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DEPARTMENT OF
WATER RESOURCES

Attorneys for Michael A. Harris & Pepin Corso-Harris

**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. 37-114C
	)	
Case No. 39576	)	MOTION TO FILE LATE OBJECTION
	)	
_____	)	

COME NOW, Michael A. Harris & Pepin Corso-Harris (collectively referred to as "Harris"), by and their attorneys of record, Barker Rosholt & Simpson, and move this Court for an Order Granting Motion to File Late Objection in the above-entitled subcases. This motion is made pursuant to SRBA Administrative Order #1 ("AO1") and the Idaho Rules of Civil Procedure. The reasons for the motion are set forth below.

INTRODUCTION

Objections for the Director's recommendations to water rights in Basin 37, part 3, were due on November 14, 2007. The Movants are claimants in the SRBA for water right 37-114C. On November 14, 2007, they filed an objection, intending to object to certain elements of the Director's recommendation to their water right. However, in that objection, they inadvertently objected to water right 37-114B instead of 37-114C. The Movants have filed a *Notice of Withdrawal of Objection* on water right 37-114B and now seek to file a late objection, as

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originally intended, on water right 37-114C. Since the Movants are the claimants to water right 37-114C, they surely have an interest in ensuring that their rights are protected. As discussed below, the Movants meet the standard to file a late objection.

STANDARD OF REVIEW

In the *Memorandum Decision and Order on Challenge* (Subcase Nos. 47-16433 *et al*) (March 22, 2005) (“*Bedke I*”). Presiding Judge Melanson described the standard of review for filing a late objection:

In subcases *for which partial decrees have not been entered*, the legal standard for filing a late objection to a water right claim in the SRBA has been historically determined pursuant to the standard set forth in *AOI* for filing late claims. [citation omitted]. *AOI* does not expressly provide a standard for reviewing late objections. A motion to file a late claim is determined pursuant to I.R.C.P. 55(c), which provides the standard for setting aside the entry of a default. *Id.*, see *AOI* § 4d(2)(d) (late claims reviewed under I.R.C.P. 55(c) criteria) and (k) leave to amend a notice of claim shall be freely given when justice so requires). In the *A.L. Cattle* subcase, this Court held that the I.R.C.P. 55(c) standard should be applied to late objections to which partial decrees have not been entered, rather than the I.R.C.P. 60(b) standard.

In determining whether to set aside the entry of a default under I.R.C.P. 55(c), Idaho Courts apply a “good cause” for untimeliness standard. I.R.C.P. 55(c). The “good cause” standard is a more lenient threshold than the Rule 60(b) standard. *McFarland v. Curtis*, 123 Idaho at 935, 854 P.2d at 279. The I.R.C.P. 55(c) good cause standard takes into account the following factors:

- 1) whether the default was willful;
- 2) whether setting aside the judgment would prejudice the opponent.
- 3) as with a Rule 60(b) motion, whether a meritorious position has been presented.

Bedke I at 5-6.

In doubtful cases, relief should be granted to reach a judgment on the merits. *Bedke I* at 10. This is because default judgments are disfavored. See *Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcase Nos. 65-07267 *et al.* (Jan. 31, 2001) (“*A.L. Cattle*”).

REASONS SUPPORTING MOTION

The Movants' Motion to File Late Objections is supported by good cause and a meritorious position; hence, it meets the above standard. First, the failure to object to water right 37-114C was not willful. Indeed, the Movants filed a timely Objection. However, due to a clerical error, using the suffix "B" instead of "C," the Objection was actually filed on the wrong water right. Furthermore, as soon as the Movants discovered the error, they filed a *Notice of Withdrawal* for the Objection to water right 37-114B and filed this motion.

In addition, granting this motion will not cause prejudice to any opponent. No objections were filed to water right 37-114C. That notwithstanding, should the motion be granted, other claimants in the SRBA will have an opportunity to participate and seek to protect their interests, should they feel such an action was necessary.

In light of the fact that the failure to Object to water right 37-114C was unintentional, was promptly corrected and will not cause prejudice to other claimants, the Movants' *Motion* is supported by a meritorious position.

The Movants are submitting for filing together with this motion their proposed objection (see Exhibit A).

REQUEST FOR HEARING

Counsel for the Movants plans to discuss the scheduling of a hearing date with the Court.

DATED this 6th day of February, 2008.

BARKER ROSHOLT & SIMPSON LLP

Paul L. Arrington

Attorneys for Movants

CERTIFICATE OF MAILING

I certify that on February 6, 2008, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

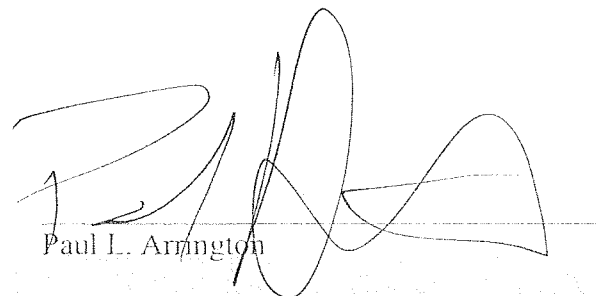
Name:	MICHAEL A. HARRIS PEPIN CORSO-HARRIS
Address:	98 FRIEDMAN LANE BELLEVUE, IDAHO 83313

3. Copies to:

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PO Box 83720
Boise, ID 83720-0098

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

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449



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