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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 29 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 DENYING MOTION TO
	)	ALTER OR AMEND THE SPECIAL
Case No. 39576	)	MASTER'S REPORT
	)	
	)	SUBCASE NOS.: 27-11269, 27-11271,
_____	)	and 27-11273

I. PROCEDURAL BACKGROUND

A *Motion to Alter or Amend the Special Master's Report* was filed by Bear Lake Grazing Co. on May 27, 2011. A hearing was held on the *Motion* on August 17, 2011.

The claimant, Bear Lake Grazing Co., filed claims to these water rights, and *Director's Reports* were filed by the Idaho Department of Water Resources on November 11, 2005. *Objections* were filed by the U.S. Bureau of Indian Affairs and the Shoshone-Bannock Tribes in March 2006. No objections were filed by Bear Lake Grazing Co. However, Bear Lake Grazing now asks to alter or amend the *Special Master's Report* because it now opposes the quantity and acreage element.

Bear Lake Grazing's *Motion to Alter or Amend* is essentially a *Motion for Late Objection* and should be considered under that legal standard. Consequently, Bear Lake Grazing must meet the criteria of I.R.C.P. 55(c) which is applied to late objections. Bear Lake Grazing must show both "good cause" for the untimeliness of the objections and the existence of a "meritorious position."

These subcases have been pending for more than five years while the court and parties have grappled with hundreds of volumetric Objections. The State of Idaho opposed the *Motion*

to *Alter or Amend* for that reason, particularly in light of attempts to quantify total acreage and total water volume utilized in Basin 27. The State of Idaho also cited Judge Wildman's recent decision in the related subcase. *Order Denying Motion to File Late Notice of Claim* (Subcase 27-12216)

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).

A. Meritorious Position

Bear Lake Grazing did state the basis of a "meritorious position" through the *Affidavit of Lynn Keetch in Support of Motion to Alter or Amend*. That *Affidavit* asserted that the *Director's Report* and the *Special Master's Report and Recommendation* described less

quantity and fewer acres than were historically irrigated by the claimant. However, the movant did not allege facts showing “good cause” for the untimeliness of the objections.

B. Good Cause for Untimeliness

Bear Lake Grazing did not allege facts showing “good cause” for the untimeliness of the objections. There was no showing that the failure to file an objection was not willful. In fact, Bear Lake Grazing stated that it did not have a reason for failing to timely object. Additionally, the State of Idaho argued that allowing the late objection now would prejudice other parties because of ongoing litigation on the acreage and volume issues in Basin 27.

Furthermore, the SRBA District Court recently denied Bear Lake Grazing’s request to file a late claim in a related case. The *Order Denying Motion to File Late Notice of Claim* (Subcase 27-12216, Mar. 29, 2011) denied Bear Lake Grazing’s late claim for 3.72 cfs on 185.8 acres. The *Order* recognized that Bear Lake Grazing asserted the late claim for 27-12216, but noted it was originally claimed under 27-11269. The SRBA Court denied the motion for 27-12216 stating:

[C]laim 27-11269 was recommended to Claimant for 10.55 cfs of water from Diamond Creek for the irrigation of 528.8 acres with a priority date of October 11, 1886. At that point Claimant was on notice that IDWR was recommending less than half the water and acreage claimed but took no further action. Of significance, Claimant did not file any Objection to the recommendation, and the time for filing such an Objection has long expired.

Because the SRBA District Court specifically made findings for 27-11269, the *Order Denying Motion to File Late Notice of Claim* is dispositive of the claim for 27-11269. Furthermore, that analysis is applicable to the other two claims.

The court must also consider prejudice to other parties as a factor under I.R.C.P. 55. The *Order Denying Motion to File Late Notice of Claim* noted that parties are trying to close Basin 27 in order to calculate the volumetric issues from the *Fort Hall Consent Decree*. Late claims present a prejudice to other parties in Basin 27, however *Motions for Late Objections* also have potential impact on negotiations. Thus, parties must show good cause for untimeliness before the court allows a late objection.

Parties in the SRBA have already litigated the issues pertaining to the *Fort Hall Consent Decree*. The Shoshone-Bannock Tribes filed a *Motion for Enforcement of Fort Hall Indian Water Rights Consent Decree*. The State of Idaho filed a *Motion for Accounting* to identify all

water rights which benefit from the subordination provision of the *Fort Hall Consent Decree*. The negotiating positions of the parties may be disturbed if the court allowed late objections without a showing that default was not willful. Here, there was no such showing.

In conclusion, the court declines to grant the motion to file a late objection under the facts presented here. Without a showing of “good cause”, allowing a late objection would improperly undermine ongoing negotiations regarding the *Fort Hall Consent Decree*.

III. FINDINGS

Bear Lake Grazing Co. did not make a showing of “good cause” for its untimely objection. Therefore, the *Motion to File Late Objection* is denied. The *Motion for Attorneys Fees* is denied. No amended Special Master’s Report and Recommendation will issue.

Dated: August 29, 2011.



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION TO ALTER OR AMEND SPECIAL MASTER'S REPORT was mailed on August 29, 2011, with sufficient first-class postage to the following:

BEAR LAKE GRAZING CO

Represented by:

ROBERT H WOOD

RIGBY ANDRUS RIGBY CHARTERED

25 NORTH 2ND EAST

PO BOX 250

REXBURG, ID 83340

Phone: 208-356-3633

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098