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DEPARTMENT OF  
WATER RESOURCES

|                                                                                         |                       |
|-----------------------------------------------------------------------------------------|-----------------------|
| DISTRICT COURT-SRBA<br>Fifth Judicial District<br>County of Twin Falls - State of Idaho |                       |
| JUL 20 2010                                                                             |                       |
| By _____                                                                                | Clerk<br>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 DEADLINE         |
|                | ) |                          |
| _____          | ) | SUBCASE NO.: 37-208F     |

I. PROCEDURAL BACKGROUND

A *Motion to File Late Objection* was filed by Greg and Lee Ann Ferris on November 16, 2007. A hearing was held on the *Motion* on July 14, 2010. Greg and Lee Ann Ferris failed to attend.

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*, IDWR explained that it had no problem with allowing the claimants to seek clarification of the *Director's Report* through the *Objection*. The *Motion* stated that the claimants want to discuss a reduction in acreage of about 7 acres.

Thus, this court finds good cause for the untimeliness of the *Objection* and also finds a meritorious position was alleged. No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection.

### III. FINDINGS

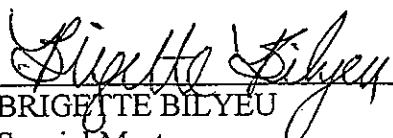
There was no opposition to the *Motion*. Therefore, the *Motion to File Late Objection* is **granted subject to Greg and Lee Ann Ferris contacting Kelly Christensen**, IDWR Water Agent at the Western Regional Office, (208) 334-2190 **prior to July 30, 2010**.

IT IS ORDERED that the following deadline shall govern further proceedings:

|                         |                |                                                                                                              |
|-------------------------|----------------|--------------------------------------------------------------------------------------------------------------|
| <b>August 20, 2010</b>  | <b>5:00 pm</b> | Deadline to file <i>Response to Objection</i>                                                                |
| <b>November 3, 2010</b> | <b>1:30 pm</b> | <u>Continued Initial Hearing</u>                                                                             |
|                         |                | <b>Location:</b> Snake River Basin Adjudication<br>253 3 <sup>rd</sup> Ave. North<br>Twin Falls, Idaho 83301 |

**Parties may participate by telephone for the Continued Initial Hearing 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: July 20, 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 DEADLINE was mailed on July 20, 2010, with sufficient first-class postage to the following:

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

GREG & LEE ANN FERRIS  
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LEE ANN FERRIS  
13 W CARBONATE  
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