

RECEIVED

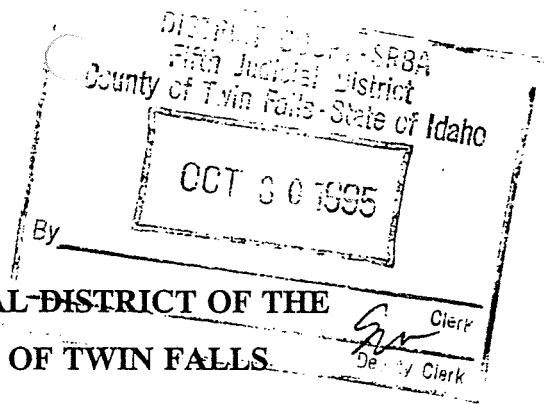
NOV 02 1995

Department of Water Resources
Adjudication Bureau

RECEIVED

NOV 01 1995

OFFICE OF THE
ATTORNEY GENERAL



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

) Subcase No: 34-02404

Case No. 39576

) ORDER GRANTING MOTION TO
) FILE LATE OBJECTION
)

95-10-0032

On July 6, 1995, a *Motion to File Late Objection (Motion)* was filed in the above subcase by Dale Smith. The *Motion* states "[t]his motion is made for the reason that a settlement has been reached in Subcase No. 34-12435 which necessitates altering the Director's Report for this Right, 34-02404."

The SRBA Administrative Orders do not provide a standard to be applied for filing late objections. However, the court's administrative rules establish 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 applies the criteria of I.R.C.P. 55(c) to determine 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).

A hearing on the *Motion* was held October 17, 1995. Dale Smith argued there was good cause for his untimeliness and asserted a meritorious position. No objections were made to the *Motion*.

Therefore, based on the hearing and the record for this subcase, the court finds good cause and a meritorious position exist. IT IS ORDERED that the *Motion to File Late Objection* is **GRANTED** and the Objection previously lodged with this court be deemed filed as of October 17, 1995. IT IS FURTHER ORDERED that:

1. Responses to the Objection shall be filed on or before November 17, 1995.
2. A *Standard Form 5 - Stipulated Elements of a Water Right* shall be filed with this court on or before November 20, 1995.
3. A hearing on the *Standard Form 5* is set for November 21, 1995 at 9:00 a.m. at the Snake River Basin Adjudication Courthouse, 253 Third Avenue North, Twin Falls.

DATED: October 30, 1995.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

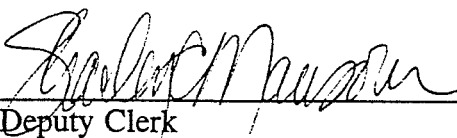
CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER GRANTING MOTION TO FILE LATE OBJECTION** was mailed on October ~~30~~³¹, 1995, with sufficient first-class postage to the following:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

William Hollifield
Peter Ampe
P.O. Box 66
Boise, ID 83303-0066

The United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, Box 33
Boise, ID 83724


Deputy Clerk