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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JUN - 9 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 NO.: 37-2553B
	)	
_____	)	

I. PROCEDURAL BACKGROUND

A *Motion to File Late Objection* was filed by Three Creeks Ranch LLC on February 5, 2010. A hearing was held on the *Motion* on June 9, 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 *Motion*, Three Creeks Ranch LLC explained that the failure to timely object was not willful. The claimants did not recognize that several of the elements for 37-2553B were apparently mixed up and swapped with the elements of 37-2553A.

A meritorious position was alleged because there were apparently errors in the *Director's Report* for 37-2553B, possibly as a result of a mix up with subcase 37-2553A. The Idaho Department of Water Resources confirmed that it wants to take another look at its recommendations. No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection.

III. FINDINGS

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

July 16, 2010	5:00 pm	Deadline to file Response to Objection
July 21, 2010	4:00 pm	<u>Status Conference</u>
		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 1-215-446-0193 and when prompted enter participant code 926509. Any questions regarding telephone participation, please contact the Clerk's office at (208)736-3011.

Dated: June 21, 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 June 21, 2010, with sufficient first-class postage to the following:

THREE CREEKS RANCH LLC

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