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DEPARTMENT OF
WATER RESOURCES

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Attorney for Lambert Produce, Inc.

**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

Case No. 39576

Subcase No.: 45-13974

**MOTION TO FILE LATE
OBJECTION**

Lambert Produce, Inc. requests an order from the Court permitting it to file a late objection to the Idaho Department of Water Resources' Recommendation for water right 45-13974. The Recommendation, which as included in a November 2010 late claims report, is for a right claimed by Lambert that IDWR has recommended as disallowed. The objection deadline was on January 24, 2011. A Standard Form 1 Objection accompanies this motion.

Where a partial decree has 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)).

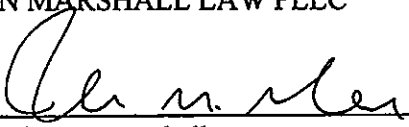
Lambert Produce can show good cause for the Court to grant this Motion. Lambert's failure to file an objection before the deadline was not willful. As explained in the accompanying Affidavit of John Marshall, Lambert did not realize that the Recommendation had been submitted and that an objection deadline had been set. Lambert prepared its objection and this motion as soon as it learned the recommendation had been submitted and the objection deadline had passed.

An order granting this Motion will not disrupt proceedings or prejudice other parties. There are no other objectors to water right 45-13974 and the response period runs through April 25, 2011. By contrast, if the motion is not granted, Lambert's claim, which represents long-standing water use on its farm, will be decreed disallowed and the water use will have to cease.

Lambert can show that water right 45-13974 should be decreed as claimed. The claim is based on long-standing irrigation water use that is confirmed by aerial photography. Lambert Produce requests that the Court grant this motion for late objection so the existence of this right can be fully vetted in the adjudication process.

DATED February 16, 2011

JOHN MARSHALL LAW PLLC

By: 

John M. Marshall

CERTIFICATE OF SERVICE

HEREBY CERTIFY that on February 16, 2011, the foregoing was filed, served, or copied as follows:

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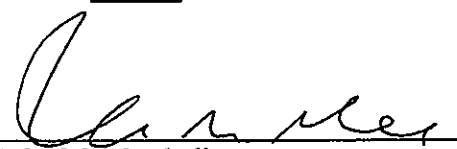
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