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DEPARTMENT OF
WATER RESOURCES

Lord Ranch

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. 63-2655

**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, for leave to file a late Objection to Water Right No. 63-2655. This Motion is supported by the Memorandum below, the Objection attached hereto as Exhibit A, and the Affidavit of Dana L. Hofstetter filed contemporaneously herewith.

MEMORANDUM

Counsel has only recently discovered that the SRBA Claim place of use quarter-quarter section description for this right did not comport with the Claim map and that an Objection should have been filed as the Claim map actually included the correct place of use description. *Affidavit of Dana L. Hofstetter*. The Director's Report Recommendation for this right apparently was based on the Claim quarter-quarter section description, not the Claim map place of use description. *Id.* It appears that IDWR Director's Report Recommendation for this water right may have been affected by this discrepancy and the IDWR agent's apparent confusion caused by the difference between the place of use description on the claim map and the claim form. *Id.* Further, had Lord Ranch's counsel learned of this discrepancy earlier, a timely Objection may have been filed. *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 a failure to answer and that a meritorious defense exists, as the policy of deciding cases on the merits should be recognized. *Id.*

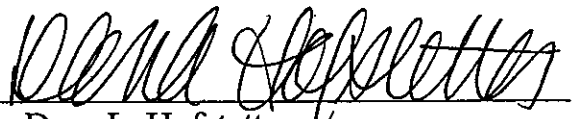
The discrepancy between the claim map and the SRBA claim place of use description which was only recently discovered by Claimant's counsel, evidences Lord Ranch's meritorious claim. An opportunity should be provided for Lord Ranch to submit clarification to IDWR regarding this matter so that the apparent confusion caused by this discrepancy may be appropriately addressed.

CONCLUSION

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

RESPECTFULLY SUBMITTED this 31st day of August, 2009.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter

CERTIFICATE OF SERVICE

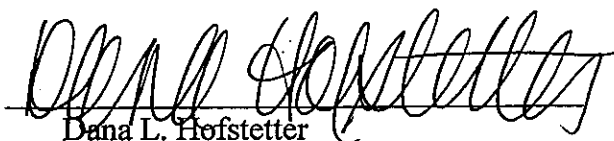
I hereby certify that on the 31st day of August, 2009, I caused to be served copies of the foregoing **Motion to File Late Objection** by the methods indicated below:

Idaho Department of Water Resources
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

Lord Ranch
1171 Mayfield Road
Boise, ID 83716-3401
✖ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


Dana L. Hofstetter

4064.1/8715

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 63-2655

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Lord Ranch, an Idaho partnership

Address: 1171 Mayfield Road
Boise, ID 83716-3401

Daytime Phone: (208) 386-9054

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: Lord Ranch, an Idaho partnership

Address: 1171 Mayfield Road
Boise, ID 83716-3401

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: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: 1.0 cfs, 190 AFY
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: 40 acres

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 and claim map.

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

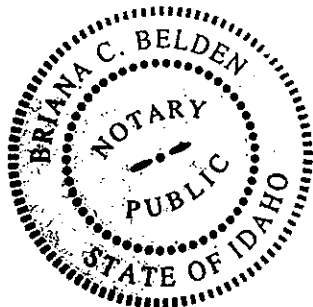
Dana L. Hofstetter, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

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 31, 2009



Briana C. Belden
Notary Public for the State of Idaho
Residing at: Meridian
My Commission expires: 11.16.13

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 31, 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:

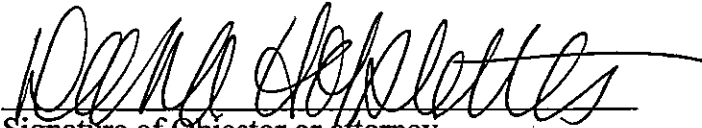
Name: Lord Ranch, an Idaho partnership
Address: 1171 Mayfield Road
Boise, ID 83716-3401

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