

John M. Marshall [ISB #5628]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for Paul A. and Marilyn Rasgorshek

a
RECEIVED
AUG 26 2009
DEPARTMENT OF
WATER RESOURCES
COPY

**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 No. 39576

Subcase No.: 63-9258

MOTION TO FILE LATE OBJECTION

Paul and Marilyn Rasgorshek (the "Rasgorsheks"), through their attorneys, Givens Pursley LLP, hereby move this Court for leave to file a late objection in the above-referenced subcase. A copy of the Standard Form 1 Objection is attached.

In subcases where partial decrees have not been entered, a motion to file a late objection may be granted upon a showing of good cause pursuant to Idaho Rule of Civil Procedure 55(c) (which deals with setting aside the entry of a default). *Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcases 65-7267 *et al.*, slip op. at 6 (January 31, 2001). The Rule 55(c) good cause standard takes into account the following factors:

- (1) whether the default was willful;
- (2) whether setting aside the judgment would prejudice the opponent; and
- (3) whether a meritorious position has been presented.

Id. at 7 (citing *McFarland v. Curtis*, 123 Idaho 931, 936, 854 P.2d 274, 279 (1993)).

The Rasgorsheks can show good cause for this Court to grant their motion to file late objection. First, the Rasgorsheks' failure to file an objection before the objection deadline was not willful. They had filed an objection in another, related subcase (number 63-31487¹) and only recently determined that they should also have filed an objection in this subcase.

Second, an order granting this Motion will not disrupt proceedings or prejudice other parties because there are no other parties to this subcase. Moreover, this subcase is scheduled for a status conference on August 25, 2009, at which time the Rasgorsheks propose this Court hear this Motion.

Third, the Rasgorsheks can show that IDWR's recommendation was in error because it failed to list stockwatering as a use (only domestic was recommended) even though the recommendation acknowledges that the right is for "500 range cattle." In addition, the recommendation did not include points of diversion and places of use that may be decreed in accordance with I.C. §§ 42-1425 and/or 42-1426.

For the foregoing reasons, the Rasgorsheks respectfully request that this Court hear and grant this Motion on Tuesday, August 25, 2009.

DATED this 21st day of August, 2009.

Respectfully submitted,

GIVENS PURSLEY LLP

By:



Michael P. Lawrence

¹ The Rasgorsheks' form objection in subcase 63-31487 was received by the SRBA Court one day after the objection deadline of June 20, 2007. This Court treated it as a Motion for Late Objection and scheduled a hearing on that Motion for Tuesday, August 25, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of August, 2009, the foregoing was filed, served, or copied as follows:

ORIGINAL FILED

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

SERVICE

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

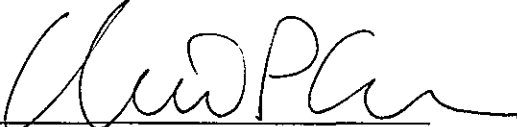
☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

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

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

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

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail


Michael P. Lawrence