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MAY 08 2008

DEPARTMENT OF  
WATER RESOURCES

ATTORNEY FOR ALWYN AND BETTY NEDROW

**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. 21-00079       |
|                | ) |                            |
| Case No. 39576 | ) | OBJECTION TO MOTION TO     |
|                | ) | SET ASIDE PARTIAL DECREE   |
|                | ) | AND OBJECTION TO MOTION TO |
|                | ) | FILE LATE OBJECTION        |
|                | ) |                            |

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COME NOW Alwyn and Betty Nedrow, by and through their attorney Daniel R. Beck of Fuller and Carr, and file this Objection to the Motion to Set Aside Partial Decree and Motion to File Late Objection filed by Arcadia Canal & Reservoir LTD (hereafter "Arcadia") for purposes of the hearing scheduled before Special Master Brigitte Bilyeu, on June 18, 2008 at 1:30 PM. The Nedrows object to Arcadia's Motion to Set Aside the Partial Decree, issued on February 2, 2007 for the following reasons:

- (1) Over one year passed prior to the filing of the Motion, and Arcadia has not set forth any grounds which would justify setting aside the partial decree under Idaho Rule of Civil Procedure 60(a) or 60(b).
- (2) The Nedrows established their ownership of 21-00079 pursuant to the "Stipulation and Judgment" signed June 1, 1981 by the Nedrow's attorney, J.D

Hancock, Phillip Rassier on behalf of the State of Idaho, and Ray Rigby on behalf of George Nedrow and Gaylene Nedrow. George Nedrow is the individual who signed the Motion on behalf of Arcadia.

- (3) That because Arcadia Canal & Res. LTD is an entity it is required to appear by attorney and the Court should dismiss the Motion until Arcadia appears through an attorney.
- (4) The Nedrows request attorney fees in the amount of \$450.00. Such fees are appropriate as a sanction against Arcadia's improper filing of the Motion, under Idaho Rule of Civil Procedure 11 or under Idaho Code §12-120 and 121.

#### **STATEMENT OF FACTS**

1. On June 19, 1893, Alwyn and Betty Nedrow's predecessor in interest appropriated the water now decreed as Water Right No. 21-00079. See Stipulation and Judgment, dated June 1, 1981, contained in the "Field Notes", pg. 3, in the file for Water Right No. 21-00079.
2. On December 16, 1910 water right No 21-00079 was decreed as being owned by Simington Nedrow. See Stipulation and Judgment.
3. On June 1, 1981, George Nedrow, through his counsel stipulated that Alwyn Nedrow was the owner of water right 21-00079. *Id.*
4. On December 13, 1988 Alwyn and Betty Nedrow filed a "Notice of Claim to a Water Right" with the Department of Water Resources. See Adjudication Claim back File, in the file for Water Right No. 21-00079.
5. On February 2, 2007 a Partial Decree was issued for Water Right No. 21-

00079 in Alwyn and Betty Nedrow's name. See Partial Decree, in Water Right file 21-00079.

6. On March 26, 2008, George Nedrow, knowing that he had previously litigated issues regarding Water Right 21-00079 and had stipulated to an order that Water Right 21-00079 was owned by Alwyn & Betty Nedrow, filed an Objection to Water Right 21-00079, which is being treated as a Motion to Set Aside Partial Decree by the Court. See Standard Form 1 Objection, dated March 26, 2008.

### **ARGUMENT**

#### **A. THE MOTION IS UNTIMELY**

The Motion to Set Aside Partial Decree was filed more than one year after a Partial Decree was issued. The only grounds stated in the Motion are that "This water right was combined with other rights when the Arcadia Canal & Res. LTD was formed." This is not an allegation of a clerical mistake, so IRCP 60(a) is inapplicable. Nor is this an allegation which fits within any of the provisions of IRCP 60(b). The currently alleged grounds to set aside the partial decree should have been brought prior to the entry of the partial decree unless there was "mistake, inadvertence, surprise, or excusable neglect." However, because more than six (6) months has passed since the entry of the Partial Decree, even those grounds are barred by IRCP 60(b). The untimely nature of Arcadia's motion requires its dismissal.

#### **B. THE MOTION HAS NO MERIT**

Even if the Motion had been timely filed, the evidence contained in the File for

water right 21-00079 establishes that Alwyn and Betty Nedrow are the true owners of water right 21-00079. This same issue was previously litigated by George Nedrow in the early 1980s, which ended when Mr. George Nedrow, through his attorney stipulated that Alwyn Nedrow was the rightful owner of water right 21-00079. See Stipulation and Judgment. George Nedrow's current attempt, on behalf of Arcadia, to undo the effect of that Stipulation is meant only to harass and annoy Alwyn and Betty Nedrow. Arcadia's Motion to Set Aside Partial Decree should be dismissed because it has no merit.

