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**DEPARTMENT OF
 WATER RESOURCES**

Attorneys for Petitioner Wood River Valley Irrigation District #45

**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: 37-11951
	)	
Case No. 39576	)	MEMORANDUM IN SUPPORT OF
	)	MOTION TO FILE LATE
	)	OBJECTION

COMES NOW, Wood River Valley Irrigation District #45 ("District 45"), by and through its attorneys, Barker, Rosholt & Simplot, LLP, and submits this memorandum in support of its *Motion to File Late Objection*. For the following reasons, the Court should grant District 45's motion and allow this late objection.

INTRODUCTION

District 45 only recently realized that it failed to file an objection on water right 37-11951. That water right was erroneously recommended to be disallowed by the Director of the Idaho Department of Water Resources ("Department").

Water right 37-11951 is used by District 45 for conveyance loss through the District 45 canal. Water District 37 records show that this right has been delivered to District 45 since at least 1985.

District 45 inadvertently failed to file an objection to water right 37-11951. Upon realizing that it failed to file the objection, District 45 directed its attorneys to file this motion. As discussed below, good cause exists to grant this motion.

STATEMENT OF FACTS

Originally numbered 37-483, *Arrington Aff.* at Ex. A, water right 37-11951 has been delivered to WRVID since at least 1985, *id.* at Ex. B. District 45 uses this water right for conveyance loss in the district canal. *Harris Aff.* Importantly, the District still receives this water right and still uses it for conveyance loss. *Id.*

District 45 has a number of claims in the SRBA for conveyance loss, including 37-11953, 37-11954 & 37-22064. When recommendations for these water rights were issued, District 45 filed an objection to the Director's recommended disallowal.¹ However, District 45 inadvertently failed to file an objection on water right 37-11951. *Harris Aff.* To date, no objections have been filed on water rights 37-11951 and the water right has not been decreed.

Upon learning that the Director recommended that water right 37-11951 be disallowed and that no objection had been filed, District 45 directed its attorneys to file this motion. *Id.*

STANDARD OF REVIEW

In the *Memorandum Decision and Order on Challenge* (Subcase Nos. 47-16433 *et al*), Presiding Judge Melanson described the standard of review for filing a late objection:

In subcases *for which partial decrees have not been entered*, the legal standard for filing a late objection to a water right claim in the SRBA has been historically determined pursuant to the standard set forth in *AOI* for filing late claims. [citation omitted]. *AOI* does not expressly provide a standard for reviewing late objections. A motion to file a late claim is determined pursuant to I.R.C.P. 55(c), which provides the standard for setting aside the entry of a default.

¹ Water right 37-11952 is also a conveyance loss claim by District 45. That claim, however, was recommended by the Director so no objection was required.

Id., see *AOI* § 4d(2)(d) (late claims reviewed under I.R.C.P. 55(c) criteria) and (k) leave to amend a notice of claim shall be freely given when justice so requires). In the *A.L. Cattle* subcase, this Court held that the I.R.C.P. 55(c) standard should be applied to late objections to which partial decrees have not been entered, rather than the I.R.C.P. 60(b) standard.

In determining whether to set aside the entry of a default under I.R.C.P. 55(c), Idaho Courts apply a “good cause” for untimeliness standard. I.R.C.P. 55(c). The “good cause” standard is a more lenient threshold than the Rule 60(b) standard. *McFarland v. Curtis*, 123 Idaho at 935, 854 P.2d at 279. The I.R.C.P. 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.

Memorandum Decision and Order on Challenge at 5-6 (March 22, 2005) (“*Bedke I*”).

In doubtful cases, relief should be granted to reach a judgment on the merits. *Bedke I* at 10. This is because default judgments are disfavored. *See Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcase Nos. 65-07267 *et al.* (Jan. 31, 2001) (“*A.L. Cattle*”).

DISCUSSION

District 45’s *Motion to File Late Objection* is supported by good cause and a meritorious position; hence, it meets the above standard. First, District 45’s failure to object to the recommendation for water right 37-11951 was not willful. While researching the history of delivery and use of the claims to which District 45 filed an objection, it was discovered that the District inadvertently failed to file an objection to water rights 37-11951. As soon as District 45 realized the oversight, it directed its attorneys to file a motion seeking to file a late objection. *Harris Aff.*

Second, no prejudice will result from granting this motion. Protecting and defending water right 37-11951 is important to District 45. *Harris Aff.* The Department’s recommendation

does not accurately reflect the historical delivery of this water right. *Arrington Aff.* at Ex. B. While District 45's interests in this water right are significant, no party will be prejudiced by granting this motion. Any party to the SRBA who believes he or she is affected would have an opportunity to participate in this subcase by filing a response to the objection.

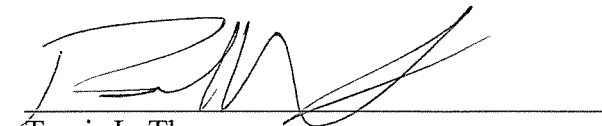
Finally, a meritorious position has been presented. District 45 moved to protect its interest in its conveyance loss claims by filing objections to water rights 37-11953, 37-11954 and 37-22064. Water District 37 records show that the right has been delivered to District 45 since at least 1985. *Arrington Aff.* As soon as the oversight was discovered, District 45 moved quickly to correct its oversight by directing its attorneys to file this motion. *Harris Aff.*

CONCLUSION

Good cause exists to grant District 45's motion. The failure to file an objection to water right 37-11951 was not willful. As soon as the oversight was discovered, District 45 directed its legal counsel to file the current motion. No prejudice will result and this Court should grant this *Motion to File Late Objection.*

DATED this 14th day of April, 2011.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in dark ink, appearing to read 'T. Thompson', is written over a horizontal line.

Travis L. Thompson

Paul L. Arrington

Attorneys for District 45

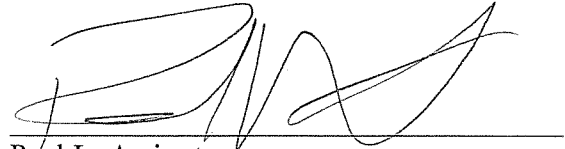
CERTIFICATE OF SERVICE

I certify that on this 14TH day of April, 2011, I served the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO FILE LATE OBJECTION**, including all attachments, to the following persons, via first class mail:

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