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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 NO.: EXHIBIT A
_____	)	

I. PROCEDURAL BACKGROUND

A Motion to File Late Objection and Request for Expedited Hearing and the Affidavit of Andrew J. Waldera in Support of Motion to File Late Objection and Request for Expedited Hearing was filed by Newfoundland Partners (hereafter "Newfoundland") and Sinclair Oil Corporation dba Sun Valley Co. (hereafter "Sinclair Oil") on March 10, 2008. Documents including *O'Gara et. al. Opposition to Sinclair Oil's and Newfoundland Partner's Motion to File Late Objection and Request for Expedited Hearing* and the *Affidavit of Albert P. Barker in Support of O'Gara Et Al Opposition to Sinclair Oil's and Newfoundland Partner's Motion to File Late Objection and Request for Expedited Hearing* were filed on June 24, 2008. A *Reply Memorandum in Support of Motion to File Late Objections* was filed by Sinclair Oil and Newfoundland on June 30, 2008. A hearing was held on the *Motion* on July 2, 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*, Sinclair Oil and Newfoundland explained the reason for the lateness of the *Objection*. Sinclair Oil and Newfoundland seek to file *Objections* to certain elements of water rights held by the parties who oppose this *Motion*. The parties who oppose this *Motion* include Big Wood Canal Co., Grace Eakin, Michael Harris, Theresa, William, Nancy, and Terry Sherbine, Thomas O’Gara Family Trust, A.W., Maxine, Kristy and John Molyneux , and John F. Stevenson. (hereafter referred to collectively as “Concerned Water Users”) The issues on which these late *Objections* are based first became apparent when the Concerned Water Users filed timely *Objections* to water rights held by Sinclair Oil and Newfoundland. The *Objections*, filed by the Concerned Water Users focused on three (3) issues:

- 1) Should the combined use of water rights include a limit of .02 cfs per acre?
- 2) Should the combined use include a limit of 3.5 AF per acre?
- 3) Should the purpose of use element include aesthetic, wildlife, and recreation uses?

Sinclair Oil and Newfoundland assert that the lateness of filing similar *Objections* to the claims of the Concerned Water Users was not willful. Prior to the objection deadline, Sinclair Oil and Newfoundland investigated the elements of upstream water rights. The rights of the Concerned Water Users are apparently downstream from those of Sinclair Oil and Newfoundland. However, when duty of water, volume, and purpose of use issues were raised by the Concerned Water Users

Objections, Sinclair Oil and Newfoundland understood the necessity for duty of water, volume, and purpose of use to be determined uniformly. Therefore, they lodged these late *Objections*.

The Concerned Water Users asserted that Sinclair Oil and Newfoundland have failed to show “good cause” for the late filing. They assert that Sinclair Oil and Newfoundland seek to file these objections to retaliate for the Concerned Water Users *Objections* to Sinclair Oil and Newfoundland’s rights. Concerned Water Users argue that Sinclair Oil and Newfoundland have not asserted “good cause” for lateness.

The standard for filing late objections is a relatively lenient standard. The standard allows late objections to be filed unless the untimeliness of the objections was willful. Willfulness would presumably occur where a party knew of an objectionable element or issue involved in a subcase and purposefully declined to file an objection by the deadline. These subcases do not present such a case. Here, Sinclair Oil and Newfoundland were not aware that duty of water or volume limits were at issue until the filing of the Concerned Water Users *Objections*. Prior to the filing of those *Objections*, Sinclair Oil and Newfoundland were not aware of those issues. The court is not convinced that the late *Objections* were filed to “retaliate” against the Concerned Water Users. The late *Objections* seem to be focused on the need to treat subcases uniformly. It seems reasonable that Sinclair Oil and Newfoundland were unaware of the need to seek uniformity for duty of water, volume, and purpose elements until after the *Objection* deadline. Therefore, the court finds that the lateness of these objections was not willful, and finds “good cause” for the untimeliness.

Sinclair Oil and Newfoundland allege a meritorious position exists to support the late *Objections*. They allege that the water rights to which they now object should be examined on several grounds:

- 1) They exceed the statutory allotment of .02 cfs per acre.
- 2) They claim a purpose of use based on aesthetic, wildlife, or recreation.
- 3) They are based on accomplished transfers which enlarged the rights.
- 4) They claim larger periods of use than is typical in the area.

To allege a “meritorious position” a party must allege facts which, if established, would allow that party to prevail. In this instance, the determination of a meritorious position is relatively straight forward. The Concerned Water Users did not dispute that some of these claims exceed the statutory duty of water, are based on aesthetic, wildlife or recreation or assert a longer period of use than is standard in the area. Sinclair Oil and Newfoundland examined the *Director’s Report* for these

subcases to provide the basis for their duty of water objection. Similarly, they looked at the *Director's Report* to identify rights which claim aesthetic, wildlife, or recreation as a purpose of use.² The *Director's Report* was also the basis for comparing the season of use claimed to the typical season in that area. Therefore the court finds that Sinclair Oil and Newfoundland have asserted a "meritorious position" on these elements.

As Sinclair Oil and Newfoundland Partners noted, the current proceedings are in the very early stages. Initial Hearings have not yet taken place. No trial schedules or other deadlines have been set. Accordingly, the court finds no prejudice has occurred.

IV FINDINGS

The court finds that Sinclair Oil and Newfoundland did not willfully file these *Objections* late. Therefore, "good cause" for the untimeliness exists. The *Objections* are based on a meritorious position and no prejudice has occurred since these cases are 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 2, 2008.

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

August 22, 2008	5:00 pm	Deadline to file Response to Objection
March 4, 2009	10:00 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 31, 2008.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

² The aesthetic and wildlife purpose of use issue has been designated as a Basin Wide issue.
ORDER GRANTING MOTION TO FILE LATE OBJECTION
AND SETTING DEADLINE
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7/31/08

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 31, 2008, with sufficient first-class postage to the following:

CATTLE LACK RANCH HOMEOWNERS
ASSN
11 PURPLE SAGE LN
BELLEVUE, ID 83313

A W MOLYNEUX
ANDREA S WARD
ESTATE OF JAMES IVAN EAKIN
GRACE EAKIN
JOHN F STEVENSON
JOHN F STEVENSON JR
JOHN I MOLYNEUX
KRISTY MOLYNEUX
MAXINE MOLYNEUX
NANCY SHERBINE
ROCKY SHERBINE
TERRI SHERBINE
THERESA L SHERBINE
THOMAS M O GARA FAMILY TRUST
WILLIAM L SHERBINE
WILLIAM T "ROCKY" SHERBINE

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DIAMOND/SOLDIER PROPERTIES LLC
SMOKEY DOME LLC
SOUTH COVE VENTURES LLC
SV RANCH LLC
TWIN LAKES RESERVOIR & IRR
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(Certificate of mailing continued)

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EXHIBIT A

SINCLAIR & BIG WOOD

Subcase Nos:

37-00111
37-00112
37-00114C
37-00115D
37-00116
37-00475
37-00477
37-00867
37-00870
37-00895
37-02502
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