**C. AN INDIVIDUAL, UNLICENSED AS AN ATTORNEY CANNOT REPRESENT AN ENTITY IN COURT**

In Idaho an unlicensed individual cannot represent an entity before a public agency or in Court. See *Kyle v. Beco Corp.*, 109 Idaho 267, 271, 707 P.2d 378 (1985). Specifically, the Court in *Kyle*, held that "representation of another person before a public agency or service commission constitutes the unauthorized practice of law, where the proceedings before those tribunals are held for purposes of adjudicating the legal rights or duties of a party." *Id.* The Idaho State Bar, pursuant to direction from the Supreme Court, found "that business entities (other than individuals) must be represented by attorneys." *Id.* The Supreme Court stated:

The legislature could not have delegated to the Industrial Commission the power—which the legislature itself lacks—to allow laypersons to represent parties in adjudicative proceedings. Only this Court could authorize corporate agents who are non-lawyers to appear on behalf of a corporation before the Industrial Commission. **This we decline to do.** Rather, we hold that, where an entity chooses to incorporate under the laws of this State and to thereby receive the benefits and privileges extended to corporations, it cannot, when convenient, ask the court to ignore its corporate status and extend to it the advantages to which an individual person is commonly entitled.

*Id.* at 272. The Court should dismiss the Motion to Set Aside Partial Decree because Mr.

Nedrow's signing of the Objection, and expected appearance at the June 18, 2008 hearing constitutes the unauthorized practice of law in Idaho.

Furthermore, the verification page has not been notarized.

For the above reasons the Court should dismiss the Motion to Set Aside Partial Decree.

#### **D. ATTORNEY FEES**

Alwyn and Betty Nedrow are entitled to recover attorney fees they incurred in defending against Arcadia's frivolous filing. Mr. George Nedrow filed the objection, without a reasonable basis in law or fact, for the sole purpose of harassing Alwyn and Betty Nedrow. This is especially apparent where Mr. George Nedrow previously litigated this exact same water right, prior to stipulating that it was actually owned by Alwyn Nedrow. The Court should sanction this type of conduct by awarding attorney's fees pursuant to IRCP 11(a), or should grant attorney fees under Idaho Code 12-120 and 12-121. Alwyn and Betty Nedrow are expected to incur attorney fees in the amount of \$450.00 for the defense of this action.

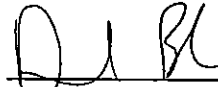
#### **CONCLUSION**

Arcadia's Motion to Set Aside Partial Decree is untimely because it was not brought within six (6) months after the issuance of the Partial Decree, and none of the grounds asserted in Arcadia's Motion fit within the provisions of IRCP 60(a) or 60(b). Furthermore, Arcadia's agent in filing the Motion to Set Aside the Partial Decree, previously stipulated to Alwyn Nedrow's ownership of Water Right 21-00079, filing of the Motion in this case, was meant only for the purposes of harassing the true owners of the

water right. Finally, Arcadia is not properly represented by an attorney in this case and their Motion should be dismissed. Representation of an entity must be through an attorney. Alwyn and Betty Nedrow request attorney fees under IRCP 11(a) as a sanction for George Nedrow's frivolous filing of the Motion to Set Aside Partial Decree. In the alternative, Alwyn and Betty Nedrow request attorney fees under Idaho Code §12-121. In the amount of \$450.00.

DATED this 6th day of May, 2008.

FULLER & CARR

A handwritten signature in black ink, appearing to read 'D. Beck', is written over a horizontal line.

Daniel R. Beck  
Attorney for Alwyn and Betty Nedrow

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the attorney listed below on this 6th day of May, 2008:

Document Served:

OBJECTION TO MOTION TO SET ASIDE  
PARTIAL DECREE AND MOTION TO  
FILE LATE OBJECTION

Original to:

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

☒ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery

Copies to:

Arcadia Canal & Reservoir LTD  
1361 N. 3125 E.  
Ashton, ID 83420

☒ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery

IDWR Document Depository  
PO Box 83720  
Boise, ID 83720-0098

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

☒ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery

Chief, Natural Resources Division  
Office of Attorney General  
PO Box 44449  
Boise, ID 83711-4449

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