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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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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 63-18957
)
Case No. 39576) ORDER GRANTING MOTION TO FILE
) LATE OBJECTION
)
_____)

On February 7, 2007, the claimant of the above-captioned water right, the Owyhee Motorcycle Club, Inc., by and through its attorney, Julie Klien Fischer, filed a *Motion to File Late Objection (Motion)*, together with the *Affidavit of Guy James*. Lodged therewith was a completed and signed *Standard Form 1 Objection*.

STANDARD APPLIED TO LATE OBJECTIONS

In the *Order on Motion to Set Aside Partial Decrees and File Late Objections, Subcase 65-07267 et al.* (January 31, 2001), then Presiding Judge Burdick explained the standard regarding motions to file late objections as follows:

In subcases for which partial decrees have not been entered, the legal standard for filing a late objection to a water right claim in the SRBA has been historically determined pursuant to the standard set forth in *AOI* for filing late claims since *AOI* does not expressly provides a standard for reviewing late objections. A motion to file a late claim is determined pursuant to I.R.C.P. 55(c), which provided the standard for setting aside the entry of a default. See *AOI* § 4d(2)(d) (late claims reviewed under I.R.C.P. 55(c) criteria) and (k) (leave to amend a notice of claim shall be freely given when justice so requires). In determining whether to set aside the entry of a default under I.R.C.P. 55(c), Idaho Courts apply a "good cause" for untimeliness standard. I.R.C.P. 55(c). The "good cause" standard is a more lenient threshold than the Rule 60(b) standard. *McFarland v. Curtis*, 123 Idaho 931, 935, 854 P.2d, 274 (1993). 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) as with a Rule 60(b) motion, whether a meritorious position has been presented

McFarland v. Curtis 123 Idaho at 936, 854 P.2d at 279.

Based on the file and record herein, and upon the *Affidavit* on file, this Special Master finds the following:

- 1) The claimant's failure to timely file an objection was not willful.
- 2) The granting of the *Motion* is not likely to prejudice the parties who have heretofore filed objections.
- 3) A meritorious position has been presented.

ORDER

In accordance with the foregoing, and good cause appearing, the *Motion to File Late Objection* is hereby **granted**. The clerk of the court is instructed to file the previously lodged objection.

Dated February 8, 2007



THEODORE R. BOOTH
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 February 08, 2007, with sufficient first-class postage to the following:

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