

**DEPARTMENT OF
WATER RESOURCES**

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

DEC 15 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.: 37-1201A

I. PROCEDURAL BACKGROUND

A *Motion to File Late Objection* was filed by Dean and Julie Beaudet on September 14, 2009. A hearing was held on the *Motion* on December 9, 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 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 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).

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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

Dean and Julie Beaudet explained that they were still investigating the reasons behind IDWR's recommendation and were working without an attorney at the time objections were due. They did not intentionally miss the deadline.

In addition, the Beaudets allege a meritorious position. They assert that shortages of water occurred during the time that forfeiture was presumed. IDWR supported the *Motion* and asked to be able to analyze information about water shortages. There was no opposition to the *Motion*.

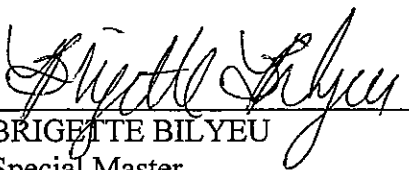
IV. FINDINGS

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

January 22, 2010	5:00 pm	Deadline to file Response to Objection
May 26, 2010	3:30 pm	Status Conference
		Location: Snake River Basin Adjudication 253 3 rd 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: December 15, 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 STATUS CONFERENCE was mailed on December 15, 2009, with sufficient first-class postage to the following:

DEAN AND JULIE BEAUDET
DEAN BEAUDET
JULIE BEAUDET

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