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Department of Water Resources

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Attorney for Claimant

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 37-10271
)
) MOTION TO SET ASIDE
) PARTIAL DECREE; I.R.C.P.
) 60(b)(1)
)
) MOTION TO FILE LATE
) OBJECTION
)
) MEMORANDUM IN SUPPORT
) THEREOF

I. MOTION

Comes now the claimant of the above-captioned water right, and moves for an order of this Court setting aside the *Partial Decree* issued for the subject water right on December 11, 2002, and allowing the Claimant to file a late objection thereto.

This Motion is based upon I.R.C.P. 60(b)(1) (inadvertence and excusable neglect).

MOTION TO SET ASIDE PARTIAL DECREE -1

II. MEMORANDUM

A Notice of Claim was filed for the above captioned water right on June 27, 1988. The property to which the water right is appurtenant was subsequently purchased by the Claimants in this matter, John and Carole Bennett (hereinafter "Bennett"). At that time, the Bennetts notified IDWR of the change in ownership.

The Bennetts changed residences in September of 1999, but neglected to notify the Idaho Department of Water Resources as to their new mailing address (the new address is the property to which the subject water right is appurtenant). Consequently, correspondence from IDWR requesting information as to the claimed water right, and ultimately the notice of filing the Director's Report, were returned to IDWR as undeliverable. IDWR did not attempt to ascertain the new address of the Bennetts. A *Partial Decree* was issued for this water right on December 11, 2002. No previous objections have been filed thereto.

The Bennetts became aware that a *Partial Decree* had been entered for this water right on or about January 9, 2003, less than one month after issuance. Because the *Partial Decree* omitted the claimed irrigation purpose of use for this water right, the Bennetts immediately consulted counsel seeking to remedy this situation.

It is respectfully submitted that the Bennetts failure to notify IDWR in September of 1999 as to their change in mailing address constitutes inadvertence and

MOTION TO SET ASIDE PARTIAL DECREE -2

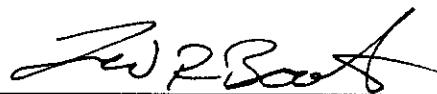
excusable neglect as contemplated under I.R.C.P. 60(b)(1). This motion is timely as it is made well within the six month time limit set forth in that Rule. Wherefore, the Bennetts respectfully request an order of the Court allowing the *Partial Decree* be set aside for the purpose of filing a late objection thereto.

A completed *Standard Form 1 Objection* is enclosed herewith, to be lodged by the Court until such time as this motion may be granted, at which time the objection may be filed.

Pursuant to SRBA docket sheet procedures, a this matter will be heard at the SRBA monthly status conference on **April 15, 2003, at 1:30 o'clock p.m. at the Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls Idaho.**

DATED this 14th day of January, 2003.

ARKOOSH LAW OFFICES, CHTD.



Theodore R. Booth
Attorney for Claimants

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of January, 2003, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

Clerk of the District Court	<u>X</u>	United States Mail, Postage Prepaid
SNAKE RIVER BASIN ADJUDICATION	<u> </u>	Overnight Courier
253 Third Avenue North	<u> </u>	Via Facsimile
PO Box 2707	<u> </u>	Hand Delivered
Twin Falls, ID 83303-2707		

IDWR Document Depository	<u>X</u>	United States Mail, Postage Prepaid
PO Box 83720	<u> </u>	Overnight Courier
Boise, ID 83720-0098	<u> </u>	Via Facsimile
	<u> </u>	Hand Delivered

Chief, Natural Resources Division	<u>X</u>	United States Mail, Postage Prepaid
Office of the Attorney General	<u> </u>	Overnight Courier
State of Idaho	<u> </u>	Via Facsimile
PO Box 44449	<u> </u>	Hand Delivered
Boise, ID 83711-4449		

US Department of Justice	<u>X</u>	United States Mail, Postage Prepaid
Environment and Natural	<u> </u>	Overnight Courier
Resource Division	<u> </u>	Via Facsimile
550 West Fort Street, MSC 033	<u> </u>	Hand Delivered
Boise, ID 83724		



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