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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

) ORDER GRANTING MOTION TO
) FILE LATE OBJECTION AND
) SETTING DEADLINE

) SUBCASE NO.: 37-353G
)

I. PROCEDURAL BACKGROUND

A *Motion to File Late Objection* was filed by Barbara Barry on April 25, 2008. A hearing was held on the *Motion* on July 23, 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).

III. ANALYSIS

In support of the *Motion*, the claimant explained that she did not receive a copy of the *Director's Report* prior to the objection deadline. As soon as she knew about the recommendation in the *Director's Report* she sought to file this *Objection*. The claimant asserted that this water right has been historically used when possible to do so and added that she continues to receive assessments from the Wood River Valley Irrigation District #45. There was no opposition to the *Motion*.

IV FINDINGS

The court finds that claimant Barbara Barry did not willfully file the *Objection* late. Therefore, "good cause" for the untimeliness exists. The *Objection* is based on a meritorious position; and no prejudice has occurred since this case is still in the very early stages.

Therefore, the *Motion to File Late Objection* is **granted**. The *Objection* will be filed with the court dated July 23, 2008.

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

August 21, 2008	5:00 pm	Deadline to file Response to Objection
November 17, 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: July 25, 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 AND SETTING DEADLINE was mailed on July 25, 2008, with sufficient first-class postage to the following:

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