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DEPARTMENT OF
WATER RESOURCES

Basin and Range Resource Company, LLC

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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	)	Subcase Nos. 63-3182, 63-7177, 63-7349,
	)	63-31841 and 63-31842
Case No. 39576	)	
	)	MOTION TO FILE LATE
		OBJECTIONS

MOTION

Basin and Range Resource Company, LLC (“Basin and Range”), by and through its counsel of record, 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 late Objections to Water Right Nos. 63-3182, 63-7177, 63-7349, 63-31841 and 63-31842. This Motion is

supported by the Memorandum below, the proposed Objections filed contemporaneously herewith, and the record.

MEMORANDUM

Basin and Range Resource Company, LLC filed Transfer Applications to add points of diversion for Water Right Nos. 63-3182, 63-7177 and 63-7349 on or about March 22, 2011 with the Idaho Department of Water Resources ("IDWR"). On or about February 4, 2011, Basin and Range had also filed a Transfer Application to create a permissible place of use for these rights along with Water Right Nos. 63-3583, 63-7533, 63-31839, 63-31840, 63-31854 and 63-31855, *inter alia*. As a result of approval of the point of diversion Transfer Applications, IDWR filed NCAPs in these subcases on or about November 7, 2011. This Motion to File Late Objections was necessitated by Administrative Order 1, Section 17(c) and the need to ensure that the partial decrees ultimately issued for these water rights are consistent with the partial decrees for the other water rights subject to the pending permissible place of use Transfer Application.

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.”

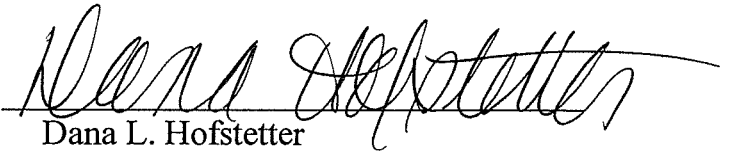
This Motion is consistent with these authorities. This Motion to File Late Objections became necessitated by IDWR’s issuance of the NCAP in this matter. This Motion complies with the timeframe provided in Administrative Order 1, Section 17(c) for such motions. Further, the record evidences the meritorious claim.

CONCLUSION

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

RESPECTFULLY SUBMITTED this 23rd day of December, 2011.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter

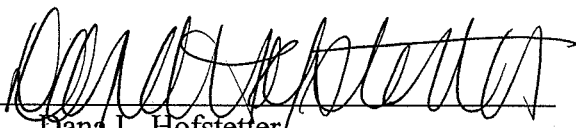
CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of December, 2011, I caused to be served copies of the foregoing **Motion to File Late Objections** by the methods indicated below:

Idaho Department of Water Resources
Document Depository
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