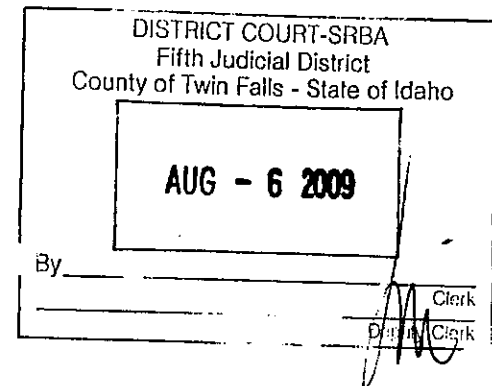


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Attorneys for Claimant



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	)	Subcase Nos. 37-60; 37-61; 37-62; 37-63A;
Case No. 39576	)	37-64A; 37-66A; 37-67B; 37-68A; 37-230;
	)	37-231B; 37-232; 37-577AZ
	)	)
	)	SUN VALLEY RANCH'S OPPOSITION
	)	TO LAKESIDE INDUSTRIES'
	)	MOTION TO FILE LATE OBJECTION
	)	AND REQUEST FOR EXPEDITED
	)	HEARING

COMES NOW, claimant Sun Valley Ranch, LLC by and through its attorney of record, Lawson Laski Clark & Pogue, PLLC, and pursuant to the Idaho Rules of Civil Procedure and this Court's procedures set forth in *Administrative Order 1* ("AO1"), and hereby responds to Lakeside Industries, dba Wood River Ranch's Motion to File Late Objection and Request for Expedited Hearing ("Motion"). Sun Valley Ranch opposes and objects to the motion to file late objections for the reasons set forth herein, and requests that the court deny same. This opposition is further supported by the *Affidavit of James R. Laski* (hereinafter "Laski Aff.") filed and served herewith.

PROCEDURAL AND FACTUAL HISTORY

Sun Valley Ranch, LLC ("SVR") is the owner of the above-listed water rights and filed numerous water right claims for Basin 37 part 3 on or about November 4, 1988. The Director of the State of Idaho Department of Water Resources ("IDWR") examined the claims and issued his

recommendations for SVR's water rights and other Basin 37 water rights through the Director's Report filed with the Court on or about February 21, 2007. Included in the Recommendation for SVR water rights listed above, was a Point of Diversion ("POD") at T01N R18E Section 12, NWSESW. This location is known as the Bypass Canal and is located north of SVR and Wood River Ranch ("WRR"). See SVR's Surface Water Delivery System Map prepared by Brockway Engineering, PLLC attached as Exhibit "A" to Laski Aff. SVR has used this POD for decades.

Pursuant to the Notice in the Director's Report, the objection deadline for these water right recommendations was set for **November 14, 2007**. See Notice of Filing of Director's Report for Basin 37, Part 3 for Irrigation and Other Water Rights attached as Exhibit "B" to Laski Aff. The Director's notice for filing made it clear that if any water user wished to object to the claimant's right "or any other water right" the objection "must be received by the SRBA court on or before November 14, 2007." Timely objections by other objectors were filed to SVR's recommended water rights. WRR did not file any objections to SVR's recommended water rights.

According to IDWR records, WRR is also the owner of several water rights in Basin 37 and filed numerous water right claims for Basin 37, Part 3 and received similar recommendations and deadlines from IDWR.¹ Notice of such filing of the Director's Report and individual recommendations for all water right claimants in the reporting area was served on or before February 21, 2007. As a claimant of water rights in Basin 37, WRR received such notice as well as Basin 37, Part 3 General Provisions on or about February 21, 2007. SVR is identified as one of the "other" claimants in Basin 37, Part 3. Hence, WRR has participated in the SRBA process,

¹ See WRR's claimed Water Rights: 37-63B, 37-64B, 37-66B, 37-67A, 37-68B, 37-69A, 37-2493, 37-2747, 37-7002, 37-7210, 37-7225, 37-7309, 37-11811, 37-11813, 37-11814, 37-11815, 37-11816, 37-11817, 37-11818 and 37-11819.

has known about SVR's adjudication of its water rights and has had adequate opportunity to review the recommendations and to file objections to SVR's water rights in a timely manner.

Nevertheless, on July 28, 2009, over two years after the IDWR made its recommendation for SVR's water rights, WRR seeks to file a late objection to SVR's recommended POD at T01N R18E Section 12, NWSESW. However, as reflected in WRR's Motion, this is not a POD issue -- this is a delivery issue. It is the duty of the Water Master to distribute water according to the water rights. I.C. § 42-607. As such, it is beyond the scope of the adjudication process. As shown in SVR's Surface Water Delivery System Map, the Water Master may deliver SVR's water through the Baseline Bypass through the Bypass Canal POD. In or about 2009, SVR **requested** that the Water Master deliver its water through the Baseline Bypass. So long as WRR is delivered its water, there is no injury to WRR's water rights.

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 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.

See Order on Motion to Set Aside Partial Decrees and File Late Objections, subcase nos. 65-07267, *et al.* ("A.L. Cattle Initial Order") (Jan 31, 2001), at 7.

