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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 DENYING MOTION TO FILE
Case No. 39576	)	LATE OBJECTION
	)	
	)	SUBCASE NO.: 25-92, 25-13388, AND
	)	25-14104

I. PROCEDURAL BACKGROUND

A *Motion for Late Objection* was filed on March 25, 2008 by Enterprise Canal Co Ltd. A hearing was held on the *Motion* on May 14, 2008 and continued on July 30, 2008. The movant, Enterprise Canal Co Ltd., did not attend the hearing held on July 30, 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. DISCUSSION

At the first hearing, Enterprise Canal Co. Ltd. stated that it did not realize that it had not filed a claim for this water right. Enterprise Canal Co. did not file a claim or a timely objection. At the second hearing, however, Progressive Irrigation District explained that the previous board of directors for Enterprise Canal Co, Ltd. had requested that the claims be filed by Progressive Irrigation District.

The United States argued that if Progressive Irrigation District and Enterprise Canal Co. Ltd. agreed on which entity should claim the rights, there was not “good cause” for the lateness of the *Objection*. Additionally, the United States argued that Enterprise Canal Co Ltd. had not made a case for a meritorious position for its late objection. Finally, both Progressive Irrigation District and the United States explained that considerable time and effort had been utilized to reach a *Standard Form 5* settlement agreement.

The standard for filing late objections is a relatively lenient standard. The standard allows late objections to be filed unless the untimeliness of the objection was willful. Willfulness would presumably occur where a party knew of an objectionable element and purposefully declined to file an objection by the deadline. It appears that Enterprise Canal Co. Ltd. made a willful decision to allow the Progressive Irrigation District to claim the water. In light of that, the decision to not file a timely objection appears willful. The court heard no argument to the contrary because Enterprise Canal Co. Ltd. did not appear at the second hearing.

Furthermore, Enterprise Canal Co. Ltd. did not present evidence of a “meritorious position” and did not rebut the argument that allowing the late objection now would prejudice both Progressive Irrigation District and the United States because they would have to begin on a case which was previously settled.

IV. FINDINGS

The court finds that under the circumstances, it appears the lateness of the objection was willful. There was no showing of a "meritorious position" regarding the proposed late objection. Finally, the assertion that the opposing parties would be prejudiced was not refuted.

THEREFORE, the *Motion for Late Objection* is **denied**. The court notes that if Enterprise Canal Co. Ltd. and Progressive Irrigation District come to an agreement on changing or splitting the ownership element of these water rights, that change is easily accomplished through an administrative procedure with the Idaho Department of Water Resources.

DATED: August 7, 2008.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION TO FILE LATE OBJECTION was mailed on August 07, 2008, with sufficient first-class postage to the following:

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