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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

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

) Subcase 34-10635

)
) ORDER DENYING CLAIMANTS'
) MOTION TO FILE LATE
) OBJECTION

Raymond E. and Marcell J. Bright filed a *Motion for Leave to File Late Objections (Motion)* to this water right through their attorneys Rigby, Thatcher, Andrus, Rigby, Kam & Moeller. In the same *Motion for Late Objection*, John P. Demorest sought leave to file a late objection to this water right. A hearing on the *Motion* was held March 14, 1995.

The movants, Raymond E. and Marcell J. Bright, and John Demorest argued that they should be allowed to file a late objection to this water right. In support of their *Motion for Late Objection*, the Brights and Mr. Demorest submitted the *Affidavit of Ray W. Rigby (Affidavit)*. The affidavit states that through inadvertence, the Objections of the Brights and Mr. Demorest were not filed previously. The *Affidavit* asserts the conclusion that the objections of the Brights and Demorest are meritorious.

The claimant to this water right, San Felipe Ranches, objected to the *Motion* at the hearing through its attorney Pat Brown. Mr. Brown argued that the Brights and Demorest should not be allowed to file a late objection on two grounds:

1. The movants failed to allege good cause for filing a late objection.
2. The relief the movants seek is merely to be treated consistently in another subcase, and thus their remedy is to seek relief in their own subcases, and not in this subcase.

I. STANDARD OF REVIEW

San Felipe Ranches urged the court to deny the *Motion* based on I.R.C.P. 15 and *Black Canyon Racquetball Club, Inc. v. Idaho First National Bank*, 119 Idaho 171, 804 P.2d 900 (1991). Rule 15 establishes the parameters of how a court may permit the amendment of pleadings after a responsive pleading has been served. The case of *Black Canyon* cited by San Felipe Ranches analyzes amendments of pleadings under Rule 15. Neither Rule 15 nor *Black Canyon* resolves this case, however. The movants here seek, not to amend a pleading which was timely filed, but rather seek leave to belatedly file a pleading. 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* (A.O.1), § 4A(c)(4)(b). All SRBA pleadings are generally required to conform to the I.R.C.P. A.O.1, § 3a.

According to case law and the Rules of Civil Procedure, a court must apply the criteria of I.R.C.P. 55(c) where it is determining whether to allow the filing of a late answer. Motions for Late Objections shall be reviewed under the same criteria of Rules 55(c) and 60(b). 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); *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981); *McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (App. 1993).

II. GOOD CAUSE EXISTS

Claimant, San Felipe Ranches asserts that movants failed to allege good cause for filing a late objection. The movants submitted the *Affidavit of Ray W. Rigby in Support of Motion for Leave to File Late Objections*. Movants assert that the *Affidavit* alleges good cause. The *Affidavit* states that movants employed attorney Ray W. Rigby shortly before January 7, 1993 to represent them on claims and objections in the SRBA. The movants instructed Mr. Rigby to file certain objections. Mr. Rigby was scheduled to be out of the area during the deadline for filing objections. Therefore, he instructed his colleague Gregory Moeller to file these

objections. The objection for this subcase was inadvertently not filed before the deadline had passed.

The SRBA is an enormous case with thousands of claims and objections. The litigation is in its beginning stages, with litigants and parties involved in the first three "test basins." Under the circumstances, good cause exists for filing this late objection.

III. MOVANTS FAILED TO ALLEGE A MERITORIOUS POSITION

The Objection which movants seek to file in this subcase indicates objection to one issue. Movants seek to object to this water right being recommended at all. Movants stated at oral argument that they object to this water right being recommended because the recommendation made by the Idaho Department of Water Resources (IDWR) in this subcase is inconsistent with recommendations made by IDWR on other rights. Movants claim they have the right to object to this subcase to assure consistent application of law. Although Movants asserted the conclusion that they have a meritorious objection, no facts or application of law to fact was asserted in support of that bare conclusion.

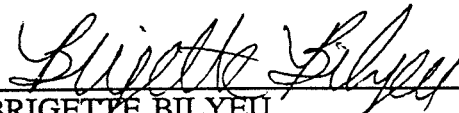
There is a strong preference for deciding cases on the merits, even when analyzed under I.R.C.P. 55(c) or 60(b). However, a meritorious position must be alleged. *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981). Movants failed to allege a meritorious position underlying the proposed Objection. The meritorious position must be beyond that which would be sufficient if pled in a timely manner. *Id.* Here, movants have failed to allege any facts which show claimant's water right should not have been recommended at all.

The SRBA has been conducted in a manner to promote accurate decrees for interconnected water rights. The rules of procedure adopted by this court and the I.R.C.P. allow maximum participation to assure accuracy and consistency, such as special procedures for considering basin-wide issues, motions to participate, and challenges to the Master's Reports and Recommendations. However, the administrative rules of this court and the Rules of Civil Procedure preclude the filing of late pleadings where there has been no showing that a meritorious position would support movants' pleading. Had movants alleged facts which showed, for example, that the claimant may have abandoned or forfeited its water right, it is possible that they could have made a sufficient showing of a meritorious position. No such

meritorious position was alleged. Although movants may be able to file a Motion to Participate or a Challenge to the Master's Report and Recommendation at a later time, under I.R.C.P. 55(c) and 60(b), movants are not entitled to file a late objection.

IT IS ORDERED that the *Motion to File Late Objection* for subcase 34-10635 is **DENIED**.

DATED June 26, 1995.


BRIGETTE BILYEU
Special Master, Reporting Area 1
Snake River Basin Adjudication

CERTIFICATE OF MAILING

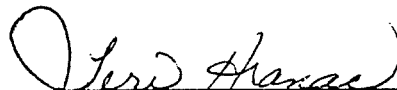
I certify that a true and correct copy of the **ORDER DENYING CLAIMANTS' MOTION TO FILE LATE OBJECTION** was mailed on June 26, 1995, with sufficient first-class postage to the following:

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