

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - CSRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

MAY 26 2016

By _____ Clerk

Deputy Clerk

II. STANDARD OF REVIEW

The Court here looked at the standards of review for both a *Motion for Late Objection* and a *Motion to Alter or Amend*. The CSRBA Administrative Orders establish a standard for Motions for Late Objections. *AOI* provides that *Motions to File Late Objections* shall be reviewed under the same criteria of I.R.C.P. 55(c). *CSRBA Administrative Order 1 (AOI)* § 4(d)(5)(a).

The CSRBA Administrative Orders provide time frames for *Motions to Alter or Amend* (*AOI*) § 18. However, *AOI* does not provide a standard for *Motions to Alter or Amend* which seek to set aside the *Special Master's Report and Recommendation*. Such motions are similar in nature to a motion to set aside a default judgment pursuant to I.R.C.P. 55(c). Accordingly, this Court applies the criteria of Rule 55(c) to the *Motion to Alter or Amend*. Therefore, the Court looks to I.R.C.P. 55(c) for both the *Motion to Alter or Amend* and the *Motion for Late Objection*.

Motions for Late Objections were reviewed in the SRBA under the 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 previously affirmed the legal standard of what must be shown to satisfy “good cause” and “meritorious position.” The legal standard for “good cause” 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. FINDINGS

Mr. McInturff argued in support of his *Motions* that his two claims, (claim 91-7094 and similar claim 92-10502) are so intertwined that the schedules were confusing. In addition, he argued that the two subcases are factually so interconnected that in the interest of justice, they should not be considered independently. Mr. McInturff argued that the schedules for settlement

with 92-10502 and the two trial schedules lead him to believe that both were still set for trial, even after the *Objection* deadline. Therefore, he mistakenly believed that he was not required to file an *Objection* after the *Amended Director's Report* was filed. The Court concludes that the failure to file a timely *Objection*, and allow the *Special Master's Report and Recommendation* to go forward was not willful. Accordingly, the "good cause" requirement has been met. (It should be noted that this finding was dependent on the specific facts of these two subcases.)

Mr. McInturff alleged a "meritorious position" regarding ownership of this claim. He explained that the predecessor owner of 91-7094 was St. Maries Wild Rice, Inc. A license was issued to St. Maries Wild Rice in about 1983. The license placed the point of diversion for 91-7094 on land owned by Aaron Robinson. The purpose of use was for crop irrigation. In 2001, Mr. McInturff apparently purchased the assets of the business, including the license for 91-7094. In 2005, Mr. McInturff filed a change in ownership form to officially place the license in his name. Subsequently, Mr. McInturff filed a claim for 91-7094 in the CSRBA. The Court concludes that Mr. McInturff alleged a "meritorious position."

No parties to the CSRBA opposed the *Motion*, and there was no showing that prejudice would result from setting aside the *Special Master's Report and Recommendation* and allowing the late objection.

IV. CONCLUSION

There was no opposition to the *Motions*. The Court finds that 91-7094 and 92-10502 were so intertwined, that the confusion regarding deadlines established "good cause." Mr. McInturff did not willfully ignore the Objection deadline. Mr. McInturff was not willful in allowing this subcase to go to a *Special Master's Report and Recommendation*. In addition, Mr. McInturff alleged a "meritorious position." (The Court notes that this is NOT A FINDING ON THE MERITS. That is a determination left for trial.) No party opposed the *Motions* or asserted that prejudice would result from setting aside the *Special Master's Report and Recommendation* or from allowing the Late Objection.

Therefore, the *Motion to Alter or Amend* is **granted**. The *Special Master's Report and Recommendation* is set aside. In addition, the *Motion to File Late Objection* is **granted**. The *Objection* will be file stamped May 25, 2016.

IT IS ORDERED that the following dates shall govern further proceedings:

June 10, 2016	5:00 pm	Deadline to file Response to Objection
June 15, 2016	10:00 am (PT)	<u>Status / Scheduling Conference</u>
	11:00 am (MT)	Location: Idaho Water Adjudication Court 253 3 rd Ave. North Twin Falls, Idaho 83301

(The parties should expect to discuss rescheduling the trial in this subcase.)

June 22, 2016 **5:00 pm (MT)** Deadline for IDWR's 706 Report

Parties may participate by telephone for the Status / Scheduling Conference by dialing 1-720-279-0026 and when prompted enter participant code 476045#. Any questions regarding telephone participation, please contact the Clerk's office at (208)736-3011.

Dated: May 26, 2016.



BRIGETTE BILYEU
Special Master
Coeur d'Alene-Spokane River Basin Adjudication

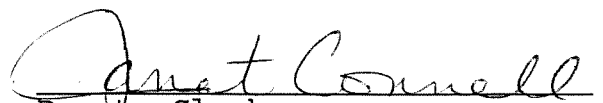
CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION TO ALTER OR AMEND AND MOTION TO FILE LATE OBJECTION AND ORDER SETTING DEADLINES was mailed on May 26, 2016, with sufficient first-class postage to the following:

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