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MAR 22 2010

DEPARTMENT OF
WATER RESOURCES

Claimant Name:
Pioneer Moon, L.L.C.

Attorney Name & Address:
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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

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A. Subcase 37-260

MOTION TO FILE LATE
OBJECTION

Pioneer Moon, L.L.C. (the "Claimant"), by and through its undersigned counsel of record and pursuant to Idaho Rules of Civil Procedure 7 and 55(c), hereby files this Motion to File Late Objection to Water Right 37-260. This Motion is supported by the Affidavit of James P. Speck in Support of Motion to File Late Objection and the Affidavit of Wolf Riehle in Support of Motion to File Late Objection (the "Affidavits").

Claimant seeks an order from the Court granting leave to file a late objection to the place of use and other elements of this irrigation water right (a copy of the proposed Objection is attached hereto as **Exhibit A**).

The factual grounds for this Motion are set forth in the Affidavits. In his *Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcase Nos. 65-07267, *et al.* (Jan. 31, 2001) (“A.L. Cattle”), Presiding Judge Burdick succinctly explained the standard governing motions to file late objections as follows:

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 since *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. 55(c), which provides the standard for setting aside the entry of a default. *See AOI* § 4d(d)(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 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 931, 935, 854 P.2d, 274 (1993). The I.R.C.P. 55(c) 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) as with a Rule 60(b) motion, whether a meritorious position has been presented.

A.L. Cattle at 6-7.

Importantly, this Court has significant discretion to grant a motion to file a late objection, and its decision will not be reversed on appeal unless an abuse of discretion clearly appears. *Memorandum Decision and Order on Challenge*, Subcase Nos. 47-16433, *et al.*, at 9 (J. Melanson, March 22, 2005) (“*Bedke I*”). In doubtful cases, relief should be granted to reach a judgment on the merits. *Bedke I* at 10. Default judgments are disfavored. *A.L. Cattle* at 8.

The submission of this Objection after the deadline is not “willful.” In 1999 shortly after Claimant acquired the property it had the Idaho Department of Water Resources (“IDWR”) review

a proposed water right transfer application for this water right. Although Claimant decided to not pursue the application, nothing in the IDWR review provided notice to Claimant that the points of diversion or place of use as claimed in the SRBA were in error. As described in the Affidavits, the Director's Report recommendation for this water right lists numerous points of diversion all of which are the same as set forth in the original claim filed by the previous owner of the property. The original claim and the recommendation for this water right both listed 150 acres as the place of use. Claimant, in reviewing the water right recommendations for his property without the assistance of legal counsel, simply did not catch these errors.

Assuming the motion is granted, the Court can then set by a scheduling order deadlines for an amended director's report, objections to the amended director's report and responses to the objections. In that way there will be no prejudice to any other party to the SRBA.

Finally, the proposed objection states a meritorious position in that it seeks to correct errors in both the points of diversion and place of use that have now been brought to Claimant's attention as a result of a recent site investigation by IDWR for another water right on adjacent property subsequently acquired by Claimant. IDWR concurs in these corrections.

For the foregoing reasons, Claimant respectfully requests that the Court grant its Motion to File Late Objection and to accept for filing the objection attached hereto as **Exhibit A**.

DATED this 19 day of March, 2010.

SPECK & AANESTAD
A Professional Corporation
Attorneys for Claimant

By: 
James P. Speck

CERTIFICATE OF SERVICE

I hereby certify that on the 19 day of March, 2010, I served a true and correct copy of the foregoing MOTION TO FILE LATE OBJECTION on the following persons in the manner designated below:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

- ☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile, with copy by United States Mail, Postage Prepaid

Pioneer Moon, L.L.C.
PO Box 2881
Ketchum, ID 83340

- ☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile, with copy by United States Mail, Postage Prepaid

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

- ☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile, with copy by United States Mail, Postage Prepaid

The United States Department of Justice
Environmental and Natural Resources
Division
550 West Fort Street
Box 33
Boise, ID 83724

- ☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile, with copy by United States Mail, Postage Prepaid

Idaho Department of Water Resources
Document Depository
P.O. Box 83720
Boise, ID 83720-0098

- ☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile, with copy by United States Mail, Postage Prepaid

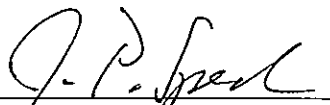

JAMES P. SPECK

EXHIBIT A

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

A. Subcase 37-260

**PROPOSED
STANDARD FORM 1
OBJECTION**

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Pioneer Moon, L.L.C.

Address: PO Box 2881
Ketchum, ID 83340

Daytime Phone: (208) 726-9588

Name & Address of Attorney, if any:

James P. Speck
SPECK & AANESTAD
A Professional Corporation
PO Box 987
Ketchum, ID 83340

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

Name: Pioneer Moon LLC

Address: PO Box 2881
Ketchum, ID 83340

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:

4. ☐ **Priority Date**
Should be:

5. ☐ **Point(s) of Diversion**
Should be:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>¼</u>	<u>¼</u>	<u>¼</u>	<u>Lot</u>	<u>County</u>
4N	19E	28	NE	NW	NE		Blaine
4N	19E	28	SW	NW	NE		Blaine
4N	19E	28	NW	SE	NW		Blaine
4N	19E	28	NE	NW	SE		Blaine
4N	19E	28	NW	NW	SE		Blaine

6. ☐ **Instream Flow Description**
Should be:

7. ☐ **Purpose(s) of Use**
Should be:

8. ☐ **Period of Year**
Should be:

9. ☐ Place of Use

Should be: For irrigation as follows:

			<u>NE</u>				<u>NW</u>				<u>SW</u>				<u>SE</u>				
<u>TWP</u>	<u>RGE</u>	<u>SEC</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>TOT</u>
4N	19E	28		7.0	1.7		9.3		16.0	27.0	0.3	21.0							82
4N	19E	29													28.0			39.7	67
TOTALS																			150

10. **I object because:**

- ☐ This water should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): See Claimant's Motion to File Late Objection and the Affidavits of James P. Speck and Wolf Reihle filed in support thereof.

F. VERIFICATION (Must be completed)

State of Idaho)
) ss.
County of Blaine)

James P. Speck, being first duly sworn, upon oath, deposes and says:

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)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: _____

Notary Public for Idaho
Residing at _____
My Commission expires _____

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 of the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on March ___, 2010, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Pioneer Moon, L.L.C.
Address: PO Box 2881
Ketchum, ID 83340

3. Copies to:

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

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

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, Box 33
Boise, Idaho 83734

Signature of Objector or attorney mailing on
Objector's behalf