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DEPARTMENT OF
WATER RESOURCES

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Attorney for 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: 22-2287

Case 39576

MOTION TO FILE LATE OBJECTION

X I have read *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996).

My name is W. Jeffrey Walters, Patrice Walters, Shawn J. Walters & Mona Walters

My address is: P.O. Box 156, Newdale, Idaho 83436

My phone number is: (208) 458-4656

My attorneys name is Jerry R. Rigby of Rigby, Andrus & Moeller, Chtd.

His address is: 25 North 2nd East, P.O. Box 250, Rexburg, Idaho 83440

His phone number is: (208) 356-3633

REASONS SUPPORTING MOTION

1. Objector's water rights are currently involved with over a hundred other water rights in what has been termed "recovered water claims" in basin 21 & 22. Therefore, the interested parties to these rights are already participating in the negotiations and litigation of these rights. In working with Rocky Mountain Environmental, a hired hydrologist, it was only recently discovered by Objector that the original claim is provable by IDWR's own records evidences that a licensing exam done by IDWR actually supports 70.3 acres were being watered and not the 24 acres as recommended.

The reduced acres recommended by the Director are in fact less than supported and are in error. Therefore, it is necessary to amend Objector's water rights in order to reflect the accurate use of said rights.

Because no partial decree has yet been entered and Objector is already objecting to the Director's Report as to these rights and because no trial or discovery dates have been set yet, no other parties would be prejudiced by granting Objector's late objection.

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*”).

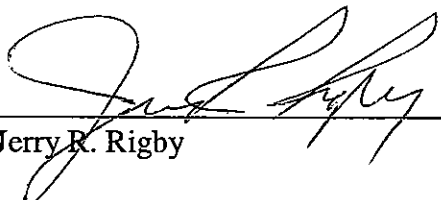
In doubtful cases, relief should be granted to reach a judgment on the merits. *Bedke 1* at 10. This is because default judgments are disfavored. *See Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcase Nos. 65-07267 *et al.* (January 31, 2001) (“*A.L. Cattle*”).

3. Objector submits with this motion its proposed amended objection to claim 22-2287.

REQUEST FOR HEARING

W. Jeffrey Walters, Patrice Walters, Shawn J. Walters & Mona Walters by and through their attorney Jerry R. Rigby, requests that this motion be set for hearing.

DATED this 9th day of February, 2009.


Jerry R. Rigby

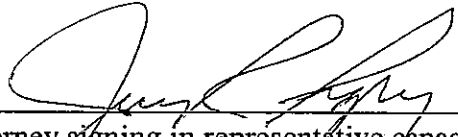
VERIFICATION

STATE OF IDAHO,)
 ss
County of Madison.)

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

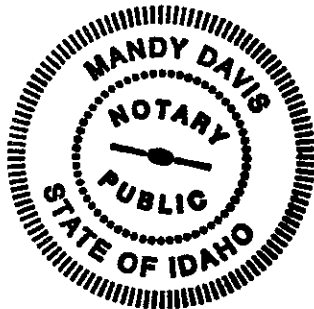
That I am the attorney of party/claimant filing this motion to file late objection (as listed on Page 2) as defined by I.C. §§ 4204101A(1) and (7) or that I am the attorney for the party/claimant filing this motion to file late objection and that I have read this motion, know its contents, and believe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

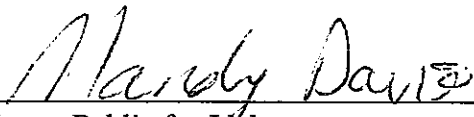
Signature of person filing motion



Attorney signing in representative capacity.

Subscribed and sworn to before me on this 9th day of February, 2009.





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

CERTIFICATE OF MAILING

I certify that on February 9, 2009, 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

Shawn J. Walters
P.O. Box 156
Newdale, ID 83436

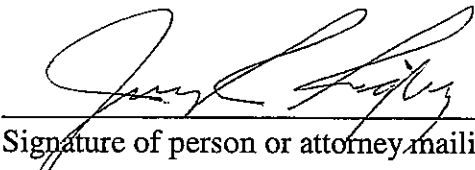
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

Canyon Creek Canal Co.
C/O Con Crapo
1509 North Canyon Creek Rd
Newdale, ID 83436

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

Fremont Madison Irrigation District
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St. Anthony, Idaho 83445

IGWA
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Signature of person or attorney mailing the form