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DEPARTMENT OF
WATER RESOURCES

Idaho Department of Water Resources (“IDWR”) about this right and was not informed that there was any issue. In fact, IDWR processed the name change application on this water right. Beyeler Ranches did not learn of the omission until just recently – at which time it hired legal counsel to file this motion.

FACTUAL BACKGROUND

Water right 74-871 diverts from Eighteenmile Creek and was originally decreed in the Lemhi adjudication. *Affidavit of Paul L. Arrington* (“*Arrington Aff.*”) Ex. A & D. The Court decreed a right for 1.8 cfs with a priority date of August 9, 1948 to Maxwell F. and Reva S. Beyeler. *Id.* at Ex. A.

Merrill Beyeler first moved to this property in the winter of 1959, with his parents Maxwell and Reva Beyeler. *Affidavit of Merrill Beyeler in Support of Motion to File Late Notice of Claim* (“*Beyeler Aff.*”) at ¶ 4. The property consists of a 900 acre ranching operation with several acres of farmland used to grow hay and alfalfa for the cattle. *Id.* With the exception of a few years when Mr. Beyeler attended college and taught school, Mr. Beyeler has lived on this property continuously. *Id.* at ¶ 5. During that time, water right 74-871 has been continuously diverted and used in relation to the ranching operation. *Id.* at ¶ 3. In 1983, Mr. Beyeler acquired the property, including the water rights, from his parents. *Id.* at ¶ 7.

In addition to water right 74-871, Mr. Beyeler owns water rights 74-31, 74-158, 74-159, 74-160, 74-2289, 74-2326 and 74-7185, which are appurtenant to and beneficially used on the property in connection with his ranching operation. *See Arrington Aff.* Ex. B. Mr. Beyeler filed claims on all of these water rights in 1991. *Beyeler Aff.* at ¶ 8. While he filed a claim on all other water rights, he inadvertently failed to file a claim for water right 74-871. *Id.*

Unfortunately, neither Mr. Beyeler nor the Department discovered this error until after the Director's Report for Basin 74 was issued.

In 2003, Mr. Beyeler formed Beyeler Ranches, LLC and changed ownership of all the water rights, including water right 74-871, with the Department. *Id.* at ¶¶ 10-11; *see also Arrington Aff.* Exs. B & C. The Department processed the name change applications on all the water rights, including 74-871, *Arrington Aff.* Ex. C, and there was no indication that there would be any concern over water right 74-871.

Shortly thereafter, Mr. Beyeler had numerous conversations with the Department regarding his claims in the SRBA. As IDWR began reviewing and processing the SRBA claims for Basin 74, Mr. Beyeler had several meetings and conversations with Roxanne Brown, a water agent with IDWR, regarding the Beyeler Ranches water rights. *Beyeler Aff.* at ¶ 12. At one point, he discovered that neither water right 74-31 nor water right 74-781 were showing up on the Department's records as being claimed in the SRBA. *Id.* at ¶ 13. Ms. Brown advised Mr. Beyeler that the Department had not completed processing all of the claimed water rights in the Lemhi River drainage, but indicated that the water rights would be processed in the near future. *Id.* Sometime thereafter, water right 74-31 was processed and returned to Mr. Beyeler. *Id.* Water right 74-871 remained absent from the Department's records. However, based on Ms. Brown's representations and the fact that water right 74-31 was subsequently processed and returned, Mr. Beyeler believed that water right 74-871 was still in processing and would be returned at some point. *Id.* at ¶ 14.

Mr. Beyeler did not realize that he had failed to file a claim for water right 74-871 in the SRBA until December, 2008. *Id.* at ¶ 15. At that time, he quickly moved to hire legal counsel to file this motion. *Id.*

STANDARD OF REVIEW

Under this Court's *AOI*, a motion to file a late notice of claim is determined pursuant to I.R.C.P. 55(c). *See AOI* § 4d(2)(d)(late claims reviewed under I.R.C.P. 55(c) criteria). The Court, therefore, applies a "good cause" standard to motions to file late notices of claim. The "good cause" standard is a more lenient threshold than the Rule 60(b) standard. *McFarland v. Curtis*, 123 Idaho 931, 935 (Ct. App. 1993). 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.
- 3) as with a Rule 60(b) motion, whether a meritorious position has been presented.

McFarland, 123 Idaho at 936; *see also Order Granting Motions to File Lat Notices of Claim* at 1 (Subcase No. 71-10886 et al., July 27, 2005).

Other jurisdictions apply similar criteria, such as: (1) proof that the default was not willful or culpable; (2) prompt action by the defaulting party to correct the default; (3) the existence of a meritorious defense; (4) an absence of prejudice to the opponent; (5) whether the default resulted from a good faith mistake in following a rule of procedure; (6) the nature of the defendant's explanation for defaulting; (7) the amount in controversy; (8) the availability of effective alternative sanctions; and (9) whether entry of a default would produce a harsh or unfair result. *See Memorandum Decision and Order on Challenge; Order of Recommitment* at 6 (Subcase No. 47-14633 et al., March 22, 2005).

