

CHARLES L. HONSINGER (ISB #5240)
JON GOULD (ISB \$6709)
RINGERT LAW CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Claimant Lava Lakes Land and Livestock, LLC

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 NUMBERS 37-22466, 37-22467,
	)	37-22468, 37-22469, 37-22470
	)	
	)	MEMORANDUM IN SUPPORT OF MOTIONS TO
	)	FILE LATE CLAIM
	)	
	)	

COMES NOW, Claimant Lava Lakes Land and Livestock, LLC (hereinafter "Lava Lakes"), by and through its counsel of record Ringert Clark, Chartered, and hereby submits this Memorandum in support of its Motions to File Late Claims related to the above referenced subcases filed concurrently herewith. This Memorandum is supported by the Supplemental Affidavit of Chuck Brockway in Support of Motions to File Late Claims, by the Affidavits of Charles Brockway, Jr., Leonard N. Purdy, and Kelly Christenson already on file in Subcase Nos. 37-37-2545A, 37-2545B, 37-2688, 37-11950, 37-07072, 37-07600, and by the record herein.

FACTS

Lava Lakes Land and Livestock, LLC (hereinafter "Lava Lakes") owns property in south central Idaho near the town of Carey. The land has historically been irrigated by water from four

COPY

sources: water stored in Lava Lake (water right nos. 37-11950 and 37-2688), Copper Creek and springs tributary thereto (water right nos. 37-2545A and 37-22116), Payne Creek (water right nos. 37-11936, 37-2715 and water right no. 37-1156), and groundwater (water right nos. 37-07600 and 37-07072). A road running east to west splits the ranch into north and south portions. *Brockway Affidavit*, ¶4; *Purdy Affidavit*, ¶6. Until 1986, the Lava Lake source and the Payne Creek and groundwater sources were used exclusively on separate portions of the ranch. *Brockway Affidavit*, ¶5. Licensed right no. 78-2545 from Copper Creek and springs was used to irrigate both portions of the ranch. *Id.*

In 1986, Lava Lake reconstructed its water distribution system to allow for the use of any of the four sources on any portion of the ranch, and began using water from all four sources in that manner, including the use of the same water rights to irrigate more acreage than either licensed or historically irrigated. *Purdy Affidavit*, ¶6; *Brockway Affidavit*, ¶6, *Supplemental Affidavit of Chuck Brockway*.

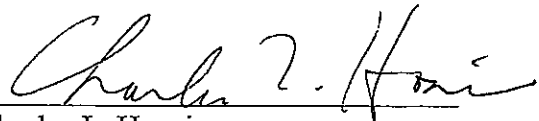
ARGUMENT

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. Lava Lake Land & Livestock LLC's Motions to File Late Claim meet the I.R.C.P. 55(c) standard.

First, Lava Lake did not willfully fail to file either the amended claim to water right no. 63-31058, or its late claim. Rather, it was not until Chuck Brockway conducted his recent study of Lava Lake's irrigation system and water rights that it was discovered that the claims and recommendations of its water rights did not reflect the actual use and configuration of those water rights after the northern and southern portions of the ranch were "connected" for irrigation purposes in 1986. Second, permitting Lava Lake to file its late claims will not prejudice any opponent. There is no opponent with respect to the late claims, and there is not now, and has never been, any other party or opponent with respect to any of the water rights claimed by Lava Lake as appurtenant to this place of use (see water right nos. 37-2545A, 37-2545B, 37-2688, 37-11950, 37-07072, 37-07600). Finally, Lava lake has set forth a meritorious position with respect to its motions. Mr. Brockway's affidavit indicates that there was an enlargement of existing water rights pursuant to I.C. §42-1426 after 1986, but before initiation of the SRBA in November of 1987.

Because Lava Lake did not willfully fail to file its late claims, because granting such claims will not prejudice any party, and because it has presented a meritorious position as to each, the Court should grant Lava Lake's Motions to File Late Claim.

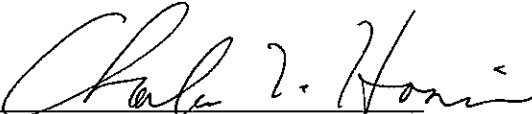
Dated this 19th day of October, 2009.


Charles L. Honsinger
RINGERT LAW, CHARTERED

CERTIFICATE OF SERVICE

I certify that on the 19th day of October, 2009, I served copies of this document, including all attachments by mailing a copy thereof, postage prepaid, to each of the parties listed below.

Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098


Person serving documents