

RECEIVED

APR 22 2008

DEPARTMENT OF
WATER RESOURCES

Basin and Range Resource Company, LLC

Dana L. Hofstetter, ISB #3867
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, Idaho 83702
(208) 424-7800
(208) 424-8774 (Facsimile)

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

In Re SRBA

Case No. 39576

)
)
)
)
)

Subcase No. 63-31418

**MOTION TO FILE LATE
OBJECTION**

MOTION

Basin and Range Resource Company, LLC ("Basin and Range"), by and through its counsel of record, Hofstetter Law Office, LLC, hereby moves for leave to file a late objection to Water Right No. 63-31418. This Motion is supported by the memorandum below, the proposed Objection attached hereto as Exhibit A, the Affidavit of Steve Hannula, the Affidavit of Dana L. Hofstetter and the record.

MEMORANDUM

Water Right Nos. 63-31417 and 63-31418 were both split from licensed Water Right No. 63-7354. SRBA Claim No. 63-7354 was submitted to the Idaho Department of Water Resources ("IDWR") on February 7, 1990 before IDWR conducted beneficial use examination on July 26, 1990 and before IDWR issued the License for the water right on November 27, 1991. *Affidavit of Dana L. Hofstetter.*

The field examiner identified 113 irrigated acres under the water right, although the permit had been issued for 240 acres and the permitholder claimed 151 acres under the water right in the SRBA. *Id.* Based on aerial photography from 1987, it actually appears that about 124 acres were irrigated under the water right at the time of the beneficial use examination. *Affidavit of Steve Hannula.*

On about December 17, 2007, after the applicable SRBA Objection deadline, Basin and Range Resource Company succeeded to ownership of the subject place of use and associated water rights. SRBA Court records now reflect the changed ownership of Water Right No. 63-31418 to Basin and Range. Steve Hannula, Basin and Range's technical consultant, discovered the discrepancy between the aerial photographs of irrigated acreage and the licensed acreage reflected on the SRBA Director's Report Recommendation. Accordingly, Basin and Range is filing this Motion to File Late Objection to preserve Water Right No. 63-31418 to the full extent documented in aerial photographs as of the date of licensing field examination and commencement of the SRBA.

**GOOD CAUSE EXISTS TO GRANT
LEAVE TO FILE A LATE OBJECTION**

The decision to allow a late objection to be filed in the SRBA, is based on the good cause standard of I.R.C.P. 55(c). The Rule 55(c) standard requires good cause and a meritorious defense. *McFarland v. Curtis*, 123 Idaho 931, 935, 854 P.2d 274, 278 (Ct. App. 1993). The Rule 55(c) standard for setting aside entry of default is less stringent than the Rule 60(b) standard for setting aside default judgment. *Id.* at 935-36, 854 P.2d at 278-79. This approach is consistent with the policy that cases generally should be decided on their merits and that in an earlier stage of where there has been no judgment, a liberal approach is appropriate. *Id.* at 936, 854 P.2d at 279. The Rule 55(c) standard has been described as requiring the movant to show “some excuse for failure to answer, that a meritorious defense exists, and the policy of deciding cases on the merits should be recognized.” *Id.*

Basin and Range just recently acquired ownership of the subject property and water rights. Thus, Basin and Range has only recently, through the efforts of its technical consultant, Steve Hannula, discovered the apparent error in the place of use and related quantification of this water right.

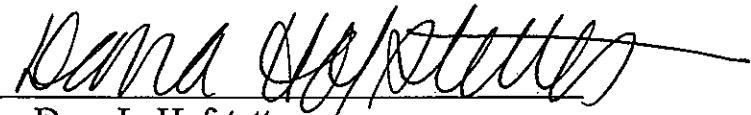
Consistent with Rule 55(c), the policy in favor of deciding cases on the merits and the purpose of the SRBA to establish the nature and extent of water rights, this Motion to File Late Objection should be granted.

CONCLUSION

For the reasons stated above, this Motion to File Late Objection should be granted.

RESPECTFULLY SUBMITTED this 21st day of April, 2008.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter

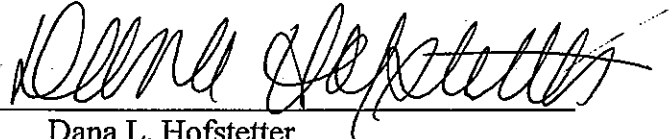
CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of April, 2008, I caused to be served copies of the foregoing **Motion to File Late Objection** by the methods indicated below:

Idaho Department of Water Resources
Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
✱ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449
✱ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724
✱ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


Dana L. Hofstetter

4072.3/7971

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 39576

A. Subcase 63-31418

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Basin and Range Resource Company, LLC

Address: 3480 GS Richards Boulevard, Suite 101

Carson City, NV 89703

Daytime Phone: (775) 885-5000

Name & Address of Attorney, if any:

Dana L. Hofstetter

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

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

Name: Basin and Range Resource Company, LLC

Address: 3480 GS Richards Boulevard, Suite 101

Carson City, NV 89703



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: 2.41 cfs and 542.7 AFA
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: 120.6 acres

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 OBJECTION(S): See Affidavit of Steve Hannula.

F.

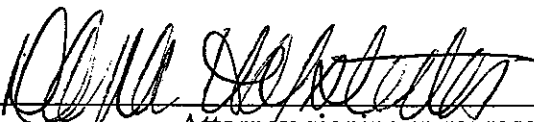
VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

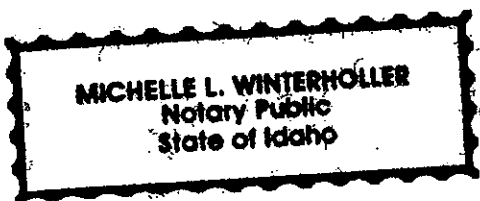
Dana L. Hofstetter, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

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.

Signature of person filing objection


Attorney signing in representative capacity

Subscribed and sworn to before me on: April 21, 2008



Notary Public for the State of Idaho
Residing at: Luna, ID
My Commission expires: 3-5-13

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 April 21, 2008, I filed the original with the SRBA Court and mailed copies of this Objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court (*via Hand Delivery*)
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: N/A

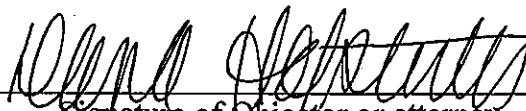
Address: _____

3. Copies to:

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

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

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



Signature of Objector or attorney
mailing on Objector's behalf