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Department of Water Resources

BOISE OFFICE

CONRAD J. AIKEN
THEODORE C. PETERS
DEBORAH L. LEHOSIT
LISA R. TANNER (CA ONLY)

101 SOUTH CAPITOL
BOULEVARD, SUITE 208
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE

477 SHOUP AVENUE
SUITE 203A
IDAHO FALLS, ID 83402
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6109

LAW OFFICES OF

**RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED**

CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
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MITCHELL W. BROWN
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RICHARD A. HEARN, M.D.
LANE V. ERICKSON
PATRICK N. GEORGE
SCOTT J. SMITH
LISA A. WOOD, CPA
STEPHEN J. MUHONEN
BRENT L. WHITING

August 18, 2004

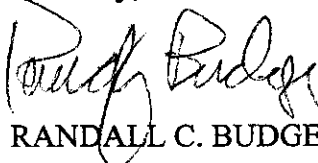
Clerk of the District Court
Snake River Basin Adjudication
Attention: Janet
P.O. Box 2707
Twin Falls, ID 83303-2707

Re: Claimant: *Diamond T Ranch, L.L.C.*
Subcase No. 29-07489A

Dear Janet:

Enclosed please find for filing a Motion to Set Aside Partial Decree and Notice of Hearing in the above-referenced matter, which I have served per the service list. Please note both Motions for hearing on October 5, 2004, at 9:00 a.m. as set by Special Master Bilyeu at this morning's status conference. Thank you.

Sincerely,


RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Service List
Phil Adams
Ralph Wheatley

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AUG 23 2004

Department of Water Resources

Randall C. Budge, ISB No. 1949
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Fax: 208-232-6109

**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 No. 29-07489A
	)	
	)	MOTION TO SET ASIDE
Case 39576	)	PARTIAL DECREE AND
	)	NOTICE OF HEARING
	)	
	)	

COMES NOW DIAMOND T RANCH, L.L.C., owner of Water Right No. 29-07489A, through counsel Randall C. Budge of the firm Racine, Olson, Nye, Budge & Bailey, Chartered, Pocatello, Idaho, and hereby moves the Court pursuant to Rule 60(b) Idaho Rules of Civil Procedure for an Order setting aside the Partial Decree for Water Right No. 29-07489A entered on March 22, 2004, by The Honorable John M. Melanson, Presiding Judge of the Snake River Basin Adjudication. This Motion is made upon the grounds and for the reasons that said Partial Decree was entered as a result of mistake, inadvertence, surprise or excusable neglect, not more than six months have passed since the Judgment was entered, and it would be fair, just and reasonable to set aside the Partial Decree. In further support hereof, Diamond T and its counsel state and represent to the Court as follows:

1. Water Right No. 29-07489A and also pending Water Right Claims numbered 29-2433 and 29-4277 are related and pertain to separate ground water rights pertaining to three wells which

are interconnected and used to irrigate by center pivots a combined total of 308 acres. Diamond T did not file the original claims as it subsequently acquired the property and water rights and was unaware until recently that the claims did not accurately reflect the interconnection and historic use practices.

2. In recent months Diamond T engaged its counsel of record to evaluate and advise regarding these water right claims and became aware, for the first time, that these three water rights as claimed, as well as the Department's Water Right Recommendations, did not accurately reflect the interconnection and historic use practices. Accordingly, Diamond T sought to amend Water Right Nos. 29-2433, 29-4277 and 29-07489A to accurately reflect the interconnected system and historic use practices. In support thereof, Affidavits of the well driller, Forrest Cagle, and prior owner, Virgil Jahnke, were secured and a proposed Settlement Agreement entered into with the Department that would provide for the disallowance of Water Right No. 29-2433 and the Amendment of Water Right Nos. 29-4277 and 29-7489A.

3. To implement the settlement, Diamond T filed on or about July 21, 2004, a Motion to File Amended Notice of Claim with respect to Water Right No. 29-4277 and 29-7489A. Thereupon, it was learned from the Clerk of the Court that the Partial Decree was previously entered on Water Right No. 29-07489A, by reason of which the Motion to Amend pertaining to that right was held.

4. The Motion to File an Amended Notice of Claim with respect to Water Right No. 29-7244 was granted by Special Master Brigitte Bilyeu following a hearing conducted August 18, 2004. This Motion to Set Aside the Partial Decree pertaining to Water Right No. 29-07489A is for the purpose of setting aside the Partial Decree so that Water Right No. 29-07489A can be amended

consistent with the amendment of Water Right No. 29-4277. If the Motion to Set Aside Partial Decree and the Motion to Amend which are noticed up for hearing on October 5, 2004 at 9:00 a.m. are both granted, it will permit Water Right Nos. 29-4277 and 29-07489A to correctly and accurately reflect the common points of diversion and place of use for these rights based upon the interconnected irrigation system and historic practices. Further, it will permit Water Right No. 29-2433 to be disallowed. All of this will permit the Settlement Agreement to be implemented and is fair, just and reasonable and will not result in any expansion of the water rights or any injury to others.

Based on the foregoing, Diamond T respectfully requests as follows:

- A. That the Court enter an Order setting aside the Partial Decree of Water Right No. 29-07489A entered on March 22, 2004;
- B. That the Motion to File Amended Notice of Claim previously filed with respect to Water Right No. 29-07489A be granted after the Motion to Set Aside is ordered;
- C. That both Motions be simultaneously noticed up and heard October 5, 2004 at 9:00 a.m. by the Court.

RESPECTFULLY SUBMITTED this 18th day of August, 2004.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By Randall C. Budge
RANDALL C. BUDGE
Attorney for Claimant

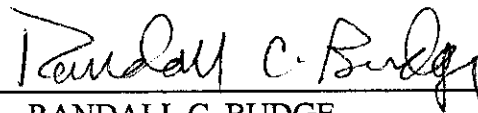
NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the foregoing Motion to Set Aside Partial Decree of Water Right No. 29-07489A and the Motion to File Amended Notice of Claim previously filed on or about July 21, 2004 with respect to Water Right No. 29-07489A, will be heard simultaneously before the Honorable Brigitte Bilyeu, Special Master of the Snake River Basin Adjudication Court, by telephone conference hearing on October 5, 2004 at the hour of 9:00 a.m.

DATED this 18th day of August, 2004.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By



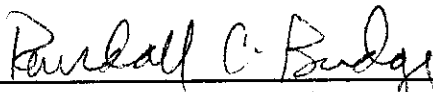
RANDALL C. BUDGE
Attorney for Claimant

VERIFICATION

State of Idaho)
 : ss
County of Bannock)

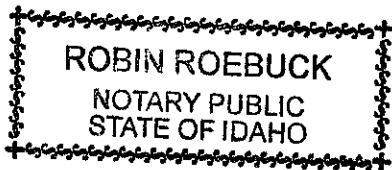
Randall C. Budge, duly sworn, upon oath, deposes and says:

That I am the party filing this objection, as defined by I.C. §§42-1401A(1) and (6) or that I am the attorney for the party objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



RANDALL C. BUDGE, Attorney

SUBSCRIBED AND SWORN TO before me this 18th day of August, 2004.





NOTARY PUBLIC FOR IDAHO,
Residing at Pocatello.
My Commission Expires 8/18/2006.

CERTIFICATE OF MAILING

I certify that on August 18, 2004, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copy to Claimant:

Diamond T Ranch, L.L.C.
1705 N. Highway 38
Brigham City, Utah 84302

3. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, Idaho 83724



RANDALL C. BUDGE
Attorney for Objector