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DEPARTMENT OF
WATER RESOURCES

COPY

Robert L. Harris, Esq.
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Attorney for Arcadia Reservoir and Canal Company, Ltd.

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 No. 21-79

**AMENDED OBJECTION AND
MOTION TO SET ASIDE PARTIAL
DECREE**

Arcadia Reservoir and Canal Company, Ltd. (Arcadia), by and through their counsel of record, Robert L. Harris of the law firm Holden, Kidwell, Hahn & Crapo, PLLC, hereby file this motion to file an amended objection and motion to set aside Partial Decree. The hearing on the original objection and motion to set aside Partial Decree is currently scheduled for June 18, 2008, at 1:30 p.m. before Special Master Brigitte Bilyeu, and this Amended Objection and Motion to Set Aside Partial Decree is intended to supercede the objection previously filed by Arcadia. The reasons supporting this motion are set forth below.

The original objection filed by Arcadia states that Water Right No. 21-79 should not exist. After review of materials relevant to the claim for Water Right No. 21-79, Arcadia has concluded that the water right should indeed exist based upon the stipulation and judgment previously filed with this Court by the claimants' attorney. For ease of reference, a copy of this Stipulation and Judgment

is attached as Exhibit A. As contained in Exhibit A, Paragraph 1 of the Stipulation states the following:

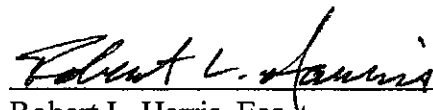
That Alywn Nedrow is the owner of a right to 75 inches (1.5 cfs) of water as decreed on December 16, 1910 in the case of Rexburg Irrigation Company vs. Teton Irrigation Canal Company, (6th Jud. Dist., Fremont Co.), to Simington Nedrow with a priority date of June 19, 1893 from “springs on land” for irrigation use on the “SW¼ of Sec. 32, T. 9N., R. 42E., B.M., containing 160 acres”, and subsequently identified by the Department of Water Resources as decreed right no. 21-0079.

Initially, there was some confusion over the dates contained in this stipulation, but Arcadia is now satisfied that the claimants do indeed have a water right, No. 21-79, with a priority date of June 19, 1893.

However, upon further review of the Partial Decree issued for this right, it appears there is a mistake as to the source listed on the Partial Decree. As contained in the Stipulation contained above, the source is more accurately labeled as “springs on land”, and not Snow Creek as it is currently partially decreed. We presume the Idaho Department of Water Resources, in investigating this water right, received a copy of this Stipulation, and appears to have made a clerical error when it listed Snow Creek as the source of this water right. The listing of Snow Creek as the source is contrary to the Stipulation entered into between the parties.

It therefore appears that a clerical error has been made pursuant to Idaho Rules of Civil Procedure, Rule 60(a). As such, we request the Court set aside the current Partial Decree for Water Right No. 21-79, accurately list springs as the source for this water right, and issue another Partial Decree nearly identical to the current Partial Decrees, except for the listed source.

DATED this 13th day of June, 2008,


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this 13th day of June, 2008.

DOCUMENT SERVED: AMENDED OBJECTION AND MOTION TO SET ASIDE PARTIAL DECREE

ATTORNEYS AND/OR INDIVIDUALS SERVED:

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

(☒) *First Class Mail*
(☐) *Hand Delivery*
(☐) *Facsimile*
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Boise, ID 83720-0098

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

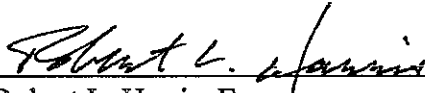
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Chief, Natural Resources Div.
Office of Attorney General
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Boise, ID 83711-4449

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Robert L. Harris, Esq.
Holden, Kidwell, Hahn & Crapo, PLLC

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Exhibit A

DAVID H. LEROY
Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone: (208) 384-2400

This Document to which this certificate is
attached is a full, true and correct copy
of the original on file and of record in my
office, having been filed 6-5-81
1981
Date, Clerk of the District
Court, Seventh Judicial District in
and County, Idaho.
By Barbara S. [Signature]

DON A. OLOWINSKI
Deputy Attorney General
Chief, Natural Resources Division

PHILLIP J. RASSIER
Deputy Attorney General
Department of Water Resources
Statehouse
Boise, Idaho 83720
Telephone: (208) 334-4448

Liine
6-5-81
Barbara S. [Signature]

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

ALWYN NEDROW and BETTY E.
NEDROW, his wife,

Case No. 7388

Plaintiffs,

STIPULATION
AND
JUDGMENT

vs.

