

DEPARTMENT OF
WATER RESOURCES

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

FEB - 3 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
	)	FILE LATE OBJECTION, SETTING
Case No. 39576	)	DEADLINE, AND STATUS
	)	CONFERENCE
	)	SUBCASE NO.: 22-12018

I. PROCEDURAL BACKGROUND

An *Objection* was filed in the above listed subcase by Les R Van Leerдам on July 30, 2008. The Court treated the late *Objections* as *Motions to File Late Objections*. A hearing was held on the *Motion* on January 28, 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*, Mr. Van Leerdam explained that this water claim is located near a stream alteration. At the time *Objections* were due, Mr. Van Leerdam did not know that the location described for the point of diversion should have been described as a point of redirection due to the effect of the stream alteration.

A meritorious position was alleged by claimant based on information discovered about the stream alteration. Research has uncovered difficulties in understanding how the alteration has impacted the description of the point of diversion.

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 January 28, 2009.

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

February 27, 2009	5:00 pm	Deadline to file Response to Objection
June 10, 2009	1:30 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: February 3, 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 FILE LATE OBJECTION, SETTING DEADLINE, AND STATUS CONFERENCE was mailed on February 03, 2009, with sufficient first-class postage to the following:

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