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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JUL - 1 2014	
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

) Subcase No. 74-15911

Case No. 39576

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I.

PROCEDURAL BACKGROUND

1. On January 31, 2012, this Court entered its *Order Establishing Deadline for Late Claim Filings* in basin 74 (“*Deadline Order*”).¹ It directed that except for *de minimis* domestic and stockwater uses and late claims required to resolve litigation pending in the Snake River Basin Adjudication (“SRBA”), the last date to file a *Motion to File Late Claim* in basin 74 “shall be March 30, 2012.”

2. The Court subsequently entered an *Order Closing Claims Taking* in basin 74, closing the basin to the filing of late claims in accordance with the *Deadline Order* (“*Closure Order*”).²

3. On July 25, 2013, Vincent and Malinda Tracy (collectively, “Movants”) filed a *Motion to File Late Notice of Claim* in the above-captioned matter. The claim asserts the right to

¹ *Order Establishing Deadline for Late Claim Filings in Basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79*, SRBA main case no. 39576, SRBA subcase no. 00-92099 (Jan. 31, 2012).

² *Order Closing Claims Taking Basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79, and Disallowal of Unclaimed Water Rights*, SRBA main case no. 39576, SRBA subcase no. 00-92099 (April 25, 2012).

divert .15 cfs from waste water tributary to the Lemhi River for the irrigation of 5.0 acres. The claim is based on beneficial use, and seeks a priority date of May 19, 1971.

4. On October 16, 2013, this Court entered an *Order* granting the Movants' *Motion to File Late Notice of Claim*. The basis for Court's decision to grant the *Motion* despite the *Deadline* and *Closure Orders* was that the late was being filed pursuant to, and as part of, a stipulated settlement in contested subcase nos. 74-179C, *et al.*³ Therefore, the limitations on filing late claims in basin 74 set forth in the *Deadline* and *Closure Orders* did not bar the late claim.

5. On December 31, 2013, the Director of the Idaho Department of Water Resources filed his *Director's Report For Late Claims in IDWR Basins 01, 21, 22, 25, 29, 31, 37, 45, 47, 61, 63, 65, 74, 75, 85 and 86* ("*Director's Report*"). The *Director's Report* included a recommendation that the Movants' late claim be decreed disallowed on the grounds that no lawful appropriation has been shown.

6. On January 10, 2014, the Idaho Department of Water Resources filed an *Affidavit of Service* establishing that a copy of the following documents were served on the Movants at their present address on December 31, 2014: (1) *Notice of Director's Report for Late and Miscellaneous Claims, Basins 01, 21, 22, 25, 29, 31, 37, 45, 47, 61, 63, 65, 74, 75, 85 and 86 for Irrigation and Other Water Rights* ("*Notice of Filing of Director's Report*"), and (2) the Department's recommendation for the above-captioned water right claim.⁴

7. Objections to the recommendation were due to be received by the Court on or before March 20, 2014. No objections were timely filed. However, on June 13, 2014, Malinda Tracy filed an *Objection* to the recommendation. Since the *Objection* was not timely filed, the Court has treated the *Objection* as a *Motion to File Late Objection*.

³ Specifically, the parties to contested subcase nos. 74-179C, *et al.*, entered into a memorandum agreement and stipulation in resolution of those contested subcases. The memorandum agreement and stipulation contemplated in part that the Movants would file the late claim at issue here, and that the others parties to the stipulation would not file objections to the late claim. The Idaho Department of Water Resources was not a signatory to the memorandum agreement and stipulation. Although, the memorandum agreement and stipulation was entered into on May 20, 2010, the Movants waited until October 16, 2013, to file their *Motion to File Late Notice of Claim* – a year and a half after the Court closed basin 74 to further late claim filings.

⁴ *Affidavit of Service: Notice of Filing Director's Report for Late Claims and Miscellaneous Claims, Basins 1, 21, 22, 25, 29, 31, 37, 45, 47, 61, 63, 65, 74, 75, 85 & 86 For Irrigation and Other Water Rights*, SRBA Main Case No. 39576 (Jan. 10, 2014).

8. A hearing on the *Motion to File Late Objection* was held on June 30, 2014. The parties did not request additional briefing, nor does the Court require any. The matter is therefore deemed fully submitted the following business day, or July 1, 2014.

