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DEPARTMENT OF
WATER RESOURCES

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re CSRBA	)	**Subcase No. 91-7868**
	)	
Case No. 49576	)	**Standard Form 7**
	)	
	)	☑ **MOTION TO FILE LATE OBJECTION**
	)	**OR**
	)	☐ **MOTION TO SET ASIDE AND MODIFY**
	)	**PARTIAL DECREE OR FINAL ORDER**
	)	**DISALLOWING WATER RIGHT CLAIM**

NAME AND ADDRESS OF PERSON FILING MOTION FOR LATE OBJECTION OR MOTION TO SET ASIDE PARTIAL DECREE/FINAL ORDER DISALLOWING

Name: State of Idaho
Address: PO Box 83720
Boise, ID 83720-0010
Phone: 208-334-4143

☑ I am an attorney representing the State of Idaho

Name: LAWRENCE G. WASDEN
Attorney General
Clive J. Strong
Chief, Natural Resources Division
Steven W. Strack, ISB # 3906
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Address: PO Box 83720
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CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT OR PARTIAL DECREE/FINAL ORDER DISALLOWING

Jackson Timberland Opportunities Tristar LLC
654 State St.
Jackson, MS 39202

If you are seeking to file a late Objection, list the reason(s) this objection is late and why it was not filed by the Objection deadline:

Motions to file late objections are reviewed under the criteria of I.R.C.P. 55(c). CSRBA Admin. Order No. 1, § 4(d)(5)(a). Rule 55(c) requires the movant to show "good cause." I.R.C.P. 55(c). "Good cause" has been described as a "lenient" and "liberal" standard, because "at the earlier stage of entry of default where no judgment has been proven, a liberal approach is less likely to create unfair prejudice to the non-moving party or disrupt the court's calendar." *McFarland v. Curtis*, 123 Idaho 931, 936, 854 P.2d 274, 279 (Ct. App. 1993). Good cause is demonstrated when the movant shows the existence of a justiciable controversy by alleging facts which, if true, would amount to a meritorious defense. *Id.* at 934, 854 P.2d at 277. The meritorious defense standard "is a pleading requirement, not a burden of proof," hence, the movant "is not required to present evidence" in order to set aside the entry of a default. *Dorion v. Keane*, 153 Idaho 371, 374, 283 P.3d 118, 122 (Ct. App. 2012).

Here, good cause exists because the proposed objection is based on the indisputable fact that the recommended quantity for the subject water right is facially inconsistent with the cited statutory authority for the water right. The Director's recommendation states that the water right is "for forest practices and forest dust abatement as provided for by Section 42-201, Idaho Code." Idaho Code § 42-201 provides that water use for forest practices and forest dust abatement "is limited to two-tenths (0.2) acre-feet per day from a single watercourse." The Director's recommended quantity, however, is "0.200 CFS," with no reference to the statutory volumetric limit of 0.2 AF/day. No logical relationship exists between 0.2 CFS and 0.2 AF—a diversion rate of 0.2 CFS results in a diversion of .3967 AF if diverted over a 24 hour period.

While indisputable, the error in the recommended quantification is not obvious, and escaped the attention of IDWR and all prior objectors to this category of water rights. This error was brought to the State's attention in conversations with IDWR adjudication staff that occurred after the objection filing deadline. The State immediately began work to identify the recommendations in which the error occurs and to prepare motions to file late objections.

In short, the recommended quantity of 0.200 CFS is plainly a clerical error, and good cause exists to allow the filing of late objections to correct the error to ensure the partial decrees of water rights for forest practices and forest dust abatement are consistent with the cited statutory authority.

If you are seeking leave to file a late Objection,

YOU MUST ATTACH A COMPLETED STANDARD FORM 1 (Objection form).

(A copy of Standard Form 1 is attached)

If you are seeking to set aside and modify a Partial Decree/Final Order Disallowing, indicate the basis for your motion:

☐ Idaho Rule of Civil Procedure 59 (e)

☐ Idaho Rule of Civil Procedure 60(a)

☐ Idaho Rule of Civil Procedure 60(b)

And list the reason(s) why the Partial Decree/Final Order Disallowing should be set aside:

(Not Applicable)

INSTRUCTIONS FOR MAILING

You must mail this motion, to the Clerk of the court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on July 16th, 2015, I mailed the original and copies of this motion, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Coeur d'Alene-Spokane River Basin Adjudication
253 Third A venue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the each party involved in the Subcase including the claimant, all objectors, respondents and any party granted a motion to participate. Attach a list of names and addresses.

Jackson Timberland Opportunities Tristar LLC
654 State St.
Jackson, MS 39202

David Negri
United States Department of Justice
Environment & Nat'l Resources Div.
Natural Resources Section
550 W Fort Street, MSC 033
Boise, ID 83724

Potlatch Forest Holdings, Inc. et al.
c/o Michael Lawrence
Givens Pursley LLP
PO Box 2720
Boise, ID 83701-2720

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83 720-0098

Chief, Natural Resources Division
Office of Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0010

United States Department of Justice
Environment & Nat'l Resources Division
550 W Fort Street, MSC 033
Boise, ID 83724

Signature of Movant or attorney
mailing on Movant's behalf