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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 SRBA	)	Subcase 37-2611C
	)	
Case No. 39576	)	MOTION TO FILE LATE OBJECTION
	)	
	)	
	)	

Collister, Inc. ("Collister"), through its attorneys, Givens Pursley LLP, hereby moves this Court for leave to file a late objection in the above-referenced subcase.

In subcases where partial decrees have not been entered, a motion to file a late objection may be granted upon a showing of good cause pursuant to Idaho Rule of Civil Procedure 55(c) (which deals with setting aside the entry of a default). *Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcases 65-7267 *et al.*, slip op. at 6 (January 31, 2001). The Rule 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; and
- (3) whether a meritorious position has been presented.

Id. at 7 (citing *McFarland v. Curtis*, 123 Idaho 931, 936, 854 P.2d 274, 279 (1993)).

Collister can show good cause for this Court to grant its motion to file late objections. First, Collister's failure to file an objection before the objection deadline was not willful—it only recently became aware that the original claim and IDWR's water right recommendation did not reflect the correct quantity or place of use for this water right. Second, an order granting this Motion will not disrupt proceedings or prejudice other parties because this water right is currently unobjected-to and initial hearings have not yet been scheduled for this subbasin. Third, Collister can show that its quantity and place of use should be decreed differently than IDWR recommended. Collister has also filed a motion to file an amended notice of claim to facilitate a new recommendation and decree with the proper quantity and place of use.

For the foregoing reasons, Collister respectfully requests that this Court grant its Motion to File Late Objection.

DATED this 8TH day of May, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By: 
Michael P. Lawrence

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th of May 2008, the foregoing was filed,
served, or copied as follows:

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