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DEPARTMENT OF
WATER RESOURCES

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IN RE SRBA)
CASE 38576) SUBCASE NO. 63-32024, 63-32025, 63-32026, 63-32027,
63-32033
BRIEF IN SUPPORT OF MOTIONS TO FILE
AMENDED CLAIM

COMES NOW SRBA Claimant and Objector City of Caldwell (hereinafter "City"), by and through its attorneys, Ringert Law, Chartered, and hereby files this *Brief in Support of Motions to File Amended Claims*. These *Motions* are filed pursuant to I.R.C.P. 7(b) and Rules 4.d.(2), SRBA Administrative Order No. 1. The grounds for these *Motions* are that the City has good cause pursuant to the standards of I.R.C.P. 55(c) for not having amended its claim to water right nos. 63-32024, 63-32025, 63-32026, 63-32027, 63-32033 earlier. Copies of the claims the City seeks to file are attached hereto as Exhibit "A". This Brief is supported by the *Affidavits of Carter Fritschle* and *Charles Honsinger* submitted concurrently herewith, by the existing record, and by the argument herein.

FACTS

The City of Caldwell claimed water right numbers 63-32024, 63-32025, 63-32026, 63-32027, 63-32033 in the Snake River Basin Adjudication. The Idaho Department of Water Resources recommended each of the claims with basically the same elements as claimed. The

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City objected to the recommendations of its groundwater rights on the basis that the remark regarding the rights' points of diversion was confusing and would make administration difficult. The City and IDWR entered into discussions in an effort to propose clear alternative language.

Through the process of reviewing the City's claims during settlement, the City and IDWR discovered that the claims that are the subjects of the Motions to Amend had not been claimed with the appropriate quantities. IDWR has indicated that if the City amends the above-captioned claims to water rights to include additional quantities, it is prepared to recommend the same in the SRBA based upon historical evidence.

ARGUMENT

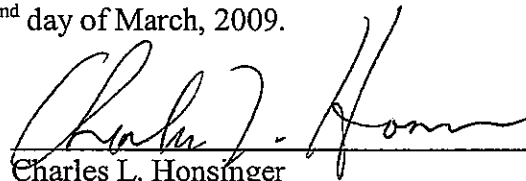
The legal standards for filing a late or amended claim to a water right recommended in the SRBA are set forth in Rules 4.d.(2)(d) and 4.d.(2)(e), SRBA Administrative Order No. 1. According to Administrative Order No. 1, such standards are the same as that by which a default judgment may be set aside 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. The City's Motions to File Late Claim meet the I.R.C.P. 55(c) standard.

First, the City did not willfully fail to file any of the amended claims. The City was unaware of the need to amend its claims to add the requested quantities until it entered into discussions with IDWR's Carter Fritschle. Thus, the City had no intent whatsoever regarding the amendment of its claims, and certainly did not willfully fail to amend such claims prior to now. Second, permitting the City to file its amended claims will not prejudice any opponent as the City

is the only party to the referenced subcases. Third, the City has set forth a meritorious position with respect to all of its motions. The Affidavit of Carter Fritschle in Support of the Motions to Amend Claim establishes that IDWR is in agreement that the evidence in support of the amended claims is sufficient to enable the recommendation of the same.

Because the City did not willfully fail to file its amended claims, because the amendments will not prejudice any opponent, and because it has presented a meritorious position as to each, the Court should grant the City's Motions to File Late Claim.

Respectfully submitted this 2nd day of March, 2009.

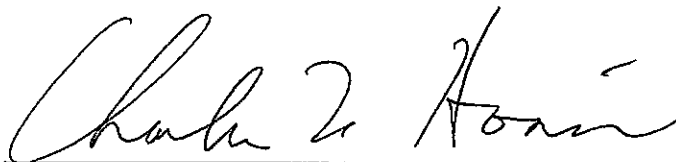

Charles L. Honsinger
Ringert Law, Chartered

CERTIFICATE OF MAILING

I certify that on March 2nd, 2009, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

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

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

A handwritten signature in black ink, appearing to read "Charles W. Horn", written over a horizontal line.

Signature of person mailing form