II. ANALYSIS

The law of the case in the SRBA provides that *Motions to File Late Objections* are reviewed under the criteria set forth in Idaho Rule of Civil Procedure 55(c). *See e.g.*, SRBA Subcase Nos., 63-5181& 63-5182, *Order Granting Motion to File Late Objections*, p.1 (July 17, 2013) (providing “[i]n cases for which partial decrees have not been entered, late objections are viewed under Idaho Rule of Civil Procedure 55(c)”; *SRBA Subcase Nos. 65-7267, et al., Order on Motion to Set Aside Partial Decrees and File Late Objections*, p.6 (Jan. 31, 2001) (providing that late objections are reviewed under a Rule 55(c) standard). Rule 55(c) provides that the entry of a default can be set aside for good cause shown. The primary considerations in determining good cause are: (1) whether the default was willful; (2) whether a meritorious defense has been presented; and (3) whether setting aside the default would prejudice the opponent. *McFarland v. Curtis*, 123 Idaho 931, 936, 854 P.2d 274, 279 (Ct. App. 1993). The decision to grant or deny a *Motion to File Late Objection* rests with the sound discretion of the trial court. *Cf. Meyers v. Hansen*, 148 Idaho 283, 287, 221 P.3d 81, 85 (2009) (providing that the decision to grant or deny a motion for relief under Rule 55(c) is left to the sound discretion of the trial court). For the reasons set forth below, the Court in an exercise of its discretion finds that the Movants have not satisfied the criteria set forth in Rule 55(c).

The Movants in this case have failed to provide an adequate reason for the untimely objection filing. The record establishes that the Movants were duly served with process in this matter. The *Affidavit of Service* filed by the Department on January 10, 2014, provides that a copy of the *Notice of Filing of Director’s Report* as well as the Department’s recommendation disallowing the late claim were served on the Movants at their present address on December 31, 2013.⁵ The *Notice of Filing of Director’s Report* clearly delineated an objection deadline of

⁵ *Affidavit of Service: Notice of Filing Director’s Report for Late Claims and Miscellaneous Claims, Basins 1, 21, 22, 25, 29, 31, 37, 45, 47, 61, 63, 65, 74, 75, 85 & 86 For Irrigation and Other Water Rights*, SRBA Main Case No. 39576 (Jan. 10, 2014).

March 20, 2014. While the Movants allege that they did not receive notice of the *Director's Report*, their allegation is not supported by the record, and the Movants have not proffered any other reason for the untimely filing of the objection.

The March 20, 2014, objection deadline in this case is significant, and was utilized by the Court as one of several case management tools to facilitate the winding down of the SRBA. Recognizing that the SRBA must at some point come to an end, the Court closed basin 74 to late claims as of March 30, 2012, subject to certain limited exceptions. *See supra, Deadline and Closure Order*. In conjunction with the basin closure, the final regularly scheduled SRBA late claims director's report was scheduled to be filed on December 31, 2013. That director's report contained the recommendation for the claim at issue here. The scheduled filing date for the final late claims director's, and the corresponding objection deadline of March 20, 2014, were deliberately chosen to permit objections to the final late claims director's report to be filed and processed by this Court in advance of the entry of the *SRBA Final Unified Decree*, and to facilitate the winding down of the SRBA.

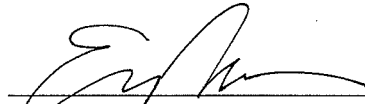
Like *Motions to File Late Objections*, *Motions to File Late Notice of Claim* are reviewed under the criteria set forth under Rule 55(c). *SRBA AOI, Rules of Procedure*, § 4.d.(2)(d). At this late stage of the SRBA, and given the plain language of the Court's *Deadline and Closure Orders*, this Court is no longer allowing *Motions to File Late Notice of Claim* in any of the SRBA basins unless they meet one of the stated exceptions to the *Closure Order*. The same is true for *Motions to File Late Objections*, which are also reviewed under the same Rule 55(c) criteria, and are therefore treated similarly to *Motions to File Late Notice of Claim*. While the Movants' *Motion to File Late Notice of Claim* was filed pursuant to one of the stated exceptions to the *Closure Order* (i.e., it was filed pursuant to, and as part of, a stipulated settlement in contested subcase nos. 74-179C, *et al.*), the same cannot be said of their *Motion to File Late Objection*. Therefore, the Court in an exercise of its discretion finds that the Movants have not established good cause sufficient to permit the filing of their late objection and have failed to satisfy the criteria set forth in Rule 55(c).

III.

ORDER

Therefore, based on the forgoing, IT IS ORDERED that the Movants' *Motion to File Late Objection* is **hereby denied**.

DATED: July 1, 2014.



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING
MOTION TO FILE LATE OBJECTION was mailed on July 01, 2014,
with sufficient first-class postage to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

MALINDA TRACY
VINCENT TRACY
3 PRAIRIE RD
SALMON, ID 83467
Phone: 208-756-8653

A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the "Deputy Clerk" text.