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DEPARTMENT OF
WATER RESOURCES

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SCI Properties, LLC

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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	)	A. Subcase 00-91013
	)	(Basin-Wide Issue 13)
Case No. 39576	)	
	)	MOTION TO FILE LATE
	)	OBJECTIONS
_____	)	

SCI Properties, LLC (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 Objections herein for Water Rights 37-21943 and 37-22586 (the "Water Rights"). This Motion is supported by the Affidavit of James P. Speck in Support of Motion to File Late Objections (the "Affidavit").

Claimant seeks an order from the Court granting leave to file late objections to the Water Rights being included on the list of water rights on Attachment B to the State of Idaho's Second Amended Motion to Include Subordination Language on Water Rights Affected by the Swan Falls

Agreement filed herein.

The factual grounds for this Motion are set forth in the Affidavit. 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 these Objections after the deadline is not “willful.” As set forth in the Affidavit legal counsel for the Claimant, in accordance with his standard practice and experience for

delivering documents to the Court from his offices in Ketchum, Idaho placed copies of the Objections for the Water Rights in the mail with sufficient first class postage to this Court and the other persons and entities identified in the Certificates of Service on May 18, 2011, two days prior to the deadline for delivery of May 20, 2011. For some inexplicable reason the U.S. Mail did not deliver the Objections to this Court until May 25, 2011 even though they were received by the Idaho Department of Water Resources, attorneys Jo Beeman, Randall C. Budge, Thomas J. Budge, John K. Simpson and the Hoffstetter Law Office on May 19, 2011.

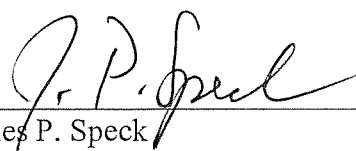
Since other parties to this Subcase at the time of mailing of the Objections received copies of the Objections prior to the filing deadline of May 20, 2011 there is no prejudice to them by having the Objections deemed filed with the Court as of May 25, 2011.

Finally, the Objections state a meritorious position in that the attachments clearly demonstrate both that a "substantial investment in irrigation wells and irrigation equipment" was made pursuant to a water right permit (37-7770) issued prior to October 25, 1984, thus satisfying the requirements of the 1180 Contract to receive the benefits of unqualified subordination and that the water was put to beneficial use pursuant to permit 37-7770 prior to October 25, 1984.

For the foregoing reasons, Claimant respectfully requests that the Court grant its Motion to File Late Objections and to accept for filing the Objections it received on May 25, 2011.

DATED this 21st day of July, 2011.

SPECK & AANESTAD
A Professional Corporation
Attorneys for Claimant

By: 
James P. Speck

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of July, 2011, 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
- ☒ FedEx Standard Overnight

Director of IDWR
P.O. Box 83720
Boise, ID 83720

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United States Department of Justice
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Aberdeen, ID 83210

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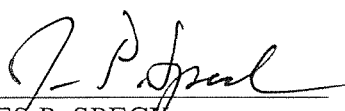
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