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NOV 29 2007
DEPARTMENT OF
WATER RESOURCES

His phone number is: (208) 356-3633

REASONS SUPPORTING MOTION

1. Objector's water rights are directly impacted by the claimed rights of the City of Salmon and if decreed in the manner as claimed and recommended will injure Objector's water rights.

2. Standard of Review: In the *Memorandum Decision and Order on Challenge* (Subcase Nos. 47-16433 *et al*), Presiding Judge Melanson described the standard of review for filing a late objection:

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 [citation omitted]. *AOI* does not expressly provide a standard for reviewing late objections. A motion to file a late claim is determined pursuant to I.R.C.P. 5(c), which provides the standard for setting aside the entry of a default. *Id.* 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 the *A.L. Cattle* subcase, this Court held that the I.R.C.P. 55(c) standard should be applied to late objections to which partial decrees have not been entered, rather than the I.R.C.P. 60(b) standard.

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 at 935, 854 P.2d at 279. The I.R.C.P. 55(c) good cause standard takes into account the following factors:

- 1) whether the default was wilful;
- 2) whether setting aside the judgment would prejudice the opponent;

3) as with a Rule 60(b) motion, whether a meritorious position has been presented.

Memorandum Decision and Order on Challenge at 5-6 (March 22, 2005) (“*Bedke 1*”).

In doubtful cases, relief should be granted to reach a judgment on the merits. *Bedke 1* at 10. This is because default judgments are disfavored. *See Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcase Nos. 65-07267 *et al.* (January 31, 2001) (“*A.L. Cattle*”).

3. Support of Motion: Affidavit of Bob Kramer, Chairman of Objector Arrowhead Water District verifying the “good cause” reason for failing to timely file its objection to claim 75-7.

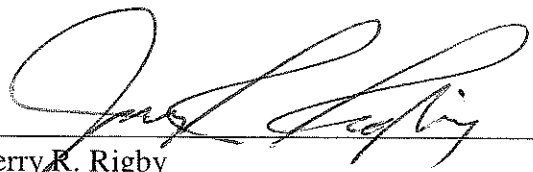
4. Affidavit of Bob Kramer also establishes a prima facie case of a meritorious position by Objector.

5. Arrowhead Water District submits with this motion its proposed objection to claim 75-7.

REQUEST FOR HEARING

Arrowhead Water District by and through their attorney Jerry R. Rigby, requests that this motion be set for hearing.

DATED this 26th day of November, 2007.



Jerry R. Rigby

VERIFICATION

STATE OF IDAHO,)
 ss
County of Madison.)

Jerry R. Rigby, being first duly sworn, upon oath, deposes and says:

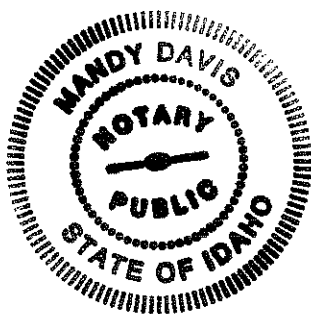
That I am the attorney of party/claimant filing this motion to file late objection (as listed on Page 2) as defined by I.C. §§ 4204101A(1) and (7) or that I am the attorney for the party/claimant filing this motion to file late objection and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

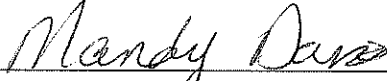
Signature of person filing motion



Attorney signing in representative capacity.

Subscribed and sworn to before me on this 26 day of November, 2007.





Notary Public for Idaho
Residing at St. Anthony
My Commission Expires: 06/24/2011

CERTIFICATE OF MAILING

I certify that on November ~~26~~²⁷, 2007, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

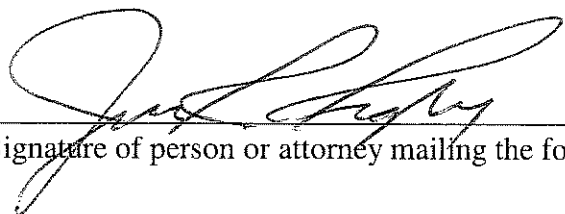
2. Copies to:

IDWR Document Depository
P. O. Box 83720
Boise, ID 83720-0098

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

United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

City of Salmon
200 Main St.
Salmon, ID 83467



Signature of person or attorney mailing the form

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: 75-17D; 75-7; 75-10076

Case 39576

AFFIDAVIT OF BOB KRAMER

STATE OF IDAHO)

ss.

