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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
APR - 5 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 AND
Case No. 39576	)	SETTING DEADLINES
	)	
	)	SUBCASE NOS.: 37-22264 and 37-22398
	)	
_____	)	

I. PROCEDURAL BACKGROUND

A *Motion to File Late Objection* was filed for each water right by Rock Creek, LLC on October 13, 2009. A hearing was held on the *Motions* on March 31, 2010.

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 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 *Motions*, Rock Creek, LLC, explained that the objections were not filed by the deadline date because the *Director's Report for Late Claims* was inadvertently misfiled. A *Late Objection* was filed promptly once counsel was aware of the *Director's Report for Late Claims*. Thus, the lateness was not willful.

A meritorious position was alleged because the *Late Objection* is based on an Excess Flow Analysis prepared by Objector's expert. No parties to the SRBA opposed the *Motions*, and there is no showing prejudice would result from allowing the late objections.

III. FINDINGS

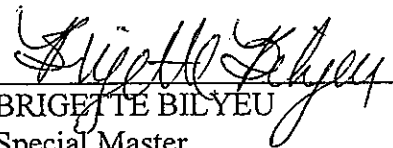
There was no opposition to the *Motions*. Therefore, the *Motions to File Late Objection* are **granted**. IT IS ORDERED that the following deadlines shall govern further proceedings:

April 30, 2010

5:00 pm

Deadline to file Response to Objection

Dated: April 5, 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 AND SETTING DEADLINES was mailed on April 05, 2010, with sufficient first-class postage to the following:

ROCK CREEK LLC

Represented by:
ROBERT E WILLIAMS
FREDERICKSEN WILLIAMS ET AL
PO BOX 168
JEROME, ID 83338
Phone: 208-324-2303

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