

JUN 29 2009

DEPARTMENT OF
WATER RESOURCESDISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JUN 26 2009

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

Clerk

Deputy Clerk

In Re SRBA

Case No. 39576

ORDER GRANTING MOTION TO
FILE LATE OBJECTION, SETTING
DEADLINE AND INITIAL HEARING
BY TELEPHONE

SUBCASE NOS.: 37-113P and 37-11281

I. PROCEDURAL BACKGROUND

Objections were filed by Doug and Lisa Niedrich on April 29, 2009. The Court treated the late *Objections* as a *Motion to File Late Objection*. A hearing was held on the *Motion* on June 17, 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. Niedrich explained that the *Objection* was late because he did not understand that his quantity had been reduced for his two rights. He thought the two rights had been combined into one right because he was confused between cfs and miner's inches.

A meritorious position was alleged because Mr. Neidrich understands that .24 cfs has historically been used for these two rights. 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**. IT IS ORDERED that the following deadlines shall govern further proceedings:

July 28, 2009	5:00 pm	Deadline to file Response to Objection
December 9, 2009	11:30 am	<u>Initial Hearing by Telephone</u> Snake River Basin Adjudication 253 3 RD Ave, North Twin Falls, Idaho 83301

ATTENDANCE IS MANDATORY. All parties are required to attend in person or by telephone and must have full settlement authority. **Parties may participate by telephone for the Initial Hearing 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.

At the Initial Hearing you will have an opportunity to meet with a representative of the Idaho Department of Water Resources (IDWR) and /or objector in the attempt to reconcile any difference between the claim and the Director's Report. Bring any and all information you believe is relevant to your claim and/or objection. If the claim cannot be reconciled at the Initial Hearing, the court will set the subcase for trial. IF YOU INTEND TO AMEND YOUR CLAIM, YOU MUST DO SO AT OR BEFORE THE INITIAL HEARING.

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 OBJECTION, SETTING DEADLINE AND INITIAL HEARING BY TELEPHONE was mailed on June 26, 2009, with sufficient first-class postage to the following:

DOUG & LISA NIEDRICH
DOUGLAS H NIEDRICH
LISA A NIEDRICH
PO BOX 291
HAILEY, ID 83333
Phone: 208-788-4145

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