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DEPARTMENT OF  
WATER RESOURCES

DISTRICT COURT-SRBA  
Fifth Judicial District  
County of Twin Falls - State of Idaho

JUN - 3 2011

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

Case No. 39576

) ORDER GRANTING MOTION TO  
) FILE LATE OBJECTION, SETTING  
) DEADLINE, AND STATUS  
) CONFERENCE

) SUBCASE NOS.: 22-276A, 22-276B,  
) 22-609A and 22-13966

### I. PROCEDURAL BACKGROUND

A *Motion to File Late Objection* was filed for 22-276A, 22-276B and 22-609A on December 30, 2010 by Harold K. Dunn Trust and HD Dunn & Son Limited Partnership. A hearing was held on the *Motion* on May 25, 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 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 *Motion*, the parties explained that these three water rights are related to enlargement claim 22-13966. Because these three subcases need elements consistent with 22-13966, the late *Objections* need to be filed.

A meritorious position was alleged because the elements for all four (4) water rights should be consistent. 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 for 22-296A, 22-296B, and 22-609A. The *Objections* will be filed with the court dated May 25, 2011.

IT IS ORDERED that the following deadline shall govern further proceedings for 22-296A, 22-296B, and 22-609A:

**July 15, 2011**                      **5:00 pm**                      Deadline to file Response to Objection

IT IS FURTHER ORDERED that the following deadline shall govern further proceedings for all of the above listed water rights:

**July 20, 2011**                      **9:30 am**                      Status Conference  
**Location:** Snake River Basin Adjudication  
253 3<sup>rd</sup> 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. Any questions regarding telephone participation, please contact the Clerk's office at (208) 736-3011.

Dated: June 3, 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 DEADLINE AND STATUS CONFERENC was mailed on June 03, 2011, with sufficient first-class postage to the following:

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