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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
JAN 12 2010
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	)	ORDER GRANTING MOTION TO
	)	FILE LATE OBJECTION, SETTING
Case No. 39576	)	DEADLINE AND STATUS
	)	CONFERENCE
_____	)	SUBCASE NO.: 22-13211

I. PROCEDURAL BACKGROUND

A Motion to Set Aside Partial Decree and Allow the Filing of a Late Objection was filed by Cedron Irrigation, LLC., Cedron Cemetery District, Teton Rainbow Ranches, Inc., Trees, Inc., and Wally Rothgeb, Jr. (hereafter "Movants") on October 26, 2009. A hearing was held on the *Motion* on December 23, 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).

III. FINDINGS

In support of the *Motion*, the Movants explained that the lateness of the *Objection* was not willful. The Movants argued that this right and others on the Paradise Springs source are difficult to follow and trace. There are possible errors in the old *Rexburg Decree* which make tracing the basis of these rights difficult. During the recent trial of some Paradise Springs rights, additional information was found.

A meritorious position was alleged because the Movants assert that part of this right may have a 1904 priority, but part of the right may have a later priority. No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection. In addition, this Special Master notes that the SRBA Court has a policy of considering all splits from a prior decree when possible. This right is derived from 22-405 from the *Rexburg Decree*.

IV. CONCLUSION

There was no opposition to the *Motion*. Therefore, the *Motion to File Late Objection* is **granted**. The *Objection* will be filed with the court dated December 23, 2009.

This Special Master notes that the Movants asked that the *Partial Decree* for this right be set aside. The Special Master is prepared to rule on that *Motion*. However, the SRBA District Court prefers to have one *Special Master's Report and Recommendation* at the conclusion of the proceedings that includes a recommendation of the elements. This Special Master presumes without deciding, that sufficient grounds exist to support setting aside this *Partial Decree* under I.R.C.P. 60(b)(5). A full decision on that question shall issue after the late objection has been considered.

Please be advised that Special Master Brigitte Bilyeu has set the following dates:

February 26, 2010 5:00 pm Deadline to File Response

July 28, 2010

10:00 am

Status Conference

Location: Snake River Basin Adjudication
253 3rd Ave. North
Twin Falls, Idaho 83301

Parties may participate by phone 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: January 12, 2010.


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 STATUS CONFERENCE was mailed on January 12, 2010, with sufficient first-class postage to the following:

CEDRON CEMETERY DISTRICT
CEDRON IRRIGATION LLC
TETON RAINBOW RANCHES INC
TREES INC

WALLY ROTHGEB JR
Represented by:

BUDGE, THOMAS J
201 E CENTER ST
PO BOX 1391
POCATELLO, ID 83204-1391
Phone: 208-232-6101

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

DON LE ROY MILLER
1835 TETON VIEW DR
REXBURG, ID 83440
Phone: 208-356-4299