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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
MAR 28 2011
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 OR
Case No. 39576	)	ALTERNATIVELY TO PARTICIPATE
	)	AND SETTING DEADLINE
	)	
	)	SUBCASE NOS.: 34-2459, 34-2460, 34-
	)	2461, 34-2462, and 34-10925

I. PROCEDURAL BACKGROUND

A *Motion to File Late Objection or Alternatively to Participate* was filed by Darrell E. McDonald and Norman K. Sowards on November 17, 2010. A hearing was held on the *Motion* on December 10, 2011.

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).

Motions to Participate are to be treated like motions to intervene under I.R.C.P. 24. AO1 § 6(g). I.R.C.P. 24(b) establishes the requirements for permissive intervention. The Rule states that anyone may be permitted to intervene in an action if a statute confers a conditional right to intervene or if the applicant’s claim or defense in the main action has a question of law or fact in common. The court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. I.R.C.P. Rule 24(b)

The Idaho Supreme Court has established the test for permissive intervention under Rule 24(b). In order to prevail on a motion for permissive intervention, the application must be timely, and the court must consider whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties. The applicant must show that its claim or defense and the main action have a question of law or fact in common. The determination to allow permissive intervention is discretionary with the court. *Rodriguez v. Oakley Valley Stone Inc.* 120 Idaho 370, 376 (1991)

III. DISCUSSION

A. Late Objection

In support of the *Motion*, McDonald and Sowards argued they have good cause for the lateness of their *Objection*. McDonald and Sowards did not know of the changes Isom sought for his water rights until September 2010. Within weeks of learning of the proposed change, they filed this *Motion*.

The movants alleged they have a meritorious position. Mr. McDonald owns property and water rights located between the Island Wells. Mr. Sowards owns property and water rights just north of the Island Wells. Both Mr. Sowards and Mr. McDonald alleged that injury to their water rights occur when other wells, including the Island Wells, come on line during the irrigation season. *Affidavit of Norman Sowards; Affidavit of Darrell E. McDonald.*

B. Intervention

Rule 24(b) requires that an application for intervention be timely, and directs the court to consider whether the intervention will unduly delay or prejudice the adjudication of the rights of original parties.

Idaho cases which analyzed timeliness of motions to intervene have given latitude to applicants. *Duff v. Draper*, 96 Idaho 299, (1974) In this case, McDonald and Sowards filed their *Motion to File Late Objections or Alternatively to Participate* after the time to file objections and responses. However, these subcases went through the standard SRBA notice during the time that Basin 34 was originally reported in the beginning years of the SRBA. These subcases were partially decreed in 1997. A *Motion to Set Aside Partial Decrees* brought these rights before the Court again, many years after the *Partial Decrees* were entered. McDonald and Sowards did not know of the changes Isom sought to make in these water rights until September 2010. Within weeks of learning of the proposed change, they filed their *Motion*. There has been no showing that the *Motion* would unduly delay or prejudice the ability of the original parties to make their case. McDonald and Sowards did not seek to intervene under I.R.C.P. 24(a) which would require a showing that a statute provided a basis for the *Motion*. Rather they sought intervention under IRCP 24(b). Under this portion of the rule, it is sufficient for an applicant to show he has a claim or defense which has a question of law or fact in common with the main case. Mr. McDonald owns property and water rights located between the two Island Wells. Mr. Sowards owns property and water rights just north of the Island Wells. Both Mr. Sowards and Mr. McDonald alleged injury to their water rights when other wells, including the Island Wells, come on line during the irrigation season. *Affidavit of Norman Sowards; Affidavit of Darrell E. McDonald*. The court finds these assertions allege common issues of law and fact sufficient to comply with the requirements of Rule 24(b).

Because Mr. McDonald and Mr. Sowards have met the requirements of I.R.C.P. 24(b), they are **granted** permissive intervention. Consequently, their late *Objections* identify the scope of their intervention.

The *Motion to Intervene* is timely, and McDonald and Sowards have made the proper showings of common issues of law or fact. Therefore, the *Motion to Intervene* is **granted**. The late *Objection* shall be filed and included in the record for these subcases.

IV. CONCLUSION

Therefore, the *Motion to Intervene* is **granted**. IT IS ORDERED that the following deadlines shall govern further proceedings:

April 21, 2011

5:00 pm

Deadline to file Response

Dated: March 28, 2011.



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 OR ALTERNATIVELY TO PARTICIPATE AND SETTING DEADLINE was mailed on March 28, 2011, with sufficient first-class postage to the following:

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