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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.: 35-02019
Case No. 39576	)	MOVANT DONNETTA M. NELSON
	)	MEMO IN SUPPORT OF HER MOTION
	)	TO ALTER OR AMEND SPECIAL
	)	MASTER REPORT AND
	)	RECOMMENDATION

Movant, Donnetta M. Nelson, of Shelley, Idaho ("Movant"), a party of interest, by and through her counsel, Ray W. Rigby, of Rigby, Andrus & Moeller, Chtd., respectfully submits the following Memorandum in Support of her Motion to Alter or Amend SPECIAL MASTER REPORT AND RECOMMENDATION ("Order") in the above entitled water right which disallowed water right 35-2019.

Rule 13 of the SRBA Administrative Order 1, Rules of Procedure specifies that "Any party to the adjudication, including parties to the subcase, may file a *Motion to Alter or Amend* within 21 days from the date the *Special Master's Recommendation* appears on the Docket Sheet."

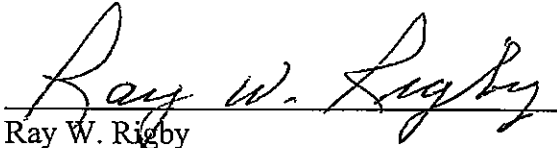
Movant respectfully submits that the grounds for relief under Rule 13 and related Idaho Rules of Civil Procedure are met in the present case and, indeed, that a mistake of facts resulted in the entry of the said Order that is contrary to law and the facts of this case. This right is based upon an undisputed license which could only be disallowed by substantial facts supporting forfeiture or abandonment. Movant maintains that no such facts exist.

Furthermore, because Movant was the Seller to Claimant, Jeffrey Stieglitz, and is now being sued by Claimant for damages due to his claim that the lands sold were misrepresented as having the above entitled water rights. Although, there was no such representation, Movant firmly believes that the water right does exist, that it is valid and should be decreed, all of which supports the conclusion that relief should be granted and that Movant be allowed to advance the claim on her own in order to avoid the inappropriate damage claim by Claimant against her.

To allow Claimant to dismiss this claim before the water court incorrectly allows him to choose a remedy of damage against Movant, which is not justified by the facts, as are supported by the attached affidavits of Jeffrey B. Trospen, a grandson of Movant, and Thane Nelson, a son of Movant, with personal knowledge of the use of water sufficient to avoid forfeiture. See *Alumet v. Bear Lake Grazing Company*, (Idaho 1990) 119 Idaho 946, 812 P.2d 253. See also *Hidden Springs Trout Ranch vs. Hagerman Water Users, Inc.*, (Idaho 1980), 101 Idaho 677, 619 P.2d 1130.

AO1 Rule 13 and I.R.C.P. rules 59(e) and 60(b) relief are plainly appropriate under the circumstances.

Dated this 28th day of January, 2009.


Ray W. Rigby
of RIGBY, ANDRUS,
& MOELLER, Chartered

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 28th day of January, 2009, a true and accurate copy of the foregoing was sent by facsimile transmission and/or U.S. Mail, postage prepaid to the following:

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Twin Falls, Idaho 83303-2707

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State of Idaho
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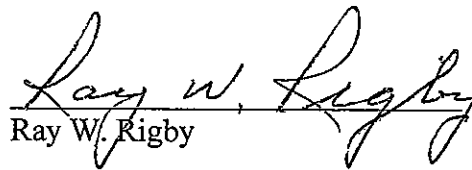
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