

DEPARTMENT OF
WATER RESOURCES

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

FEB 10 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

Case No. 39576

**ORDER GRANTING MOTION TO
FILE LATE OBJECTION, SETTING
SUBCASE DEADLINE AND STATUS
CONFERENCE**

SUBCASE NO.: 22-13746

I. PROCEDURAL BACKGROUND

A *Motion to File Late Objection* was filed by B & B Farms on September 8, 2008 in the above listed water right. A hearing was held 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 provide 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).

III. ANALYSIS

In support of the *Motion*, B & B Farms explained that the lateness of the *Objection* was not willful. Counsel for B & B Farms did not receive information about this right possibly being an enlargement of 22-2236, not 22-7088, until after the deadline had passed. When B & B Farms

became aware of the problem the following month, it promptly filed a *Motion for Late Objection*.

A meritorious position for the *Objection* was asserted because the late objection seeks to take advantage of additional information about this right and how it relates to license right 22-2236 and the later license 22-7088. The proposed *Objection* responds to the *Amended Director's Report issued June 17, 2008*. No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection.

IV. FINDINGS

This Special Master finds "good cause" for the untimeliness of the *Objection* and a meritorious position. Therefore, the *Motion to File Late Objection* is **granted**. The *Objection* previously lodged shall be filed and dated January 28, 2009.

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

March 4, 2009	9:30 am	Status Conference
		Location: Snake River Basin Adjudication 253 3 rd Ave. North Twin Falls, Idaho 83301

March 20, 2009	5:00 pm	Deadline to file Response
----------------	---------	---------------------------

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 10, 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 SUBCASE DEADLINES AND STATUS CONFERENCE was mailed on February 10, 2009, with sufficient first-class postage to the following:

B & B FARMS

Represented by:
ANDREW J WALDERA
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

B & B FARMS

Represented by:
SCOTT L CAMPBELL
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098