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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

Case No. 39576

) Subcase Nos. 63-3182, 63-3308, 63-3583,
) 63-7177, 63-7349, 63-7533, 63-7903,
) 63-31841 and 63-31842
)
) **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, 63-3308, 63-3583, 63-7177, 63-7349, 63-7533, 63-7903,

63-31841 and 63-31842. This Motion is supported by the Memorandum below, the proposed Objections filed contemporaneously herewith, and the record.

MEMORANDUM

As a result of the June 26, 2012, amended approval of Transfer No. 77052, IDWR filed NCAPs in these Subcases (except for 63-7533) on or about August 23, 2012. Also, an NCAP was filed in Subcase 63-7533 on or about August 23, 2012, because a previous transfer approval was rescinded. This Motion to File Late Objections was necessitated by Administrative Order 1, Section 17(c) and the need to ensure that the SRBA partial decrees ultimately issued for these water rights are correct.

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 NCAPs in these Subcases. 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 11th day of September, 2012.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter

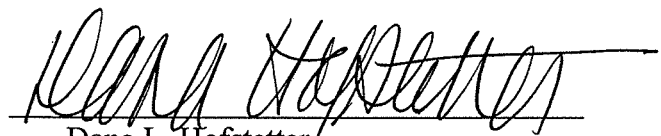
CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2012, 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
P. O. Box 83720
Boise, Idaho 83720-0098
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Chief, Natural Resources Division
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State of Idaho
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Boise, ID 83711-4449
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United States Department of Justice
Environment and Natural Resources Division
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