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DEPARTMENT OF
WATER RESOURCES

L. Dean Goodner

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. 63-21611

**MOTION TO FILE LATE
OBJECTION**

MOTION

L. Dean Goodner, by and through his counsel of record, Dana Hofstetter of Hofstetter Law Office, LLC, hereby moves, 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. 63-21611. This Motion is supported by the Memorandum below, the proposed Objection attached hereto as Exhibit A, the contemporaneously filed Affidavit of Dana L. Hofstetter and the record.

MEMORANDUM

Water Right Nos. 63-10217 and 63-21611 were claimed in the SRBA by Merle Culp for irrigation of the SE1/4NW1/4 of Section 36, Township 5 North, Range 5 West, Boise Meridian in Canyon County, Idaho (the "Parcel") with water from the Dixie Slough. *Affidavit of Dana L. Hofstetter*. L. Dean Goodner and Rebecca Lynn Goodner succeeded to the interest of Mr. Culp in these two water rights as a result of their purchase of the approximately 40 acre Parcel. *Id.* The Director's Report Recommendation for Water Right No. 63-10217, based on an IDWR license, provided for irrigation of 28.1 acres on the Parcel from the Dixie Slough. However, beneficial use Claim No. 63-21611 for irrigation of a different 5 acres on the Parcel was recommended disallowed. The Director's Report states "No beneficial use found" as the basis for denial.

In the course of assisting Mr. Goodner with addressing an Objection filed by the Riverside Irrigation District in related Subcase No. 63-10217, the disallowal of 63-21611 was brought to legal counsel's attention. *Affidavit of Dana L. Hofstetter*. It appeared from legal counsel's review of the IDWR files for Water Right No. 63-10217 that IDWR likely overlooked the approximately 5 acres of irrigation on the Parcel that were not covered by the licensed right and should have been recommended under 63-21611. *Id.*

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 and no Partial Decree has yet been issued. Movant's legal counsel recently found information apparently confirming the apparent oversight of the subject 5 acres. 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 so that this recently identified information may be

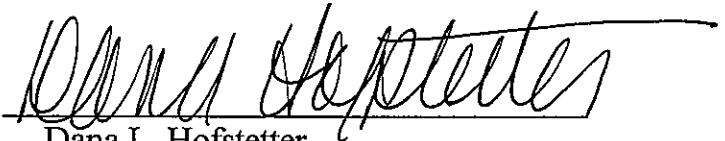
reviewed and considered along with other information Claimant has confirming irrigation of the subject 5 acres.

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

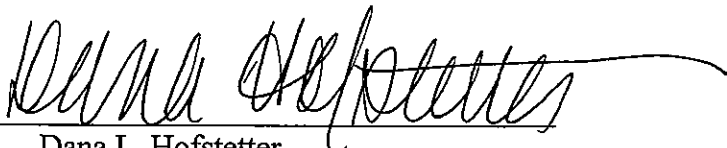
CERTIFICATE OF SERVICE

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


Dana L. Hofstetter

4086.1/8143

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 63-21611
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: L. Dean Goodner

Address: 12555 S. Cloverdale Road
Kuna, Idaho 83634

Daytime Phone: (208) 362-4247

Name & Address of Attorney, if any:

Dana L. Hofstetter

Hofstetter Law Office, LLC

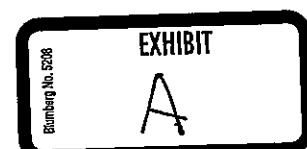
608 West Franklin Street

Boise, Idaho 83702

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

Name: L. Dean and Rebecca Lynn Goodner

Address: 12555 S. Cloverdale Road
Kuna, Idaho 83634



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: as claimed.
2. ☒ **Source**
Should be: as claimed.
3. ☒ **Quantity**
Should be: as claimed.
4. ☒ **Priority Date**
Should be: as claimed.
5. ☒ **Point of Diversion**
Should be: as claimed.
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☒ **Purpose(s) of Use** *any*
Should be: as claimed.
8. ☒ **Period of Year**
Should be: as claimed.
9. ☒ **Place of Use**
Should be: as claimed.
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): Actual historic beneficial use as reflected in aerial photographs and other historic information.

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

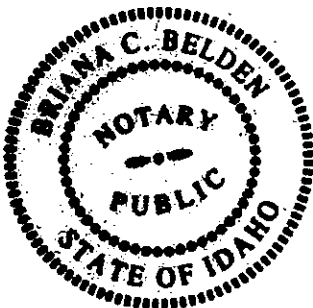
Dana L. Hofstetter, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

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:

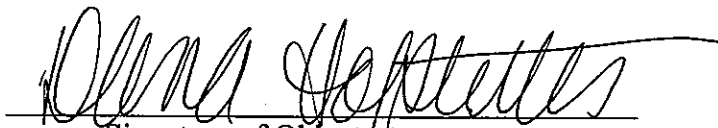
Name: L. Dean and Rebecca Lynn Goodner
Address: 12555 S. Cloverdale Road
Kuna, Idaho 83634

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