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DEPARTMENT OF
WATER RESOURCES

Lord Ranch

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**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. 63-33233

**MOTION TO FILE LATE
OBJECTION**

MOTION

Lord Ranch, by and through its 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, Section 17(c), for leave to file a late Objection to Water Right No. 63-33233. This Motion is supported by the Memorandum below, the Objection hand delivered to the Court, and the record.

MEMORANDUM

The SRBA record reflects that Water Right No. 63-33233 derives from licensed Water Right No. 63-2143. This recent split, as evidenced in the Notice of Completed Administrative Proceeding ("NCAP") filed in the subject subcase on July 31, 2009, prompts this Motion to File Late Objection to the extent required by SRBA Administrative Order 1, Section 17(c).

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."

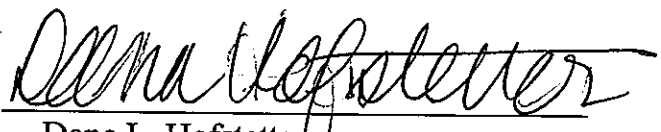
This Motion is consistent with these authorities. This Motion to File Late Objection was prompted by IDWR's July 31, 2009 NCAP. This Motion complies with the time frame provided in Administrative Order 1, Section 17(c) for such motions. Further, the portion of Water Right No. 63-2143 now described as 63-33233 which is recommended in Lord Ranch's name in the NCAP, evidences Lord Ranch's meritorious claim to this water right.

CONCLUSION

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

RESPECTFULLY SUBMITTED this 28th day of August, 2009.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of August, 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
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