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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
APR 11 2012	
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 ON MOTION TO FILE
	)	AMENDED CLAIM; ORDER
Case No. 39576	)	DENYING MOTION TO FILE
	)	LATE OBJECTION
	)	
	)	SUBCASE NO.: 22-13853

I. PROCEDURAL BACKGROUND

This subcase involves a claim filed by Rex Miller and Chester Miller. A *Director's Report* was filed which recommended the root right for 22-13585 with .61 cfs on 55.6 acres. Root right 22-13585 was split into 22-13854, which was recommended to Richardson Properties and 22-13853 recommended to Rex and Chester Miller. A *Special Master's Report* was issued for 22-13854 based on an *Order on Show Cause Hearing*. (The *Special Master's Report* gave subcase 22-13854 .24 cfs on 31 acres.)

This subcase, 22-13853 is the other portion of root right 22-13585. Water claim 22-13853 was recommended in the *Amended Director's Report* (Feb. 28, 2011) for .29 cfs on 16.5 acres. A *Notice of Completed Administrative Proceeding* was issued on April 6, 2011. The *NCAP* changed only the address of the claimants. No *Objections* were timely filed to the *Amended Director's Report* or to the *NCAP*. After the deadlines for the *Objections* had passed, Michael Reid filed a *Motion to Amend Claim*, seeking to allow claimant Rex Miller an opportunity to amend the claim. A hearing was held on December 21, 2011. Both Michael Reid and the claimant Rex Miller appeared in person at the hearing. Mr. Miller indicated that he wanted to join in the *Motion to Amend Claim*. However, the *Motion* did not include an attached *Amended Notice of Claim* for the court to evaluate. Therefore, the court asked about which elements Mr. Miller wanted to amend. Mr. Miller said he should increase his acreage, but did not know how the

acreage or diversion rate should be changed. The court denied the motion **without prejudice** since the claimant did not know how he wished to amend his claim.

In order to assist the claimant, the court set a hearing for a renewed *Motion to Amend Claim* to elicit additional information about the claim. *See, Order Denying Motion to File Amended Claim and Setting Hearing* (Dec. 29, 2011). Mr. Miller did not attend the subsequent hearing on February 22, 2012. At the hearing, Michael Reid explained that Mr. Miller had suffered a stroke and was hospitalized. The court again set a deadline for a written amended claim to be filed, established a deadline for Mr. Miller to obtain counsel, and scheduled a third hearing on a *Motion to Amend Claim*. In the meantime, Mr. Reid filed a *Motion for Late Objection* on February 21, 2012. The Court **denied** the *Motion for Late Objection* and set additional deadlines and hearing dates. *See, Order Setting Deadline and Continued Motion to Amend Hearing* (Feb. 23, 2012).

After that *Order* was issued, Mr. Reid filed an *Objection to Amended Director's Report* for 22-13853. A hearing was held on April 4, 2012 for the *Continued Motion to Amend Claim* and for the second *Motion for Late Objection*. Rex Miller did not attend the hearing. The Court noted that Mr. Miller had not filed a *Motion to Amend Claim*. In addition, Mr. Miller did not obtain counsel prior to the hearing. Mr. Miller has not contacted the court nor has anyone from his family contacted the court or indicated whether he intends to pursue any motions related to this claim.

II. STANDARD OF REVIEW

The SRBA Court administrative rules establish that motions to amend claims “shall be freely given when justice so requires.” *SRBA Administrative Order 1 (AO1)* § 4d (2) (k)

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).

III. DISCUSSION

A. Motion to Amend Claim

After the first *Motion to Amend Claim* was denied, no second *Motion* was ever filed by Mr. Miller. In addition, no *Amended Claim* was ever provided to the court or to IDWR. It appears that Mr. Miller is ill, and the court accounted for his medical condition when setting additional deadlines and an additional hearing date. Neither Mr. Miller nor anyone from his family contacted the court, and no attorney appeared on his behalf. *SRBA Administrative Order 1 (AOI) Rule 4d (2) (k)* allows that amendments to claims shall be granted when justice so requires. Since no one provided any information about whether Mr. Miller wishes to pursue an amendment to his claim, the Court can only conclude that there was no showing that justice requires an amendment of the claim.

B. Motion for Late Objection

Mr. Reid’s *Motion to File Late Objection* appears to relate to a possible amended claim. The motion states that: “Rex Miller’s share of the Miller Right, prior to selling land that is now Paradise Springs subdivision owned by Richardson Family, was 1 cfs. The quantity in 22-13853 should reflect this, be 0.55 cfs, and not what he got from the settlement.”

Mr. Reid must show good cause for the untimeliness of the *Objection* and show a meritorious position. It is not clear what the reason was for the untimeliness of the *Objection*. Therefore, the court cannot make a finding of good cause.

Furthermore, even if good cause was shown for the lateness of the *Objection*, the movant must set forth a case for a meritorious position. It is uncertain what Mr. Reid is asserting as to the meritorious position because a proposed *Objection* was not attached to the *Motion*. Nevertheless, it is assumed that Mr. Reid was trying to object to allow Mr. Miller to amend his claim. Without an amended claim from Mr. Miller, Mr. Reid is not able to show a meritorious position on this particular request to file a late *Objection*.

III. FINDINGS

No *Motion to Amend Claim* was filed by Rex Miller. Additionally, no Notice of Appearance was filed by an attorney to act for Mr. Miller. No request was made by Mr. Miller or by his family members to extend the time for any court filings. Therefore, the court is unable to grant a *Motion to Amend Claim* since the court is without any information about what kind of changes Mr. Miller might possibly want to make to his claim. The *Motion* is **denied**.

Mr. Reid's *Motion to File Late Objection* lacked a showing of good cause for the untimeliness. Mr. Reid's *Motion to File Late Objection* was stated to be for the purpose of allowing Mr. Miller to amend his claim. Without an amended claim from Mr. Miller, Mr. Reid was not able to show a meritorious position on his *Motion to File Late Objection*. The *Motion* is **denied**.

DATED: April 11, 2012.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION TO FILE AMENDED CLAIM; ORDER DENYING MOTION TO FILE LATE OBJECTION was mailed on April 11, 2012, with sufficient first-class postage to the following:

CC: CEDRON IRRIGATION LLC
CC: MAHOGANY RANCH HOLDINGS
CC: SHIVER, AL
CC: TETON RAINBOW RANCHES INC
CC: TREES, INC

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