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DEPARTMENT OF
WATER RESOURCES

2008 AUG 29 AM 9:13

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 NOS.: 22-13245, 22-13246, 22-
	)	13626, 22-13636, 22-13637, and 22-13639

I. PROCEDURAL BACKGROUND

Motions to File Late Objections were filed by the claimants in the above listed water rights on August 13, 2008. A hearing was held on the *Motion* on August 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*, counsel for the movants explained that the lateness of the *Objection* was not willful. The claimants to these subcases are concerned that the original points of diversion claimed should be reclassified as points of rediversion. The proper description may be important because Teton Creek splits into a main channel and a side channel.

A meritorious position was alleged by movants based on changes to the historic points of diversion when the channel for Teton Creek was apparently altered. Thus, movants seek to more accurately describe these water rights. 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 August 21, 2008.

Please be advised that Special Master Brigitte Bilyeu has set the following dates:

September 29, 2008	5:00 pm	Deadline to File Response
January 28, 2009	2:30 pm	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. Any questions regarding telephone participation, please contact the Clerk's office at (208) 736-3011.

Dated: August 29, 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 CONFERENC was mailed on August 29, 2008, with sufficient first-class postage to the following:

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