As the facts set forth above demonstrate, WRR should have been aware of SVR's claims when the relevant Director's Report was issued back in 2007. The Notice clearly provided specific instructions for reviewing claims and filing objections. Notwithstanding the clear instructions, WRR apparently failed to conduct any investigation into SVR's recommended PODs. WRR offers no reason for its failure to undertake the same investigation that all other claimants in the SRBA have had to undertake in making timely objections.

ANALYSIS

A. WRR's Default Was Willful.

The rationale presented by WRR for its failure to timely file objection is as follows:

It was not until the 2009 water year when water was first being delivered, that Wood River Ranch learned that Sun Valley Ranch was demanding delivery of all of its water through Bypass Canal and Bypass Extension, based on the new POD in the recommendation.

See Memo, p. 4.

The basis presented by WRR to support its late objection – that the recommended POD was not discovered until SVR made its delivery request – does not excuse the willful nature of the default. SVR's recommended points of diversion were included in the Report filed on or about February 21, 2007. WRR, who is also adjudicating its own water rights, knew that SVR's

PODs were included in the Report; however, it failed to make a proper investigation and objection during the authorized time.² In addition, WRR has presented no evidence that it made *any* attempt to timely review the Director's Report to protect its own interest. It has been held that failure to review the Director's Report is a willful default. *See Order on Motion to File Late Objection*, subcase no. 23-009B (January 18, 2005) at p. 3. In this opinion, the Special Master reasoned that good cause for a late objection exists where a party has a systematic process of reviewing claims and Director's Reports, but that where a movant fails to attempt to protect his water rights with a system of reviewing competing claims, the failure is willful. *Id.* It is clear, in light of these facts, that WRR made no attempt to review SVR's Director's Report. Accordingly, WRR's failure to timely object is willful, and WRR's Motion must be denied.

B. Allowing WRR's Late Objection Would Prejudice SVR.

Given the fact that the objection period has lapsed, and that the allowance of late objections will cause increased delay, additional pleadings and unnecessary costs, WRR's argument that *no* prejudice will result is incorrect. WRR basically states that no prejudice will occur because no action has been taken upon SVR's water rights by the Court, no resolution has been reached with the other objectors and the other objectors have not objected to the recommended point of diversion. These arguments do not demonstrate that WRR's late objection will not prejudice SVR. On the contrary, SVR has demonstrated that WRR's reason for filing the late objection is a red herring for the underlying delivery issue, which is irrelevant in this adjudication. It's clear that WRR's motion is designed to intimidate and harass SRV, which will have a negative prejudicial impact on the litigation of its water rights by

² Moreover, WRR admits that it does not even really object to the Point of Diversion, but rather seeks to have the court adjudicate the delivery practices. *See Motion*, p. 4.

unnecessarily delaying and increasing the costs to adjudicate the same. As stated above, as long as the Water Master delivers WRR its water, there is no injury to WRR's water rights.

C. WRR Has Not Presented Facts Sufficient to Present A Meritorious Position, and Therefore Allowing the Late Objection Would Be Futile.

Lastly, WRR's motion does not identify a *meritorious defense*, the third factor in analyzing a motion under I.R.C.P. 55(c). WRR must show both "good cause" and a "meritorious position" in order to prevail on a *Motion for Late Objection*. WRR not only fails to provide sufficient facts to show "good cause", it also fails to provide adequate legal reasoning and facts to demonstrate a "meritorious defense."

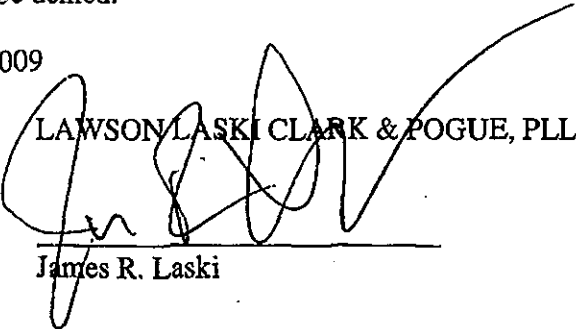
WRR claims that because SVR changed its POD without going through a transfer proceeding, WRR was not provided adequate notice of the Director's recommended POD. WRR then goes on to state that it does not really object to the actual POD, but the methodology of delivery. Therefore, WRR argues that it should be allowed to object to the Recommendations so that remarks on SVR's rights are included "... clarifying for the water master how the points of diversion for Sun Valley Ranch are to be administered in a fashion that does not cause harm to the Wood River Ranch water rights."

Once again, the administration and delivery of water is not part of this adjudication and should remain under the jurisdiction of the Water Master. *See* I.C. §42-607. In sum, WRR's allegations are unfounded, outside the adjudication process and fail to satisfy the requirement of a meritorious defense. Therefore, WRR's Motion to File Late Objection must be denied.

Based on the foregoing, the Motion must be denied.

DATED this 12 day of August, 2009

LAWSON LASKI CLARK & POGUE, PLLC


James R. Laski

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 6th 2009, I caused to be served a true copy of the foregoing document by the method indicated below, and addressed to each of the following:

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Copies faxed to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098
Fax: (208) 287-6701

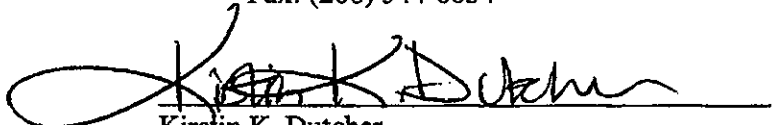
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