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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JAN 23 2009	
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

In Re SRBA	)	ORDER GRANTING MOTION TO
	)	ALLOW LATE OBJECTION, SETTING
Case No. 39576	)	DEADLINE AND STATUS
	)	CONFERENCE
_____	)	SUBCASE NO.: 37-899B

I. PROCEDURAL BACKGROUND

A *Motion to Allow Late Objection* was filed by Harry S. Rinker on October 27, 2008. A hearing was held on the *Motion* on January 21, 2009.

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*, the claimant offered the *Affidavit of Charles G. Brockway*. The *Affidavit* explains that the claimant did not file a timely objection to the recommended disallowance of water right 37-899B. A timely objection was not filed because the claimant understood that water right 37-899B had been included in previous water transfers T-69269 and T-69271. When it was discovered that 37-899B was not included in transfers T-69269 and T-69271 and that the original right was apparently described in *Barker v. Coffin*, the claimant filed this *Motion*.

Thus, this court finds good cause for the untimeliness of the *Objection* and also finds a meritorious position was alleged. 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** subject to a written *Objection* being submitted.

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

January 29, 2009	5:00 pm	Deadline to submit written Objection
February 27, 2009	5:00 pm	Deadline to file Response
June 10, 2009	10:30 am	Status Conference
Location: Snake River Basin Adjudication 253 3 rd Ave. North Twin Falls, Idaho 83301		

Parties may participate by telephone 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: January 23, 2009.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

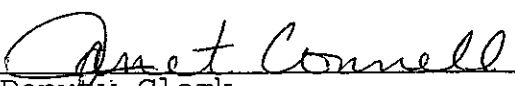
CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO ALLOW LATE OBJECTION, SETTING DEADLINE AND STATUS CONFERENCE was mailed on January 23, 2009, with sufficient first-class postage to the following:

HARRY S RINKER

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