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Attorneys for Earl Warthen, Objector


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MAY 31 2007

**DEPARTMENT OF
WATER RESOURCES**

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 Nos. 45-10480, 45-10481, 45-10502
	)	45-12906, and 45-13991
	)	
	)	
Case No. 39576	)	JOINT NOTICE TO COURT OF
	)	INCONSISTENCY IN APPROVAL
	)	OF WATER RIGHTS SETTLEMENT
	)	AGREEMENT AND DISMISSAL OF
	)	OBJECTIONS
	)	

COMES NOW, Norman, Dolores and Kevin Smyer, by and through their counsel,
Michael P. Tribe of the law firm Ling Robinson & Walker, and Earl Warthen, by and through his
counsel, Shelley M. Davis of the law firm Barker Rosholt & Simpson, LLP, and jointly submit
this notice to the Court of perceived inconsistency in the entering of the parties Water Rights
Settlement Agreement.

In October 2006, the parties submitted for the Court's approval a Settlement Agreement
resolving all outstanding objections and issues related to litigation in the above-referenced sub-
cases, replacing the necessity for a trial in the litigation related to sub-case numbers 45-10480,
45-10481, 45-10502, and 45-12906, and submitted that upon approval of the Agreement all

parties agreed to withdraw their pending objections to one another's water right recommendations in the above-entitled sub-cases. Chris Bromley, Deputy Attorney General in the Idaho Department of Water Resources agreed that the fact that the parties have entered into a Settlement Agreement governing the use of water in the above-entitled sub-cases will be captured in a Standard Form 5, and referenced in the remark portion of the ultimate decrees for the above-entitled sub-cases.

Upon review of the action taken by the court to date in enforcing the Settlement Agreement, it appears that the Court has taken the following action:

The Court has entered the Order Approving Settlement Agreement in sub-case numbers 45-327E, 45-7366, and 45-10502. The Settlement Agreement was not meant to be referenced or entered in 45-327E, or 45-7366. The Motion for Approval was not submitted in those two sub-cases, nor was it contemplated by the parties that the Settlement Agreement would affect or be referenced in the remarks for those two sub-cases. It is requested that the Court submit recommendations for partial decrees granting water rights numbered 45-327E and 45-7366 that do not include references to the parties' settlement in those two sub-cases.

It also appears that the Court has not entered orders approving the Settlement Agreement in sub-case numbers 45-10480, 45-10481, 45-12906, and 45-13991. The parties request that the Court enter an Order approving the settlement agreement in these sub-cases.

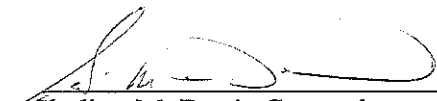
Upon review it appears that the recommendations for partial decrees in sub-case numbers 45-12906 and 45-13991 include the remark language agreed upon by the parties and this Court during a status conference. The parties request that the Court, in addition to entering an Order approving settlement agreement in subcase numbers 45-12906 and 45-13991, also enter the

Order in sub-case numbers 45-10480, and 45-10481, and include the remark language in the recommendations for those water rights.

THEREFORE, the Parties hereby request that the Court take the requested actions approving the settlement agreement and including the remark language in the recommendations for sub-case numbers 45-10480, 45-10481, 45-12906, and 45-13991. The parties further request that the Court remove the Order Approving Settlement Agreement in sub-case numbers 45-327E and 45-7366, and remove the remark language referencing the settlement agreement in the recommendation for those two rights, as it was not contemplated that those rights be subject to the settlement agreement.

Dated this 30th day of May, 2007

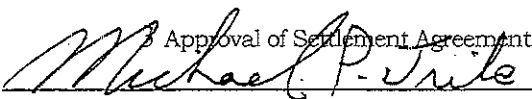
BARKER ROSHOLT & SIMPSON LLP



Shelley M. Davis Counsel
for Earl Warthen

Dated this 30th day of May, 2007.

LING ROBINSON & WALKER, LLP



Approval of Settlement Agreement

Michael Tribe
Counsel for Norman, Dolores, & Kevin Smyer

CERTIFICATE OF SERVICE

I hereby certify that on this 32nd day of May, 2007, I served a true and correct copy of the foregoing *Joint Notice to the Court of Inconsistency in Approval of Water Rights Settlement Agreement and Dismissal of Objections* on the following by the method indicated below:

Original via facsimile to:

Clerk
Fifth Judicial District Court
Snake River Basin Adjudication
253 3rd Ave. N.
P.O. Box 2707
Twin Falls, ID 83303-2707

Copies via U.S. Mail, Postage Prepaid, to:

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

United States Department of Justice
Environment and Nat'l Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

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



Shelley M. Davis