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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, SETTING
Case No. 39576	)	DEADLINE, AND STATUS
	)	CONFERENCE
_____	)	SUBCASE NO.: 37-2215

I. PROCEDURAL BACKGROUND

An *Objection* was filed by Donald E Krahn on January 11, 2008. The court treated the *Objection* as a *Motion to File Late Objection*. A hearing was held on the *Motion* on May 21, 2008.

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*, Donald Krahn explained that the lateness of the *Objection* was not willful, but was inadvert because he and the claimant Ina Krahn were not aware of the deadline for filing objections in basin 37.

A meritorious position was alleged. The Director's Report recommended disallowance of this right based on forfeiture or abandonment from 1982 to 1987. However, Mr. Krahn's position is that the water was used during the early season during these years and was used later when available. Apparently a tree farm in the area has an earlier priority date and uses most of the water supply in some years. Therefore, a meritorious position was alleged.

No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection.

III. FINDINGS

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 May 21, 2008.

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

June 27, 2008	5:00 pm	Deadline to file Response to Objection
September 3, 2008	10:30 am	Status Conference
Location: Snake River Basin Adjudication 253 3 rd Ave. North Twin Falls, Idaho 83301		

Parties may participate by phone for the Status Conference by dialing 1-225-383-1099 and when prompted enter participant code 926509. If you have any questions regarding telephone participation, please contact the Clerk's office at (208) 736-3011.

Dated: May 23, 2008.


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, SETTING DEADLINE AND STATUS CONFERENCE was mailed on May 23, 2008, with sufficient first-class postage to the following:

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