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DEPARTMENT OF
WATER RESOURCES

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

JUN 26 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, SETTING
) DEADLINES, AND STATUS
) CONFERENCE

) SUBCASE NOS.: 22-13509, 22-13586,
) 22-13853, and 22-13854

I. PROCEDURAL BACKGROUND

An *Objection* was filed in the above listed subcases by Michael Reid on November 10, 2008. The Court treated the late *Objections* as *Motions to File Late Objections*. A hearing was held on the *Motion* on June 24, 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 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. Reid explained that these are so-called “friendly objections” which seek to have IDWR re-examine its recommendations to the benefit of the claimants. He found information about the *Director’s Report* recommendation after the deadline for *Objections*. After he found the information, he immediately filed the late *Objections*.

A meritorious position was alleged by Mr. Reid based on research about the historic use of water in the area of Paradise Springs.

The court finds the lateness of the *Objections* was not willful, and that a meritorious position was asserted.

III. FINDINGS

There was no opposition to the *Motions*. Therefore, the *Motions to File Late Objections* are **granted**. The *Objections* will be filed with the court dated June 24, 2009.

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

July 31, 2009	5:00 pm	Deadline to file Response to Objection
<u>Prior to</u> July 31, 2009	5:00 pm	Deadline for parties to contact IDWR Agent Michael Holliday at (208) 525-7161
August 31, 2009	5:00 pm	Deadline to file Motion for Amended/Late Claim
September 30, 2009	5:00 pm	Deadline to file Amended Directors’ Report
October 30, 2009	5:00 pm	Deadline to file Objection
November 27, 2009	5:00 pm	Deadline to file Response

December 23, 2009

10:30 am

Status Conference

Location: Snake River Basin Adjudication
253 3rd 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: June 26, 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 OBJECTIONS, SETTING DEADLINES, AND STATUS CONFERENCE was mailed on June 26, 2009, with sufficient first-class postage to the following:

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