RONALD D. CARLSON, Watermaster
of Water District No. 1 of the
State of Idaho; ALL UNKNOWN
CLAIMANTS OF 600 MINER'S INCHES
OF THE WATERS OF SNOW CREEK, A
TRIBUTARY TO THE SNAKE RIVER
DIVERTED FROM SAID CREEK IN THE
S $\frac{1}{4}$ OF THE NW $\frac{1}{4}$; SW $\frac{1}{4}$; AND LOTS 4
AND 5 OF SECTION 32; TOWNSHIP 9
NORTH, RANGE 42 EAST, BOISE
MERIDIAN IN FREMONT COUNTY, IDAHO,

Defendants.

COME NOW all parties to the above-entitled action by and
through their respective counsel, J. D. Hancock, attorney for
plaintiffs, Phillip J. Rassier, Deputy Attorney General for the
Idaho Department of Water Resources, attorney for the defendant
watermaster, and Ray W. Rigby, attorney for George E. Nedrow and
Gaylene Nedrow, and stipulate and agree as follows:

1. That Alywn Nedrow is the owner of a right to 75 inches
(1.5 cfs) of water as decreed on December 16, 1910 in the case of
Rexburg Irrigation Company vs. Teton Irrigation Canal Company

STIPULATION AND JUDGMENT - Page 1

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Department of Water Resources
Eastern District Office

Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone: (208) 344-2400

(6th Jud. Dist., Fremont Co.), to Simington Nedrow with a priority date of June 19, 1893 from "springs on land" for irrigation use on the "SW $\frac{1}{4}$ of Sec. 32, T. 9N., R. 42E., B.M., containing 160 acres", and subsequently identified by the Department of Water Resources as decreed right No. 21-0079.

2. That prior to 1969, the place of use for right No. 21-0079 was transferred by the plaintiffs or their predecessors in interest to 110 acres of land within the SW $\frac{1}{4}$ of Sec. 32, Twp. 9N Rge. 42E, B.M., to include that area located on the west side of Snow Creek, and the point of diversion of the water right was transferred to two points on Snow Creek, one each within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 32, and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 32, Twp. 9N, Rge. 42E, B.M., for irrigation use from April 1 to November 1.

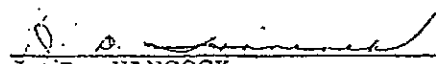
3. That a measuring device of a type approved by the Department of Water Resources shall be permanently installed and maintained as part of the diverting works at each point of diversion and at such locations as may be required by the watermaster including measuring devices to measure amounts of water diverted into Snow Creek from other sources.

4. That this action brought by the above-named plaintiffs for a decree quieting title to certain water rights in Snow Creek, tributary to the Henry's Fork of the Snake River in Fremont County, Idaho, shall be fully compromised, settled and resolved upon the court's approval of this stipulation of the parties and entry of judgment by the court.

5. That each party to this action shall bear their own costs and attorney's fees.

6. That the trial date set for June 5, 1981 in this action shall be vacated.

DATED this 1st day of June, 1981.


J. D. HANCOCK
Attorney for Plaintiffs

STIPULATION AND JUDGMENT - Page 2

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Attorney General
State of Idaho
Solicitor General
Boise, Idaho 83720
Telephone: (208) 381-2000

Phillip J. Rassier
PHILLIP J. RASSIER
Deputy Attorney General
Department of Water Resources

Ray W. Rigby
RAY W. RIGBY
Attorney for George E. Nedrow and
Gaylene Nedrow

JUDGMENT

Upon stipulation of the parties hereto, and good cause
appearing therefor,

IT IS HEREBY ORDERED ADJUDGED AND DECREED That the above-
entitled case shall be fully compromised, settled and resolved as
set forth in the foregoing stipulation of the parties.

DATED This 1 day of June, 1981.

Willard C. Burton
WILLARD C. BURTON
District Judge

NOTICE OF ENTRY

I HEREBY CERTIFY that on this 4th day of June, 1981, I
mailed a certified copy of the foregoing Stipulation & Judgment to
the following parties:

Phillip J. Rassier
Deputy Attorney General
Statehouse
Boise, Idaho 83720

J. D. Hancock, Esq.
Smith, Hancock & Moss
30 South 2nd West
Rexburg, Idaho 83440

Ray W. Rigby, Esq.
Rigby, Thatcher, Andrus,
Barton & Walters, Chartered
25 North 2nd East
Rexburg, Idaho 83440

S. D. Hanson
Clerk

BY: _____
Deputy

MAILED
MAY 13 1986