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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, SETTING
Case No. 39576	)	SETTLEMENT CONFERENCE AND
	)	STATUS CONFERENCE
	)	
	)	SUBCASE NOS.: 22-12714B and 22-
	)	13511

I. PROCEDURAL BACKGROUND

Motions to File Late Objections were filed by LaRell A. Kunz on July 12, 2010. A hearing was held on the *Motions* 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 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).

In support of the *Motions*, Mr. Kunz explained that the lateness of the *Objections* were 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 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 *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 Objections* are **granted**. The *Objections* will be filed with the court dated July 28, 2010.

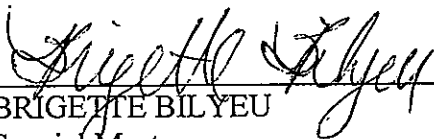
Please be advised that Special Master Brigitte Bilyeu has set the following dates:

August 27, 2010	5:00 pm	Deadline to File Response
November 18, 2010	1:30 pm	<u>Informal Settlement Conference</u> Location: IDWR Eastern Regional Office 900 N. Skyline Dr. Ste. A Idaho Falls, Idaho

December 15, 2010	11:00 am	<u>Status Conference</u> Location: Snake River Basin Adjudication 253 3 rd Ave. North Twin Falls, Idaho 83301
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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: 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, SETTING SETTLEMENT CONFERENCE AND STATUS CONFERENCE was mailed on August 06, 2010, with sufficient first-class postage to the following:

TETON RAINBOW RANCH
TETON RAINBOW RANCHES INC
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

LARELL A KUNZ
4346 W 5250 S
VICTOR, ID 83455
Phone: 208-354-2554

SUSAN C ALDEEN TRUST
495 S 450 W
VICTOR, ID 83455