

DEPARTMENT OF  
WATER RESOURCES

a response) 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.

*See, 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*, counsel Jerry Rigby explained that the subcases listed on Exhibit A are generally claims to surface water irrigation rights filed in Basin 27. The Shoshone-Bannock Tribes filed *Objections* in these subcases. On the *Objection* form, the quantity element was checked and a statement was included that says “volumetric diversion limit should be included in water right.” The attachment to the *Objection* discussed the *1995 Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes*. However, the Committee of Nine did not realize that the “Equitable Apportionment” section of the *1995 Partial Final Consent Decree* was at issue until recently. The Committee of Nine is a signatory to the *1990 Fort Hall Agreement* on which the *1995 Partial Final Consent Decree* was based. Therefore the Committee of Nine seeks to participate as a Respondent. The Committee of Nine argued that it did not file its responses prior to the deadline because it did not know that an “Equitable Apportionment” was at issue.

The Committee of Nine also asserted it has a meritorious position in the *Response* because its response will enable it to be involved in negotiations on the “Equitable Apportionment” issue related to the *1990 Fort Hall Agreement*. The other parties to these subcases agreed that it would be beneficial to have the Committee of Nine involved in negotiations, and therefore consented to the *Motion*. The court notes that in some SRBA subcases, the court has allowed water claimants, not associations of water claimants, as parties. This decision does not rule on that issue because the parties here did not oppose the *Motion*. Additionally, this decision makes no determination about the “Equitable Apportionment” issue.

### IV. CONCLUSION

The lateness of the responses by the Committee of Nine was not willful. It appears that the Committee of Nine did not know that the “Equitable Apportionment” issue was being discussed until

recently. Additionally, the Committee of Nine asserted a meritorious position. There was no opposition to the *Motion*. Therefore, the *Motion to File Late Responses* is **granted**. The *Responses* will be filed with the court dated July 23, 2008.

DATED: July 31, 2008.

  
BRIGETTE BILYEU  
Special Master  
Snake River Basin Adjudication

## EXHIBIT A

## "IRRIGATION"

## Subcase Nos:

|            |           |          |          |          |
|------------|-----------|----------|----------|----------|
| 27-00001A  | 27-00037E | 27-02126 | 27-11199 | 27-12136 |
| 27-00001B  | 27-00037F | 27-02165 | 27-11236 | 27-12137 |
| 27-00002A  | 27-00037G | 27-04001 | 27-11245 |          |
| 27-00002B  | 27-00037H | 27-04009 | 27-11261 |          |
| 27-00003C  | 27-00037J | 27-04010 | 27-11262 |          |
| 27-00003D  | 27-00037L | 27-04058 | 27-11269 |          |
| 27-00003E  | 27-00037M | 27-04068 | 27-11271 |          |
| 27-00003G  | 27-00037N | 27-04077 | 27-11273 |          |
| 27-00004AC | 27-00038  | 27-04078 | 27-11317 |          |
| 27-00004F  | 27-00039  | 27-04079 | 27-11330 |          |
| 27-00004H  | 27-00040  | 27-04096 | 27-11334 |          |
| 27-00004M  | 27-00041  | 27-04097 | 27-11918 |          |
| 27-00004S  | 27-00045  | 27-04141 | 27-11919 |          |
| 27-00004Y  | 27-00047  | 27-07013 | 27-11930 |          |
| 27-00004Z  | 27-00049  | 27-07089 | 27-11939 |          |
| 27-00005A  | 27-00050  | 27-10096 | 27-11940 |          |
| 27-00005B  | 27-00051A | 27-10116 | 27-11946 |          |
| 27-00012A  | 27-00051B | 27-10207 | 27-11966 |          |
| 27-00012B  | 27-00052  | 27-10292 | 27-11988 |          |
| 27-00013A  | 27-00054  | 27-10296 | 27-11989 |          |
| 27-00013B  | 27-00055A | 27-10341 | 27-11992 |          |
| 27-00014B  | 27-00055B | 27-10344 | 27-11994 |          |
| 27-00014C  | 27-00056  | 27-10357 | 27-11995 |          |
| 27-00014D  | 27-00073  | 27-10358 | 27-11997 |          |
| 27-00016A  | 27-00074  | 27-10362 | 27-12006 |          |
| 27-00017   | 27-00076  | 27-10370 | 27-12014 |          |
| 27-00020A  | 27-00085A | 27-10388 | 27-12015 |          |
| 27-00020B  | 27-00088  | 27-10390 | 27-12016 |          |
| 27-00021A  | 27-00094  | 27-10398 | 27-12017 |          |
| 27-00021B  | 27-00102  | 27-10452 | 27-12027 |          |
| 27-00021C  | 27-00104  | 27-10505 | 27-12028 |          |
| 27-00021D  | 27-00105  | 27-10539 | 27-12029 |          |
| 27-00022D  | 27-00106  | 27-10545 | 27-12030 |          |
| 27-00023B  | 27-02001  | 27-10550 | 27-12031 |          |
| 27-00023C  | 27-02003A | 27-10552 | 27-12032 |          |
| 27-00023E  | 27-02003B | 27-10555 | 27-12035 |          |
| 27-00025B  | 27-02008  | 27-10557 | 27-12040 |          |
| 27-00025C  | 27-02015  | 27-10657 | 27-12045 |          |
| 27-00026A  | 27-02019A | 27-10667 | 27-12050 |          |
| 27-00026B  | 27-02026  | 27-10728 | 27-12051 |          |
| 27-00026C  | 27-02041A | 27-10756 | 27-12064 |          |
| 27-00026D  | 27-02041B | 27-10790 | 27-12068 |          |
| 27-00026E  | 27-02043  | 27-10844 | 27-12069 |          |
| 27-00028   | 27-02048  | 27-10847 | 27-12074 |          |
| 27-00029B  | 27-02052  | 27-10878 | 27-12081 |          |
| 27-00029C  | 27-02054  | 27-10943 | 27-12108 |          |
| 27-00029E  | 27-02066  | 27-10994 | 27-12109 |          |
| 27-00035D  | 27-02078  | 27-10999 | 27-12115 |          |
| 27-00037A  | 27-02080A | 27-11016 | 27-12116 |          |
| 27-00037C  | 27-02080B | 27-11117 | 27-12118 |          |

(Subcase list: IRRIGATION)

7/24/08