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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
SEP 18 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 DEADLINE

SUBCASE NOS.: 37-60, 37-61, 37-62,
37-63A, 37-64A, 37-66A, 37-67B, 37-68A,
37-230, 37-231B, 37-232 and 37-577AZ

I. PROCEDURAL BACKGROUND

A *Motion to File Late Objection and Request for Expedited Hearing* was filed by Lakeside Industries doing business as Wood River Ranch (hereinafter "Wood River Ranch"). The claimant, Sun Valley Ranch LLC (hereafter "Sun Valley Ranch" opposed the *Motion*. A hearing was held on August 7, 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 set aside a default and 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
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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).

III. DISCUSSION

Sun Valley Ranch, LLC filed claims in the SRBA for its water rights. The claims listed several points of diversion, but did not include a point of diversion (POD) at the Bypass Canal located at T01N R18E S12, NWSESW. The *Director's Report* for these water rights did include the POD at the Bypass Canal. Wood River Ranch did not file a timely *Objection* to the POD at the Bypass Canal, and did not file a timely *Objection* seeking a provision to clarify how the right was defined or administered. Wood River Ranch now seeks to file a late objection.

A. Good Cause

Wood River Ranch did not file a timely objection to the Bypass Canal POD. Wood River Ranch argues that it does not object to the Bypass POD. However, it does object to utilizing the Bypass POD as a conduit for changing the manner of filling water rights. Wood River Ranch asserts that beginning in 2009, the Bypass POD was used in a way that injured its rights. The Bypass Canal POD is north and upstream from the Wood River Ranch property. All other PODs claimed and recommended for Sun Valley Ranch are located downstream of Wood River Ranch. Wood River Ranch asserts that the Sun Valley Ranch rights were traditionally diverted into the Bypass Extension only when priority cuts to June 1883 rights were enforced.

During the 2009 irrigation year, Sun Valley Ranch requested that IDWR deliver its water entirely through the Bypass Extension which extends from the Bypass POD. Wood River Ranch contends that defining and delivering Sun Valley Ranch's water in this manner injures the Wood River Ranch water rights. Wood River Ranch contends that this traditional method of utilizing the Bypass POD is satisfactory. However, if Sun Valley Ranch's rights are delivered through the Bypass Canal and Bypass Extension at all times, Wood River Ranch will be injured. Wood River Ranch

says the lateness of its *Objection* was not willful because the Bypass POD was not used in this manner until the 2009 irrigation season. The Wood River Ranch *Objection* seeks a provision to define how the Bypass POD defines or is utilized to administer these water rights.

This Special Master concludes that the lateness of Wood River Ranch's *Objection* was not willful. Wood River Ranch objects to utilizing the Bypass POD to permanently divert the Sun Valley rights through the Extension Bypass. Since Sun Valley's water rights were not defined or administered this way until 2009, the lateness of the *Objection* was not willful.

B. Meritorious Position

Sun Valley Ranch argues that even if there was "good cause," the Wood River Ranch *Objection* can not go forward since it lacks a meritorious position. The dispute is whether a provision may be added to Sun Valley Ranch rights which describe how the Bypass POD is used. Sun Valley Ranch argues that this *Objection* seeks an SRBA decree which impermissibly orders the method of administration. Wood River Ranch argues that it does not seek to have the rights administered in a certain way, but seeks a provision which clarifies how the rights are defined or administered.

As a general proposition, the SRBA is not the correct forum for seeking purely administrative remedies. For example, in subcases 37-514 and 37-4403, this court declined to allow a late *Objection* where the movant sought to have a ditch rider as part of his water right. *See, Order Denying Motion to File Late Objection* (37-514 and 37-4403)(March 17, 2009) However, the court has allowed parties and IDWR to include conditions which are needed to define or properly administer the water right. *See, I.C. § 42-1411(2)(j)*. For example, the court approved a condition on municipal water rights for the City of Pocatello. The condition listed the date of appropriation for each well in Pocatello's municipal system. This condition was recommended by IDWR in order to prevent injury to existing wells. IDWR testified that the quantity and priority dates associated with each were needed to properly define the water right. *See, Master's Report and Recommendation and Order on Motion to Reconsider* (29-271 *et.al.*)(October 2, 2007) Amended MRR 10/30/07

It is difficult to distinguish between conditions which are purely administrative (thus inappropriate) and conditions which are needed to define and administer (thus appropriate) water rights. Consequently, where it is not obvious that the proposed condition is purely administrative, the court should allow the *Objection* to go forward. Here, Wood River Ranch has not proposed a specific condition. However, the *Objection* appears to seek language which would define the right in

a way that it could be administered without injury to Wood River Ranch.

IV. FINDINGS

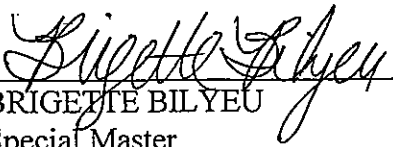
Therefore, the *Motion to File Late Objection* is **granted**. IT IS ORDERED that the following deadline shall govern further proceedings:

October 23, 2009

5:00 pm

Deadline to file Response to Objection

Dated: September 18, 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 DEADLINE was mailed on September 18, 2009, with sufficient first-class postage to the following:

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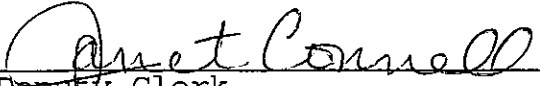
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