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DEPARTMENT OF
WATER RESOURCES

Attorneys for Clare Olson, Objector

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 Nos. 37-4323, 37-4325
	)	
	)	
Case No. 39576	)	MOTION TO FILE LATE
	)	OBJECTIONS OR IN THE
	)	ALTERNATIVE TO
	)	PARTICIPATE
_____	)	

COMES NOW, Clare Olson, by and through his attorneys of record, Barker Rosholt & Simpson, LLP, and moves this Court for an Order Granting Motion to File Late Objections, or alternatively, for an Order Granting Motion to Participate in the above-entitled sub cases. This motion is made pursuant to SRBA Administrative Order #1 ("AO1") and the Idaho Rules of Civil Procedure. The reasons for the motion are set forth below.

INTRODUCTION

The Movant seeks to file late objections to the recommended priority dates in the above-entitled sub cases. When the claimants in the above-entitled sub cases were requested to provide evidence of priority for the claims identified as number 37-4323 and 37-4325 claimants did not provide the Department with the complete record of the development of the water rights, but rather provided only their personal knowledge relating to the claims. There is additional evidence that demonstrates the claimed water rights were developed much earlier that should

have been provided to the Department. The movant was not made aware of this oversight until he began investigating the water rights as part of his research relating to a potential purchase of the property which is the place of use for these recommended water rights. If this Motion is granted, Movant will provide the necessary additional evidence to adjust the recommended priority dates.

STANDARD OF REVIEW

In the *Memorandum Decision and Order on Challenge* (Subcase Nos. 47-16433 *et al*) (March 22, 2005) (“*Bedke I*”), 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. 55(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 willful;
- 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.

Bedke I at 5-6.

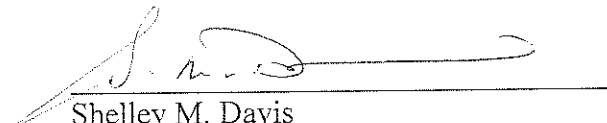
In doubtful cases, relief should be granted to reach a judgment on the merits. *Bedke I* at 10. This is because default judgments are disfavored. See *Order on Motion to Set Aside Partial*

ARGUMENT

The Movant's failure to appear earlier in this action was not willful. His investigation of the above listed water rights revealed the error in the priority date only after the time for filing timely objections had passed. At this relatively early stage of the adjudication for Basin 37, in that responses are not due until January 15, 2008, it would not prejudice other claimants or the Department of Water Resources to make the adjustment prior to the water right going to partial decree. Furthermore, as it is the goal of the Snake River Basin Adjudication to accurately describe the water rights in the Snake River Basin, allowing the claims to go to partial decree without the correct priority date would undermine this purpose. The Motion should be granted so that the rights can be accurately described and decreed. Movant requests a hearing on these matters.

Dated this 31 day of December 2007.

BARKER ROSHOLT & SIMPSON LLP


Shelley M. Davis
Counsel for Clare Olson

CERTIFICATE OF MAILING

I certify that on December 31st, 2007, the foregoing Motion to File Late Objection or Alternatively to Participate, including all attachments was served upon the following by Facsimile or U.S. Mail:

1. Original via Facsimile to:

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

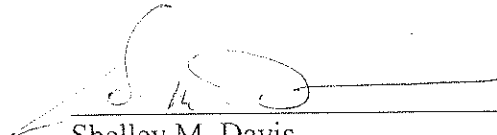
2. Copies via U.S. Mail to:

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United States Department of Justice
Environment & Nat'l Resources Div
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