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DEPARTMENT OF
WATER RESOURCES

Terry Tidwell and Debbie Delaney

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

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)
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Subcase No. 63-4594

**MOTION TO FILE LATE
OBJECTION**

MOTION

Terry Tidwell and Debbie Delaney, by and through their counsel of record, Dana Hofstetter of Hofstetter Law Office, LLC, hereby move, pursuant to I.R.C.P. Rule 55(c) and SRBA Administrative Order 1, for leave to file a late Objection to Water Right No. 63-4594. This Motion is supported by the Memorandum below, the proposed Objection attached hereto as Exhibit A and the record.

MEMORANDUM

Water Right No. 63-4594 was recommended in the SRBA to the Movants with the following “Other Provision” language:

This right remains subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place or manner of wasting it, or to recapture it.

The Riverside Irrigation District filed an Objection in this subcase asserting *inter alia* “The source should be described as waste waters, and waste waters belong to the Riverside Irrigation District.” Riverside also stated that, “Proposed waste water remark does not sufficiently protect original appropriator.”

As a result of Riverside’s Objection, the Movants became aware of the potentially dire consequences if the “Other Provision” language is interpreted to mean that the source of Water Right No. 63-4594 is wholly waste water. Accordingly, the Movants are respectfully filing this Motion to ensure that this matter is appropriately addressed.

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.*

This Motion is consistent with these authorities. This subcase is at a relatively early stage where other than an Initial Hearing no other judicial proceedings have yet occurred. Movants did not realize the full potential impact on their water right of the "Other Provision" language until after Riverside filed its Objection. The Director's Report Recommendation for their water right listed "Dixie Slough" as the source and the Riverside Objection made it apparent that the "Other Provision" language could be

interpreted and applied to deem the source of their water right wholly Riverside waste water and subject to Riverside's exclusive control. This Court recently has addressed similar "Other Provision" language and a similar Objection in another subcase. *See Memorandum Decision and Order on Motion for Summary Judgment*, SRBA Subcase No. 63-27475 (May 2, 2008).

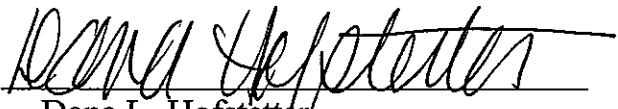
Consistent with Rule 55(c), the policy in favor of deciding cases on the merits and the purpose of the SRBA to establish the nature and extent of water rights, this Motion to File Late Objection should be granted.

CONCLUSION

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

RESPECTFULLY SUBMITTED this 29th day of August, 2008.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter

CERTIFICATE OF SERVICE

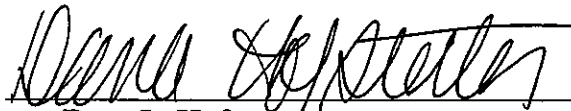
I hereby certify that on the 29th day of August, 2008, I caused to be served copies of the foregoing **Motion to File Late Objection** by the methods indicated below:

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

Albert P. Barker
Barker, Rosholt and Simpson
P. O. Box 2139
Boise, Idaho 83701-2139
✕ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


Dana L. Hofstetter

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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

Case 39576

A. Subcase 63-4594

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Terry Tidwell and Debbie Delaney

Address: 24860 Boise River Road
Parma, Idaho 83660

Daytime Phone: (208) 722-7132

Name & Address of Attorney, if any:

Dana L. Hofstetter

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

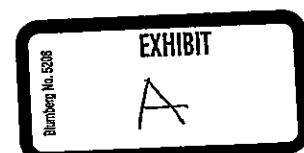
C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Terry Tidwell

Debbie Delaney

Address: 24680 Boise River Road
Parma, Idaho 83660

24860 Boise River Road
Parma, Idaho 83660



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: Waste water remark should be deleted.
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. ☒ **Other Provision**
Should be: Waste water remark should be deleted.
11. **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): Source is not wholly waste water.

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

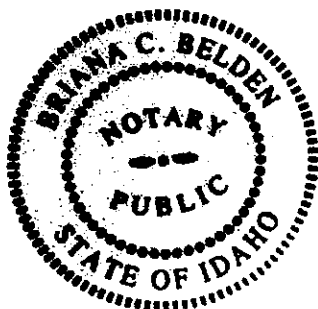
Dana L. Hofstetter, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

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

Dana L. Hofstetter
Attorney signing in representative capacity

Subscribed and sworn to before me on: August 29, 2008



Briana C. Belden
Notary Public for the State of Idaho
Residing at: Meridian
My Commission expires: 01-16-2013

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 August 29, 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: Terry Tidwell and Debbie Delaney

Address: 24860 Boise River Road

Parma, Idaho 83660

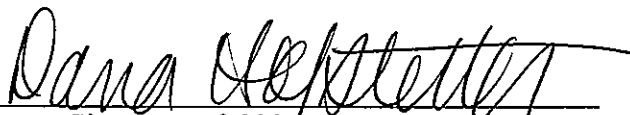
3. Copies to:

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

Albert P. Barker
P.O. Box 2139
Boise, Idaho 8370-2139

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