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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
APR - 8 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, SETTING
Case No. 39576	)	DEADLINE, INFORMAL
	)	SETTLEMENT CONFERENCE, AND
	)	STATUS CONFERENCE
_____	)	SUBCASE NO.: 29-4445

I. PROCEDURAL BACKGROUND

A *Motion to File Late Objection* was filed by Rowlands, Inc. on January 28, 2011. A hearing was held on the *Motion* on April 6, 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:

ORDER GRANTING MOTION TO FILE LATE OBJECTION,
SETTING DEADLINE, SETTLEMENT CONF, STATUS CONF
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- 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*, Rowlands Inc. explained that an objection was not filed prior to the deadline due to an oversight.

A meritorious position was alleged. The *Motion* recounted a site visit by IDWR to the Rowland's milk plant during the fall of 2010. The use of water at the plant was not in dispute, but additional information relating to priority is under investigation. Effluent records from the City of Pocatello and information from prior plant managers has been obtained. 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 April 6, 2011.

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

April 14, 2011

Informal Settlement Conference

May 27, 2011

5:00 pm

Deadline to File Response to Late Objection

July 6, 2011

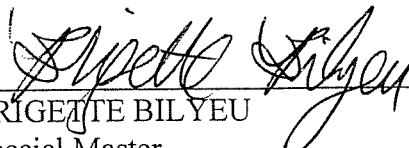
2:30 pm

Status Conference

Location: Snake River Basin Adjudication
253 3rd Ave. North
Twin Falls, Idaho 83301

Parties may participate by telephone for the Status Conference by dialing 1-215-446-0193 and when prompted enter participant code 926509. If you have any questions regarding telephone participation, please contact the Clerk's office at (208) 736-3011.

Dated: April 8, 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, SETTING DEADLINES, INFORMAL SETTLEMENT CONF AND STATUS CONFERENCE was mailed on April 08, 2011, with sufficient first-class postage to the following:

ROWLANDS INC

Represented by:

BUDGE, THOMAS J

201 E CENTER ST

PO BOX 1391

POCATELLO, ID 83204-1391

Phone: 208-232-6101

DIRECTOR OF IDWR

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