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DEPARTMENT OF
WATER RESOURCES

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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

Subcase No. 31-12181

**MOTION TO FILE LATE
OBJECTION**

The State of Idaho, Department of Lands (“IDL”), by and through the undersigned deputy attorney general, hereby moves this Court for an order granting IDL leave to file the late objection attached hereto. This motion is made pursuant to Rules 7 and 55(c) of the Idaho Rules of Civil Procedure (“I.R.C.P.”) and SRBA Administrative Order 1 (“A.O.1”).

Motions to file late objections are reviewed under I.R.C.P. 55(c) and a “good cause” standard. The SRBA Court explained the applicable legal standard 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(2)(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 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 more lenient threshold than the Rule 60(b) standard. [*McFarland v. Curtis*, 123 Idaho 931, 935, 854 P.2d 274, 279 (Ct. App. 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.

McFarland, 123 Idaho at 936, 865 P.2d at 279.

Order on Motion to Set Aside Partial Decrees and File Late Objections, 5 SRBA 4, 4.5 (2001) (“A.L. Cattle”).

The IDL can demonstrate good cause for the Court to grant this motion.

1. IDL’s failure to file an objection by the deadline was not willful. The Idaho Department of Water Resources issued a Director’s Report for Claimant Mud Lake Water Users, Inc.’s (“Claimant”) late claim for 31-12181 on June 23, 2010. Objections to the recommendation were due on September 8, 2010. In the claim and recommendation, the point of diversion and place of use for this water right do not occur on State land. Counsel for Claimant notified counsel for IDL that the conveyance for this water right (Lone Tree Diversion Canal) appears to run on State land. IDL researched the issue and recently confirmed that portions of the conveyance are in fact on State land. IDL also researched whether any existing easement authorizes the use sought by Claimant on State land. Likewise, IDL recently confirmed there is no existing authorization for the use sought by Claimant on State land.

2. An order granting IDL's motion will not prejudice the present parties nor unduly disrupt the proceedings. A status conference for this subcase is scheduled on February 22, 2012, and a one-day trial is scheduled on July 11, 2012. In the event the Court allows IDL's late objection, the pending status conference and trial will not need to be rescheduled to allow IDL's participation in this case.

3. Finally, IDL states a meritorious position in this motion. The objection, attached hereto, includes a supporting document that demonstrates the conveyance occurs on State land.

Based on foregoing reasons, IDL has demonstrated good cause to for this Court to accept the late objection in this subcase. IDL respectfully requests that this Court enter an order granting IDL leave to file the late objection attached hereto. Oral argument is requested on this matter.

DATED this 14th day of December 2011.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



TYSON K. NELSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 14th day of December 2011, I caused to be served the original and copies of the **MOTION TO FILE LATE OBJECTION** on the following persons by the methods indicated:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 736-2121
☐ Email:

2. Copies to:

MUD LAKE WATER USERS, INC.
Represented by:
ROBERT L. HARRIS
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. BOX 50130
IDAHO FALLS, ID 83405-0130

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☐ Email:

UNITED STATES DEPT. OF INTERIOR,
BUREAU OF LAND MANAGEMENT
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT &
NATURAL RESOURCES DIVISION
550 WEST FORT STREET, MSC 033
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☐ Federal Express
☐ Facsimile:
☐ Statehouse Mail

IDWR DOCUMENT DEPOSITORY
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BOISE, ID 83720-0098

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IDAHO DEPARTMENT OF LANDS
ATTN: BOB BRAMMER
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