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DEPARTMENT OF
WATER RESOURCES

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*Attorneys for the State of Idaho,
Department of Fish and Game*

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 Nos. 63-05181 & 63-05182

MOTION TO FILE LATE OBJECTIONS

The State of Idaho, Department of Fish and Game (“IDFG”), by and through the undersigned deputy attorney general, hereby moves this Court for an order granting IDFG leave to file late objections to water right claims 63-05181 and 63-05182. A Standard Form 1 Objection is attached hereto as Exhibit A. This motion is made pursuant to Rule 55(c) of the Idaho Rules of Civil Procedure (“I.R.C.P.”) and SRBA Administrative Order 1 (“A.O.1”).

In cases for which partial decrees have not been entered, late objections are reviewed under I.R.C.P. 55(c), which provides a “good cause” standard for setting aside the entry of a default. 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.

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

1. IDFG’s failure to file objections to the above-listed water right claims was not willful. The IDFG owns and manages thousands of acres of land for public use. The IDFG only recently became aware that water right claims 63-05181 and 63-05182 have a point of diversion located on property owned by IDFG within the Fort Boise Wildlife Management Area. These claims are uncontested, overlapping claims to water right claim 63-00174, which lists the same point of diversion located on IDFG property. The IDFG filed a timely objection in subcase no. 63-00174 on April 17, 2013. The failure to file objections in subcase nos. 63-05181 and 63-05182 was inadvertent and IDFG now seeks to correct this oversight.

2. An order granting IDFG’s motion will not prejudice any party to the SRBA, including the claimant, because any party who believes they will be prejudiced by the late objections may participate in the proceedings by filing a response and will have a full and fair opportunity to address their concerns before the Court. Moreover, allowing IDFG to file late objections will not further delay the proceedings. Trial proceedings in subcase nos. 63-00174, 63-05181, and 63-05182 are scheduled for October, 2013. If this motion is granted, there will be more than adequate time for the filing of responses prior to trial.

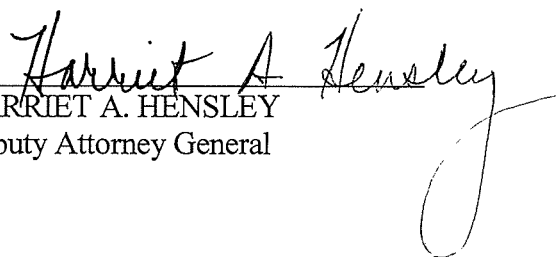
3. Finally, IDFG states a meritorious position in this motion. The purpose of the SRBA is to define water rights in the Snake River Basin for the purpose of improved administration and to avoid future conflict between water users. Allowing IDFG to file late objections is entirely consistent with this purpose because it is in the parties' and the State's interest to clarify the circumstances under which the claimant may access IDFG property so as to put the above-listed water rights to beneficial use.

Based on the foregoing reasons, IDFG has demonstrated good cause for this Court to allow IDFG to file late objections to the above referenced water right claims. IDFG respectfully requests that this Court enter an order granting IDFG leave to file late objections to water right claims 63-05181 and 63-05182. Oral argument is requested on this matter.

DATED this 5th day of June 2012

LAWRENCE G. WASDEN
Attorney General

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


HARRIET A. HENSLEY
Deputy Attorney General

CERTIFICATE OF MAILING

I certify that on this 5th day of June 2013, I caused to be served the original and/or copy of this document on the following persons by the indicated method:

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

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c/o Dana Hofstetter
608 W Franklin St
Boise, ID 83702

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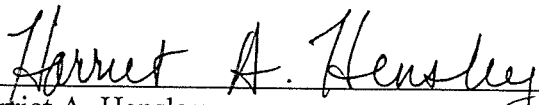
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☒ Statehouse Mail

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

Not Applicable

United States Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

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



Harriet A. Hensley
Deputy Attorney General

ATTACHMENT A

**STANDARD FORM 1 OBJECTION
SUBCASE NOS. 63-05181 & 63-05182**

**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	)	Subcase Nos. 63-05181 & 63-05182
	)	
	)	STANDARD FORM 1
Case No. 39576	)	OBJECTION
	)	
	)	
_____	)	

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: State of Idaho
Idaho Department of Fish and Game
Address: P.O. Box 25
Boise, ID 83707
Phone: (208) 334-3700

Attorney Name: LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
HARRIET A. HENSLEY (ISB No.
5235)
Deputy Attorney General
Attorney Address: P.O. Box 44449
Boise, Idaho 83711-4449
Attorney Phone No.: Telephone: (208) 334-2400

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

Name: Estate of Tina Iest
c/o Helen Tidwell
5700 S. Linder Road
Meridian, ID 83642

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 of Diversion**

Should be:

6. ☐ **Instream Flow Beginning and Ending Point**

Should be:

7. ☐ **Purpose(s) of Use**

Should be:

8. ☐ **Period of Year**

Should be:

9. ☐ **Place of Use**

Should be:

10 ☐ **I object because:**

☐ This water right Should not exist.

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

E. REASONS SUPPORTING OBJECTIONS(S): The point of diversion for these
water right claims and water right claim 63-00174 is located on property owned by the
Idaho Department of Fish and Game.

F. VERIFICATION (must be completed)

State of Idaho)
)ss.
County of Ada)

Harriet Hensley, duly sworn, upon oath, deposes and says:

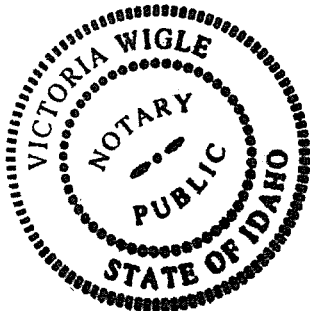
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
HARRIET A. HENSLEY
Deputy Attorney General

Harriet A. Hensley

Subscribed and sworn to before me on:

June 5th, 2013



Victoria Wigle
Notary Public for Idaho
Residing at: Boise
My Commission Expires: 6/22/16

CERTIFICATE OF MAILING

I certify that on this 5th day of June 2013, I caused to be served the original and/or copy of this form on the following persons by the indicated method:

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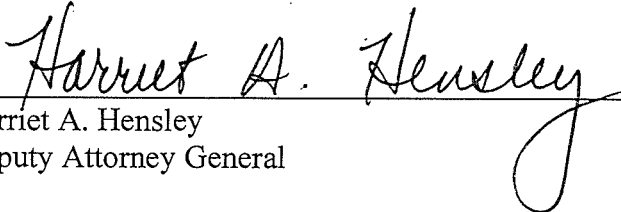
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Deputy Attorney General