County of Lemhi.)

Bob Kramer, being first duly sworn, deposes and states as follows:

1. That he resides at 54 Oliver Dr., Salmon, ID 83467 and is Chairman of Arrowhead Water District.
2. That Objector has water rights and claims for water rights which divert water from the same tributaries as those recommended in Claimant's above entitled water rights.
3. That Objector had previously filed other objections through its attorneys, Holden, Kidwell, Hahn & Crapo, PLLC. However, it has since been required to change law firms due to a conflict discovered by said firm.
4. During the time that Objector was changing law firms, through further investigation by Objector, it was discovered that the above entitled water rights should also be objected to and therefore, knowing that the deadline for objection was near, it was decided that Objector would file the objections on its own.
5. Because Objector had not filed the original objections itself, it was under the mistaken belief that it was to file the objections with IDWR with which it had previously filed correction responses of its own water rights, not knowing that the objections must be filed with the SRBA court.
6. Other than filing in the wrong location, the Objections to each of the above entitled water rights were timely prepared and mailed. In fact, the city of Salmon timely received notification of the objections in the same manner as it if the Objections had been filed with the SRBA court. Therefore, Salmon was not jeopardized in that it received copies in a timely

manner.

7. Objector believes that the objections are required based upon historical use and practices evidencing: That Claimant's right in Jesse and Pollard Creek were not diverted and should not be diverted from Chipps Creek which would expand Claimant's right and injure Objector's rights; That year round diversion rights are an illegal expansion of Claimant's rights and historically not diverted; and that these claims overlap with other claims of Claimant, including 17A, 17B & 19E;

8. Claimant has already objected to Claimant's water right 75-10076 but with further investigation believes that the right should not exist and is already covered by Claimant's other water right. To grant this right would be an illegal expansion of Claimant's rights and injure Objector directly.

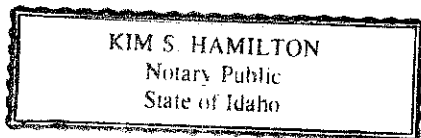
9. Finally, the above entitled water rights have been objected to by other objectors upon the identical or similar grounds made by this Objector and will therefore not unduly delay or hinder the final resolution of Claimant's claims.

DATED this 19 day of November, 2007.

Bob Kramer

Bob Kramer

SUBSCRIBED AND SWORN to before me this 19 day of November, 2007.



Kim S. Hamilton
Notary Public for Idaho
Residing at: *SALMON, IDAHO*
My Commission Expires: *03/09*

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)
_____)

A.

Subcase 75-7

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Arrowhead Water District

Address: c/o Bob Kramer, Chairman

54 Oliver Dr. Salmon, ID. 83467

Daytime Phone: 208-756-1012

Name & Address of Attorney, if any:

Jerry Rigby

Rigby, Andrews, & Moeller Chtd.

25 N. 2nd East P.O. Box 250

Rexburg, Idaho 83440

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: City of Salmon

Address: 200 Main St.

Salmon, ID. 83467

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
10. ☐ **I object because:**
 - ☐ This water right Should not exist.
 - ☐ This water right was not recommended, but Should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTIONS(S):** _____

Irregularities in how this right was acquired

F.

VERIFICATION (must be completed)

State of IDAHO)
)ss.
County of LEMHI)

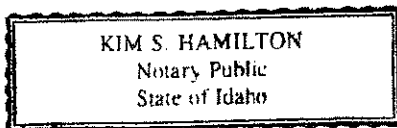
ROBERT KRAMER, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Robert Kramer
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: OCTOBER 15th 2007



Notary Public for IDAHO
Residing at: SALMON IDAHO
My Commission Expires: 03/09

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on 10-15, 2002, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

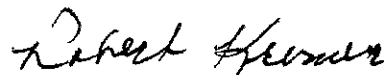
Name: CITY OF SALMON
Address: 200 MAIN STREET
SALMON, ID 83467

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449



Signature of objector or attorney
mailing on Objector's behalf