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DEPARTMENT OF
WATER RESOURCES

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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 No. 67-00348C
Case 38576	)	
	)	
	)	
	)	MOTION TO FILE LATE OBJECTION
	)	
	)	
	)	
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COMES NOW SRBA Claimants and Objectors William P. and Rose Abide (hereinafter "the Abides"), by and through their attorneys, Ringert Clark, Chartered, and hereby file this Motion to File Late Objection to the recommendation of water right number 67-00348C claimed in the SRBA by the Abides. This motion is filed pursuant to I.R.C.P. 7(b). The grounds for this motion are that the Abides have good cause pursuant to the standards of I.R.C.P. 55(c) for not having filed their objection earlier. A copy of the Objection that Abide seeks to file is attached hereto as Exhibit "A". This Motion and Argument are supported by the Affidavit of William P. Abide in Support of Motion to File Late Objection, and by the argument herein.

COPY

FACTS

The Abides own water right no. 67-00348C recommended in the Snake River Basin Adjudication. Until May, 2005, the Abides lived at 2182 Highway 95, Council, Idaho 83612. In May, 2005, the Abides moved to Hailey, Idaho where they have since resided. Upon recently meeting with his attorney, Mr. Abide discovered that the director's report for water right no. 67-00348C had been mailed to his Council address after he had moved, and that he had never received a copy of the same. Mr. Abide was thus unaware of the elements of the water right as recommended in the SRBA. After discussion with his attorney, Mr. Abide became aware that the configuration of the place of use of water right no. 67-00348C had been erroneously recommended by IDWR and needed to be reconfigured as historically beneficially used.

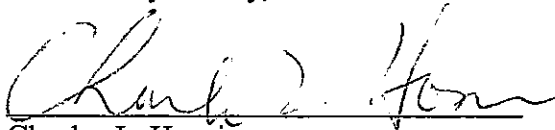
ARGUMENT

The legal standard for filing a late objection to a water right recommended in the SRBA is set forth in the *Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcase Nos. 65-19812 et. al. (January 31, 2001) (hereinafter "A.L. Cattle Decision"). That decision holds that motions to file late objections should be reviewed under the standards by which a default judgment may be set aside pursuant to I.R.C.P. 55(c). *Id.* at p. 6. "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." *Id.* at p. 7. Abide's Motion to File a Late Objection meets all three criteria.

First, the Abides' failure to file an objection was not willful - they were simply unaware of the need to do so because they had not seen a copy of the recommendation until recently. Second,

there is no opponent and thus no prejudice is possible. Third, as is apparent from Mr. Abide's Affidavit, he is seeking only to reconfigure the acres recommended as the place of use and such place of use is as the water right has been historically used. Therefore, he has presented a meritorious position. Accordingly, the Court should grant this motion, and Abide respectfully requests the same.

Respectfully submitted this 9th day of May, 2008.

A handwritten signature in cursive script, appearing to read "Charles L. Honsinger", written over a horizontal line.

Charles L. Honsinger
Ringert Clark, Chartered

CERTIFICATE OF MAILING

I certify that on May 9, 2008, I mailed the original and copies of this document, 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: WILLIAM P. AND ROSE ABIDE

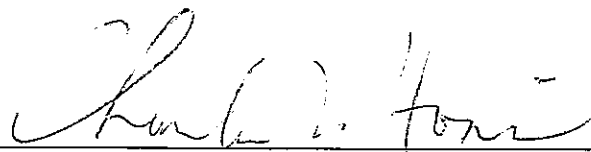
Address: P.O. Box 3080
Hailey, Idaho 83333

3. Copies to:

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

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

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



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