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By \_\_\_\_\_  
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*Attorneys for Objector State of Idaho*

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

IN RE: PRBA

Case No. 59576

Subcase: 87-12015 and 87-12088

**MEMORANDUM IN SUPPORT OF THE  
STATE OF IDAHO'S MOTION TO FILE  
LATE AMENDED OBJECTIONS**

The State of Idaho hereby submits the Memorandum in support of the State of Idaho's Motion to File a Late Amended Objections in the above-captioned subcases.

## I. FACTS

On December 27, 2019, the United States filed 177 claims in the Palouse River Basin Adjudication (PRBA) on behalf of the Nez Perce Tribe. These claims included numerous spring water right claims including spring claims 87-12015 and 87-12088. On December 28, 2021, the State of Idaho filed timely objections to all these claims. The State objected to all the elements of both subject claims and asserted that these water rights should not exist. Since that time the State has actively engaged in litigation and settlement discussions on all the spring claims.

On February 4, 2026, the United States filed a Motion to Amend Claims. The United States moved to amend the Place of Use and Point of Diversion on claim 87-12088 based upon its investigation of its claim. It also sought to amend claim 87-12015 to claim only one spring instead of what it subsequently determined were two springs. Around this same time, the United States moved to file a Late Notice of Claim in subcase 97-12406 seeking to claim rights to one of the two springs the United States inadvertently claimed as only one spring in its original claim 87-12015.

A hearing was held on the motion to amend on February 25, 2026. The State did not object to either proposed amendment. An order granting the motions to amend was entered on February 27, 2026. The order granting the motions set a deadline to file objections to the amend claims for March 23, 2026. The objection deadline was entered onto the docket sheet. Due to an oversight, the attorney for the State missed the deadline and the State inadvertently did not file an amended objection to either amended claim.

A hearing was held on the United States' motion to file a late claim in subcase 97-12406 on May 20, 2026. Once again, the State did not object to the motion to file a late claim. During the status conference following the hearing, the State learned for the first time that it had not filed

objections to the two amended claims. The State immediately informed the court and parties of this oversight and indicated its intent to file a motion to file late objections to the amended claims.

## II. LEGAL STANDARD

PRBA Administrative Order 1 (“AO1”) sets out the procedure for filing a Motion to File a Late Objection and establishes that such motions “will be reviewed under the criteria of I.R.C.P. 55(c)”. AO1 5(a). I.R.C.P. 55(c) provided that “a court may set aside an entry of default for **good cause**, and it may aside a default judgment under Rule 60(b). (Emphasis added.) Where there has been a default and no judgment has been entered,

[t]he legal standard for a motion to set aside entry of default under I.R.C.P. 55(c) is for good cause shown. The primary considerations for determining whether good cause has been shown are whether the default was willful, whether setting aside the default would prejudice the opponent, and whether a meritorious defense has been presented.

*Kirby v. Scotton*, 163 Idaho 551, 554, 1673 P.3d 960, 963 (Idaho Ct. App. 2018).

Idaho Courts have further recognized that,

the required *good cause* showing to set aside a default under Rule 55(c) is “lower or more lenient than that required to set aside a default judgment” under Rule 60(b). *McFarland*, 123 Idaho at 936, 854 P.2d at 279 (citing 10 WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D §§ 2681–2702 (1983)). This more lenient approach in setting aside a default, as opposed to a default judgment, is consistent with an application of the policy that cases should be decided on their merits.

*Dorion v. Keane*, 153 Idaho 371, 375, 283 P. 3d 118, 122 (Idaho Ct. App. 2012).

Nevertheless, even under the higher standard to set aside an entered default judgment under Rule 60(b)(1), the court may set aside a final judgment for the reasons of

“mistake, inadvertence, surprise or excusable neglect.” I.R.C.P 60(b)(1). “Because

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judgments by default are not favored, a trial court should grant relief in doubtful cases in order to decide the case on the merits.” *Id.*

### **III. ARGUMENT**

This court should grant the State’s motion to file late amended objections to the United States’ amended claims as the State’s failure to file timely objections was: A) an inadvertent mistake which was not willful; B) allowing the late objection would not be prejudicial to any party; and C) the State has previously established that a meritorious defense exists in its prior objections, discovery responses and expert disclosures.

#### **A. The Failure to File a Timely Objection Was Not Willful and the Motion to File a Late Amended Objection Was Timely and Not Unduly Delayed**

There should be no question that the State’s attorney inadvertently and mistakenly did not file a timely objection to the subject amended claims. The State’s counsel first became aware of the mistake on the record during the status conference on May 20, 2026. He immediately recognized a mistake had occurred and informed the parties that he would file a motion to correct the oversight. The State then immediately moved to correct the mistake by filing the present motion.

