

RECEIVED
JUL 06 2011
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JUL - 5 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 AND
Case No. 39576	)	SETTING DEADLINE
	)	
	)	SUBCASE NO.: 21-13112
	)	
_____	)	

I. PROCEDURAL BACKGROUND

A Status Conference was held on June 22, 2011. At the hearing, DGM Properties LLC made an oral *Motion to File Late Objection*. There was no opposition to the *Motion to File Late Objection*.

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*, DGM Properties LLC explained that the *Objection* was not timely filed due to confusion about where to claim these irrigation uses. Originally DGM filed a *Motion to Set Aside* a commercial right. Then the right was claimed as a late claim. IDWR recommended the right disallowed merely to allow time to obtain information. A meritorious position was alleged because DGM asserts there were valid irrigation uses. No parties to the SRBA opposed the *Motion*, and there is no showing prejudice would result from allowing the late objection.

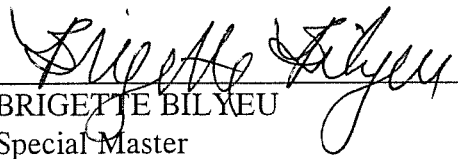
III. FINDINGS

There was no opposition to the *Motion*. Therefore, the *Motion to File Late Objection* is **granted** subject to a written *Objection* being filed by **July 8, 2011**.

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

August 19, 2011	5:00 pm	Deadline to file Response to Objection
August 24, 2011	11:00 am	<u>Status Conference</u>
		Location: Snake River Basin Adjudication 253 3rd Ave. North Twin Falls, Idaho 83301

Dated: July 5, 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 AND SETTING DEADLINE was mailed on July 05, 2011, with sufficient first-class postage to the following:

DGM PROPERTIES LLC
FUNK-DRUSSEL LLC
G&S DEVELOPMENT LLC
WENGREEN DEVELOPMENT LLC

Represented by:
ROBERT L HARRIS
1000 RIVERWALK DR, STE 200
PO BOX 50130
IDAHO FALLS, ID 83405
Phone: 208-523-0620

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098