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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

Case No. 39576

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Subcase Nos. 78-00182, 78-00206A,  
78-12128, 78-12162, 78-12165

MOTION TO ALTER OR AMEND

**Introduction**

The defendants, Jennifer D. Eld and Barbara J. Clancy, are herein filing their Motion to Alter or Amend the decision set forth by Special Master, Snake River Basin Adjudication, Theodore R. Booth, in the above-mentioned case number.

**Grounds for Motion**

Idaho Statute 42-222-2 states, "any right to the use of water shall not be lost through forfeiture by failure to apply the water to beneficial use under certain circumstances as specified in section 42-223, Idaho Code.

Idaho Statute 42-223-6 states, "no portion of any water right shall be lost or forfeited for nonuse if the nonuse results from circumstances over which the water right owner has no control. Whether the water right owner has control over nonuse of water shall be determined on a case-by-case basis".

The defendants are claiming that, because the watermaster's office has no record of defendant's water right, although decreed and adjudicated with the State of Idaho, and they do have records of the original water right 78-0206, from which the defendant's water right was derived from. The defendants are stating that the district has not performed their due diligence in record keeping. According to Idaho Statute 42-605, the District must "send notification of by regular mail to all persons, companies or corporations known by the director to hold rights to the use of the waters of such district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources, of the time, date, location and purpose of the annual meeting". The defendants have never notified of the District meetings as discussed in Idaho Statute 42-605. Nor have the defendants been notified of monies owed for their decreed water right.

Idaho Statute 42-1102, states "..... The existence of a visible ditch, canal or conduit shall constitute notice to the owner, or any subsequent purchaser, of the underlying servient estate, that the owner of the ditch, canal or conduit has the right-of-way and incidental rights confirmed or granted by this section". And Idaho Statute 42-902, states

"Any person who, without the consent of the watermaster of the district, diverts any water from the ditch or channel where it was placed, or caused, or left to run by the water master or his deputies, or who shuts or opens any ditch, gate or dam with intent so to divert any water, and thereby deprive any person of the use of the same during any part of the time he is entitled to such use,....".

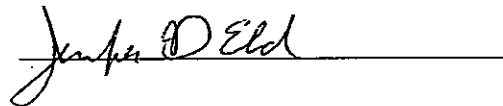
### **Conclusion**

The defendants have not forfeited their water right; in fact, from circumstances over which the water right owner has no control, their water has not been delivered to them as their right has been decreed, and there has been diversions put in place at times so the water was unable to run at all. The defendants have used, and made distribution easier of the water that they have gotten.

From circumstances over which the water right owners have no control, the defendant's water right has been excluded from the records of the watermaster. The defendants have not been notified of the annual District meetings or unable to participate, and have not been asked to pay any monies related to their water rights. The watermaster herself should have been at the hearing, as she was as a witness, so that the defendant, Jennifer Eld, could have asked her questions.

Dated this 27<sup>th</sup> day of June 2008.

Jennifer D. Eld & Barbara J. Clancy

A handwritten signature in cursive script, appearing to read "Jennifer D. Eld", is written over a horizontal line.

**CERTIFICATE OF SERVICE**

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