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AUG 23 2011

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 22 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 CONTINUED MOTION TO
	)	SET ASIDE PARTIAL DECREE
	)	
	)	SUBCASE NO.: 22-163B
_____	)	

I. PROCEDURAL BACKGROUND

A *Motion to Set Aside Partial Decree* was filed by Siddoway Sheep Co. Inc. on July 11, 2011. A hearing was held on the *Motion* on August 17, 2011. At the hearing, the movant explained that Siddoway Sheep Co. inadvertently omitted filing an objection to this right. Siddoway Sheep Co. intended to object because elements of approved administrative transfers were not incorporated in the *Director's Report* or *Partial Decree*.

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 Objections 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*, Siddoway Sheep Co. Inc. explained that the movant did not catch the errors in the *Director’s Report* when it was filed. The errors primarily include aspects of approved administrative transfers which were not included in the *Director’s Report* and subsequent *Partial Decree*.

A meritorious position was alleged because IDWR explained that administrative transfers were inadvertently overlooked in the *Director’s Reports*. 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.

This Special Master notes that Siddoway Sheep Co. Inc. also asked that the *Partial Decree* be set aside for this right. The Special Master is prepared to rule on that *Motion*, however, the SRBA District Court prefers to have one *Special Master’s Report and Recommendation* at the conclusion of the proceedings that includes a recommendation for the elements of this water right. The Special Master presumes without deciding, that sufficient grounds exist to support setting aside this *Partial Decree* under I.R.C.P. 60(a), because the conditions from the prior transfer were inadvertently omitted. A full decision on that question shall issue after the late objection has been considered.

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

November 16, 2011

9:30 am

Continued Motion to Set Aside Partial Decree

Location: Snake River Basin Adjudication

253 3rd Ave. North

Twin Falls, Idaho 83301

Parties may participate by telephone for the hearing on the Motion 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: August 22, 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 CONTINUED MOTION TO SET ASIDE PARTIAL DECREE was mailed on August 22, 2011, with sufficient first-class postage to the following:

SIDDOWAY SHEEP CO INC

Represented by:

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