#### **B. Filing a Late Amended Objection to the Amend Claims Will Not Prejudice Any Party**

Granting the motion to file late objections to the subject amended claims will not create any prejudice to anyone. The State had filed objections to the subject claims in December 2021. Those objections put all parties on notice of the State’s objections. Since that time, the State has actively engaged in litigation, discovery and settlement negotiations based upon its objections. Moreover, after the amended claims were filed, the State continued to respond to discovery requests, produced supplemental expert disclosures,

worked with the United States and Tribe on supplementing the parties' discovery responses and expert reports and engaged in settlement negotiations. Allowing the State to file late amended objections would not substantively change the status of the litigation or create any delay in the litigation schedule.

### **C. The State Has Raised Meritorious Objections**

A justiciable controversy has existed concerning the subject amended claims since 2021. "The meritorious defense requirement is a pleading requirement, not a burden of proof." *Dorion*, 153 Idaho at 375, 283 P.3d at 122. "A party may satisfy the meritorious defense requirement by pleading fact which, if established, would constitute a defense to the action." *Id.* The State has raised and continues to raise meritorious objections to the subject claims.

### **IV. CONCLUSION**

For the foregoing reasons, the State respectfully requests the Court to grant its Motion to File Late Amended Objections.

Respectfully submitted this 28th day of May 2026.



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DAVID S. PERKINS  
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28th day of May, 2026, I caused to be served a true and correct copy of the foregoing document by the methods indicated:

<p>CLERK OF THE DISTRICT COURT PALOUSE RIVER BASIN ADJUDICATION 253 THIRD AVE NORTH P.O. BOX 2707 TWIN FALLS, ID 83303-2707</p> <p>NORMAN M SEMANKO PARSONS BEHLE &amp; LATIMER 800 W MAIN STREET STE 1300 BOISE, ID 83702</p> <p>DIRECTOR OF IDWR PO BOX 83720 BOISE, ID 83720-0098</p> <p>U S DEPARTMENT OF JUSTICE ENVIRO &amp; NAT'L RESOURCES DIV PO Box 7611, Ben Franklin Station WASHINGTON D.C. 20044-7611</p> <p>CHARLIE S BASER MICHAEL P LAWRENCE GIVENS PURSLEY LLP 601 W BANNOCK ST PO BOX 2720 BOISE, ID 83701-2720</p> <p>THOMAS MURPHY NATIVE AMERICAN RIGHTS FUND 250 ARAPAHOE AVE BOULDER, CO 80302</p> <p>MICHAEL A LOPEZ NEZ PERCE TRIBE LEGAL COUNSEL 100 AGENCY RD PO BOX 305 LAPWAI, ID 83540</p> <p>SUSAN R. WILSON 208 S. MAIN ST. STE 2 MOSCOW, ID 83843</p>	<p><input type="checkbox"/> By U.S. Postal Service <input checked="" type="checkbox"/> Overnight w/FedEx <input type="checkbox"/> By email to:</p> <p><input type="checkbox"/> By U.S. Postal Service <input checked="" type="checkbox"/> By email to: <a href="mailto:NSemanko@parsonsbehle.com">NSemanko@parsonsbehle.com</a></p> <p><input type="checkbox"/> By U.S. Postal Service <input checked="" type="checkbox"/> By email to: <a href="mailto:file@idwr.idaho.gov">file@idwr.idaho.gov</a></p> <p><input type="checkbox"/> By U.S. Postal Service <input checked="" type="checkbox"/> By email to: <a href="mailto:Emmi.Blades@usdoj.gov">Emmi.Blades@usdoj.gov</a>, <a href="mailto:Hillary.Hoffman@usdoj.gov">Hillary.Hoffman@usdoj.gov</a></p> <p><input type="checkbox"/> By U.S. Postal Service <input checked="" type="checkbox"/> By email to: <a href="mailto:mpl@givenspursley.com">mpl@givenspursley.com</a></p> <p><input type="checkbox"/> By U.S. Postal Service <input checked="" type="checkbox"/> By email to: <a href="mailto:murphy@narf.org">murphy@narf.org</a></p> <p><input type="checkbox"/> By U.S. Postal Service <input checked="" type="checkbox"/> By email to: <a href="mailto:mlopez@nezperce.org">mlopez@nezperce.org</a></p> <p><input type="checkbox"/> By U.S. Postal Service <input checked="" type="checkbox"/> By email to: <a href="mailto:sw2@moscow.com">sw2@moscow.com</a></p>
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