

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

DEC 22 2008

By _____ Clerk
_____ Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

Case No. 39576

ORDER DENYING MOTION TO FILE LATE OBJECTION

SUBCASE NO.: 22-4195

The *Director's Report* for Basin 22 Part II Irrigation and Other Claims was filed December 22, 2006. Objections were due on July 25, 2007. An Initial Hearing was held on August 20, 2008.

At the Initial Hearing, the existing parties to the subcase filed a *Standard Form 5* settlement agreement. George Brown was not a party at the time, but he attended the Initial Hearing and lodged a document entitled *Objector's Amended Objection*. The document entitled *Objector's Amended Objection* did not comply with the *Standard Form Objection*. However, a conforming *Objection* was lodged by Mr. Brown on August 25, 2008. The Court treated the late *Objection* as a *Motion to File Late Objection*. A hearing was held on the *Motion* on November 19, 2008. The *Motion* was opposed by DKJ Farms LLC.

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). ***SRBA Administrative Order 1 (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*, Mr. Brown argued that the *Objection* should be considered timely because at the Initial Hearing, the court set the hearing for his *Motions for Late Objections*. However, that deadline was established to hear the *Motion* and is not the date used to determine if the *Objection* was late. The deadline for Objections was established in Basin 22 Part II as July 25, 2007. Since Mr. Brown’s *Objection* was lodged on either August 20, 2008 or August 25, 2008 it was past the deadline. The movant must show “good cause” for the untimeliness of the *Objection*. Mr. Brown provided no information as to why the *Objection* in 22-4195 was late

The *Motion* was opposed by DKJ Farms LLC. DKJ Farms argued that the proposed late *Objection* did not state a meritorious position, because the SRBA does not allow parties to collaterally attack administrative transfers. DKJ Farms asserts that the late *Objection* relies solely on a dispute with an administrative decision.

The court notes that neither Mr. Brown nor DKJ Farms identified the administrative decision or made it part of the record.

III. FINDINGS

Motions for late objections may be granted where the movant shows “good cause” for the untimeliness of the filing and a “meritorious position.” Here, the movant did not provide information about why the *Objection* was late. Consequently, the movant failed to show “good cause” for the untimeliness of the *Objection*. Because the movant did not show “good cause” for the late filing, the court need not reach the issue of a “meritorious position.” However, the court notes that the law of the case in the SRBA is that a party may not subsequently challenge elements or conditions decided

in a license or transfer. The SRBA Court has also prohibited non-parties from collaterally attacking administrative determinations if they had an opportunity to protest but failed to do so. *See, Order Adopting Special Master's Report and Recommendation*, (Subcase No. 36-7092A)(December 10, 1997) In order to prevail on a *Motion to File Late Objection*, Mr. Brown would need to show a meritorious position in addition to "good cause" for being late. However, since Mr. Brown did not make a showing of "good cause" for the untimeliness of the *Objections*, the *Motion* may be decided on that basis alone.

Accordingly, IT IS ORDERED that the *Motion to File Late Objection* is **denied**.

Dated: December 22, 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 December 22, 2008, with sufficient first-class postage to the following:

GEORGE BROWN

JAMES WOOD

Represented by:

BROWN, JOSEPH F

4094 S FEDERAL WAY STE K102

BOISE, ID 83716

Phone: 208-965-2224

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

DKJ FARMS LLC

665 CENTENNIAL LOOP

REXBURG, ID 83440

Phone: 208-356-3638

cc Jerry Rigby