	
	)	SUBCASE NO.: 21-07084

I. PROCEDURAL BACKGROUND

A *Motion to File a Late Objection* was filed in the above listed subcase by Dean Schwendiman & Sons, Inc. on August 27, 2007. A hearing was held on the *Motion* on October 31, 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*, Dean Schwendiman & Sons, Inc. explained that upon realizing that there was a GIS error in this water right, immediately filed a *Motion*. They further explained that the *Motion* reduces the amount of acres to more accurately describe this right. The lateness of the objection was not willful. No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection.

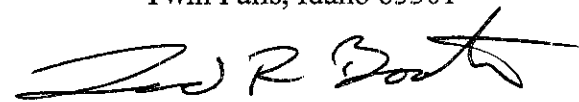
III. FINDINGS

The untimeliness of the *Objection* to the *Director's Report* was not willful. In addition, a meritorious position was asserted. 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 October 31, 2007.

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

November 21, 2007	5:00 pm	Deadline to file Response to Objection
January 9, 2008	3:30 pm	Status Conference
		Location: Snake River Basin Adjudication 253 3 rd Ave. North Twin Falls, Idaho 83301

DATED: November 1, 2007.



Theodore R. Booth
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 DEADLINES was mailed on November 01, 2007, with sufficient first-class postage to the following:

DEAN SCHWENDIMAN & SONS INC

Represented by:

ROBERT L HARRIS

1000 RIVERWALK DR, STE 200

PO BOX 50130

IDAHO FALLS, ID 83405

Phone: 208-523-0620

DEAN SCHWENDIMAN & SONS INC

PO BOX 57

NEWDALE, ID 83436

Phone: 208-458-4314

DIRECTOR OF IDWR

PQ BOX 83720

BOISE, ID 83720-0098