

DEPARTMENT OF
WATER RESOURCES

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

MAR - 5 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

Case No. 39576

ORDER GRANTING MOTION TO FILE LATE OBJECTION AND SETTING DEADLINES

SUBCASE NO.: 37-4242

I. PROCEDURAL BACKGROUND

A *Motion to File Late Objection* was filed by Carl Johnston on August 4, 2008. A hearing was held on the *Motion* on March 4, 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).

Mr. Johnston did not attend the hearing. However, his *Motion* explained that mail in the Bellevue area is not currently delivered when the physical address is used. Apparently post office box addresses are required. Therefore, Mr. Johnston did not receive a copy of the *Director's Report* with instructions on the objection deadline. Thus, "good cause" for the untimeliness was shown. IDWR reported that this may be a valid water right, but IDWR needs more information to show evidence of the claimed priority date. Therefore, Mr. Johnston shall contact IDWR Agent, Doug Jones at (208) 736-3033 to provide evidence of priority.

No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection.

III. FINDINGS

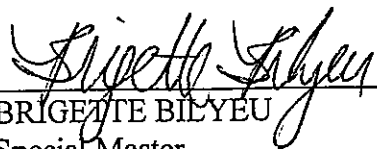
There was no opposition to the *Motion*. Therefore, the *Motion to File Late Objection* is **granted**. The *Objection* will be filed with the court dated March 4, 2009.

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

May 15, 2009	5:00 pm	Deadline to File Response
July 29, 2009	4:00 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: March 5, 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 AND SETTING DEADLINES was mailed on March 05, 2009, with sufficient first-class postage to the following:

DIRECTOR OF IDWR
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