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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG - 6 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
Case No. 39576	)	
	)	SUBCASE NO.: 22-13854
_____	)	

I. PROCEDURAL BACKGROUND

A *Motion to File Late Objection* was filed by LaRell A. Kunz on July 12, 2010. A hearing was held on the *Motion* on July 28, 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*, Mr. Kunz explained that the lateness of the *Objection* was not willful. He did not realize how a possible misallocation of quantity from a root right was related to his claim and other rights until after the objection deadline had passed.

A meritorious position was alleged by claimant based on Mr. Kunz' assertion that a root right may have been improperly allocated, which would have created inaccuracies in the quantity element. 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**. The *Objection* will be filed with the court dated July 28, 2010.

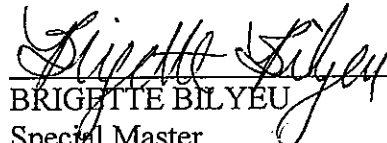
Please be advised that Special Master Brigitte Bilyeu has set the following date:

August 27, 2010

5:00 pm

Deadline to File Response

Dated: August 6, 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 was mailed on August 06, 2010, with sufficient first-class postage to the following:

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TREES INC
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