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DEPARTMENT OF
WATER RESOURCES

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COPY

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 Nos.: 74-54

NOTICE OF ERRATA

F. James Whittaker and Paula J. Whittaker ("Whittaker"), by and through their attorneys of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., file this Notice of Errata in regards to Whittaker's "Response to Leadore Land Partners Ltd. Partnership's Motion for Partial Summary Judgment" (hereinafter "Whittaker Response Brief") in the above-numbered subcase. There are two sentences that contains errors as to Water Right No. 74-54. The arguments actually related to 74-40, not 74-54. The incorrect sentences are set forth below, followed by the appropriate corrections in bold:

Whittaker Response Brief, p. 3, first full paragraph:

INCORRECT: A resumption of use of the Big Timber Creek point of diversion would injure Whittaker and many other water users, constitute an enlargement in use, and disrupt the historical delivery of water that the water users on Big Timber Creek have so relied for decades. As such, the point of diversion has been forfeited and 74-54 should not be partially decreed with a point of diversion from Big Timber Creek.

CORRECT: A resumption of use of the Big Timber Creek point of diversion would injure Whittaker and many other water users, constitute an enlargement in use, and disrupt the historical delivery of water that the water users on Big Timber Creek have so relied for decades. **As such, 74-54 has been forfeited and should not be partially decreed in the SRBA.**

Whittaker Response Brief, p. 3-4, first full paragraph of Section B:

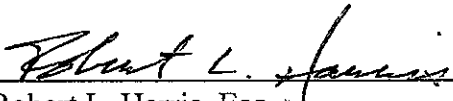
INCORRECT: Whittaker recognizes that entry of a partial decree for 74-54 in the Lemhi Adjudication creates a difficult burden to overcome in the SRBA regarding the use of pre-December 30, 1982 evidence to demonstrate the historic non-use of 74-54 for partial decree in the SRBA. As noted by the Claimants, parties are bound by the determinations of a previous decree.¹ However, it is not necessary at this summary judgment stage to challenge the Lemhi Decree for 74-54 because there are other theories, as set forth above, to decree 74-54 in the SRBA as it has been historically used only from Little Timber Creek. As such, it is not necessary to make this argument now, but in the event summary judgment is not successful based on the theories advanced above, a challenge to the Lemhi Adjudication and/or claim of mistake in the Lemhi Adjudication would be raised at trial. In that instance, evidence of pre-December 30, 1982 water use would be relevant and appropriate.

¹ *Id.* at 5.

CORRECT: Whittaker recognizes that entry of a partial decree for 74-54 in the Lemhi Adjudication creates a difficult burden to overcome in the SRBA regarding the use of pre-December 30, 1982 evidence to demonstrate the historic non-use of 74-54 for partial decree in the SRBA. As noted by the Claimants, parties are bound by the determinations of a previous decree.² However, it is not necessary at this summary judgment stage to challenge the Lemhi Decree for 74-54 because there are other theories, as set forth above, upon which 74-54 should be disallowed in the SRBA. As such, it is not necessary to make this argument now, but in the event summary judgment is not successful based on the theories advanced above, a challenge to the Lemhi Adjudication and/or claim of mistake in the Lemhi Adjudication would be raised at trial. In that instance, evidence of pre-December 30, 1982 water use would be relevant and appropriate.

Counsel for Whittaker regrets the error, and apologizes to the parties for the confusion the above error has caused.

Dated this 9th day of April, 2008.


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

² *Id.* at 5.

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of ^{April}~~March~~, 2008, I mailed or faxed the original and copies of this memorandum, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

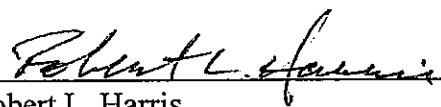
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