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MAR 27 2009

DEPARTMENT OF
WATER RESOURCES

L. W. and Barbara J. Ragains

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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)
)

Subcase No. 63-33146

**MOTION TO FILE LATE
OBJECTION**

MOTION

L. W. and Barbara J. Ragains, 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 Section 17(c), for leave to file a late Objection to Water Right No. 63-33146. 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

The SRBA record reflects that Water Right No. 63-33146 derives from licensed Water Right No. 63-8700. L. W. and Barbara J. Ragains were the original licensees for Water Right No. 63-8700 and originally claimed Water Right No. 63-8700 in the SRBA. *Affidavit of Dana L. Hofstetter*. The SRBA record also reflects that John R. Lindley filed a late Objection challenging the Ragains' ownership of a portion of the water right originally included in License No. 63-8700. This late Objection resulted in IDWR's split of the successor water right remaining in the Ragains' ownership, into Water Right Nos. 63-33145 and 63-33146. This recent split, as evidenced in the Notice of Completed Administrative Proceeding ("NCAP") filed in the subject subcase on February 5, 2009, necessitates this Motion to File Late Objection as the Ragains continue to contest Mr. Lindley's claim to a portion of the former Water Right No. 63-8700.

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 a failure to answer and that a meritorious defense exists, as the policy of deciding cases on the merits should be recognized. *Id.* Further SRBA Administrative Order 1, Section 17(c) provides for the filing of Motions to File Late Objections in instances such as these where an NCAP has been issued: "Any party wishing to file an objection to an Amended Director's Report [NCAP] may do so by filing a *Motion to File a Late Objection* within 21 days following the notice of filing the Amended Director's Report [NCAP] in the Docket Sheet."

This Motion is consistent with these authorities. This Motion to File Late Objection became necessitated by IDWR's recommendation of a portion of the former Water Right No. 63-8700 to Mr. Lindley in the NCAP filed on February 5, 2009. This Motion complies with the time frame provided in Administrative Order 1, Section 17(c) for such motions. Further, License No. 63-8700, as originally issued to the Ragains including the portion of the water right now described as 63-33146 in the NCAP, evidences the Ragains' meritorious claim.

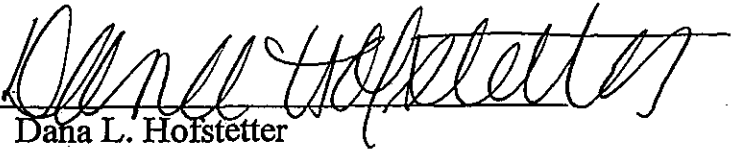
CONCLUSION

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

RESPECTFULLY SUBMITTED this 26th day of March, 2009.

HOFSTETTER LAW OFFICE, LLC

By


Dana L. Hofstetter

CERTIFICATE OF SERVICE

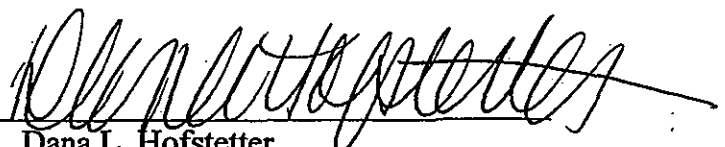
I hereby certify that on the 26th day of March, 2009, I caused to be served copies of the foregoing **Motion to File Late Objection** by the methods indicated below:

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

Jon C. Gould
Ringert Clark Chartered
P.O. Box 2773
Boise, ID 83701-2773
✱ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


Dana L. Hofstetter

4090.1/8486

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 63-33146

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: L. W. and Barbara J. Ragains

Address: 29392 Sabin

Parma, Idaho 83660

Daytime Phone: (208) 722-5515

Name & Address of Attorney, if any:

Dana Hofstetter, ISB #3867

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

(208)-424-7800

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

Name: John R. Lindley

Address: 29453 Gotsch 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: L. W. and Barbara J. Ragains
2. ☐ **Source**
Should be: _____
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. ☐ **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):** License No. 63-8700.

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: MARCH 26, 2009



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 March 26, 2009, 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:

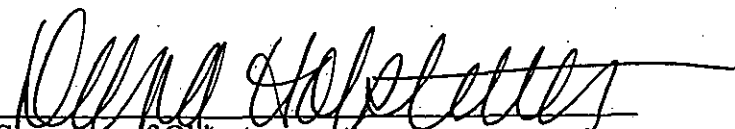
Name: Jon C. Gould
Ringert Clark Chartered
Address: P.O. Box 2773
Boise, ID 83701-2773

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