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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
OCT 20 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.: 37-22464, 37-22465,
	)	37-22501, and 37-22502
_____	)	

I. PROCEDURAL BACKGROUND

A Status Conference was held on October 13, 2010. At the hearing, Harry & Diane Rinker Revocable Trust and Rock Creek LLC made an oral *Motion to File Late Objections*. There was no opposition to the *Motion*.

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*, the Harry & Diane Rinker Revocable Trust and Rock Creek LLC explained that there is good cause for the lateness of these *Objections*. The movants intended to file objections but inadvertently missed the deadline.

A meritorious position was alleged regarding the priority and how it relates to the *Frost Decree*, the place of use historically used, and the diversion rate based on a hydrologic analysis. No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection.

III. FINDINGS

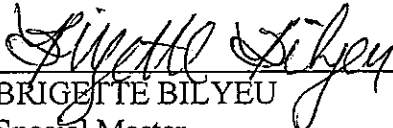
Therefore, the *Motion to File Late Objections* is **granted** subject to written *Objections* being filed by October 29, 2010. IT IS ORDERED that the following deadlines shall govern further proceedings:

November 15, 2010

5:00 pm

Deadline to file Response to Objection

Dated: October 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 DEADLINES was mailed on October 20, 2010, with sufficient first-class postage to the following:

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