Finally, in determining whether to grant a motion under Rule 55(c), the Idaho Court of Appeals has instructed courts to "examine each case in light of the unique facts and circumstances presented." *Baldwin v. Baldwin*, 114 Idaho 525, 527 (Ct. App. 1988). In

addition, “[j]udgments by default are not favored, and the general rule in doubtful cases is to grant relief from default in order to reach a judgment on the merits.” *Johnson v. Pioneer Title Co. of Ada County*, 104 Idaho 727, 732 (Ct. App. 1983).

ARGUMENT

I. Beyeler Ranches Meets the “Good Cause” Standard for Filing a Late Notice of Claim

The central question presented here is whether a water right that (i) was previously claimed, reviewed and decreed in the Lemhi Adjudication, (ii) was inadvertently overlooked when several other rights were claimed in the SRBA, and (iii) has been diverted and beneficially used since at least 1959, should be claimed and ultimately decreed in the SRBA. Since Mr. Beyeler’s actions were not willful, the granting of this motion will not prejudice any other water user, and a meritorious position has been shown, *see Order Granting Motions to File Lat Notices of Claim* at 1 (Subcase No. 71-10886 et al., July 27, 2005), Mr. Beyeler’s motion should be granted.

A. Mr. Beyeler’s Actions were not Willful

The Court must first consider whether Mr. Beyeler’s actions were willful. The facts demonstrate that they were not willful. First, Mr. Beyeler intended to file claims on all Beyeler Ranches water rights in 1991. *Beyeler Aff.* at ¶ 8. This includes water rights 74-31, 74-158, 74-159, 74-160, 74-2289, 74-2326 and 74-7185. *Arrington Aff.* Ex. B. All of these water rights, in addition to water right 74-871, are used in the ranching operation. Water right 74-871 plays an important role in the Beyeler Ranches operations. *Beyeler Aff.* at ¶ 3. It has been used continuously since at least 1959. *Id.* It is inconceivable that Mr. Beyeler would have intentionally failed to claim this vital water right in the SRBA, especially when all of the other

water rights were claimed. Doing so would have left Beyeler Ranches without one of its vital water rights – a “water right that the Ranch cannot afford to lose.” *Id.* at ¶ 9.

B. Granting Mr. Beyeler’s Motion Will not Prejudice Other Water Users.

No other water users will be prejudiced by the granting of this motion. This water right was already decreed – in the Lemhi Adjudication. *Arrington Aff.* Ex. A. Accordingly, all other claimants in the Lemhi River Basin have notice of the existence of the water right and the fact that it was previously decreed. It has also been diverted and beneficially used since at least 1959. *Beyeler Aff.* at ¶ 3. Granting this right will simply provide an opportunity for the SRBA Court to confirm the right that was already decreed in the Lemhi Adjudication. Furthermore, no prejudice will result because any party to the SRBA will have an opportunity to participate in these proceedings by filing objections and/or responses.

C. A Meritorious Position has been Presented.

Finally, a meritorious position has been presented by Mr. Beyeler. As stated above, the failure to file a claim for water right 74-871 was not willful. Since 1959, Mr. Beyeler and/or his parents have continuously diverted and beneficially used water right 74-871 in association with the ranching operation. *Beyeler Aff.* at ¶ 3. They continue to use water right 74-871 to this day. *Id.* at ¶ 9. Failure to recognize this water right will leave Beyeler Ranches without a vital water right necessary for its ranching operations. *Id.* Finally, there is no prejudice that will result from granting this motion because the water has been continually used and any party to the SRBA may file an objection or response to the Director’s recommendation on the water right.

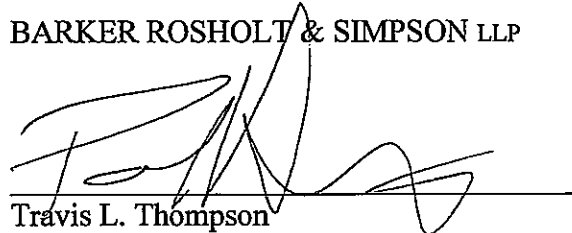
CONCLUSION

Beyeler Ranches has filed the present motion, seeking to file a late claim for its decreed water right 74-871. The facts demonstrate that Mr. Beyeler’s failure to file a claim for water

right 74-871 was not willful. Furthermore, no water user will be prejudiced by the granting of this motion. Accordingly, since a meritorious position has been presented, the motion should be granted.

DATED this 18th day of February, 2009.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'Travis L. Thompson', is written over a horizontal line.

Travis L. Thompson
Paul L. Arrington

Attorneys for Beyeler Ranches, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 2009, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

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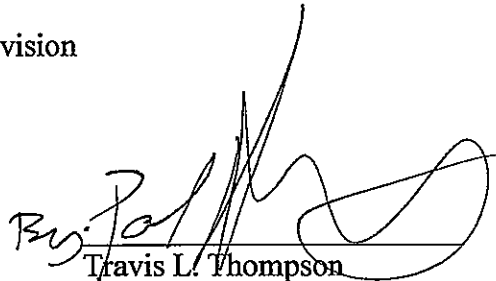
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