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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

A. Subcase:74-1557

MOTION TO SET ASIDE PARTIAL DECREE

Case No. 39576

McFarland Livstock Co, Inc., by and through his counsel of record, Holden, Kidwell, Hahn & Crapo, PLLC, hereby moves this Court to set aside the partial decree to the above referenced water right. This motion is supported by the Affidavit of Attorney Robert L. Harris (the "Harris Affidavit") filed contemporaneously herewith.

On April 25, 2000, an SRBA partial decree for Water Right No. 74-1557 was issued, confirming the use of .1 cfs for stockwater purposes from Eighteenmile Creek. Water Right 74-1557 was also decreed in the Lemhi Adjudication, and it was recently discovered by the owner of this water right that the SRBA partial decree significantly omits a portion of the water right place of use which was specifically listed in the Lemhi partial decree.

Attached to the Harris Affidavit at A is a water right report obtained from the Idaho Department of Water Resources' website. As show on the report, the water right received a partial

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decree in the SRBA on August 25, 2000. The partial decree lists the place of use as the NESW of Section 10, Township 13N, Range 38E. This is the only quarter-quarter section listed as the authorized place of use.

Attached to the Harris Affidavit at Exhibit B is a copy of a water right abstract page from the Lemhi Decree. Attached to the Harris Affidavit at Exhibit C is a copy of a water right summary from what is commonly called the "Green Book," which is another document listing the water rights decreed in the Lemhi Adjudication. As shown on both Exhibit B and Exhibit C, the listed place of use includes the NESW of Section 10, Township 13N, Range 38E (which is also Government Lot 4 in Section 10), **and in addition**, includes the entirety of Sections 3 and 16 of Township 13N, Range 38E.

Additionally, attached to the Harris Affidavit as Exhibit D is one copy of the maps prepared by IDWR in conjunction with the Lemhi Adjudication. As shown on the map, the point of diversion for this water right (E-21) is clearly shown, and the ditch which proceeds from the point of diversion is also clearly shown. The ditch goes through Section 3, and does continue down to Section 16. However, the continuation to Section 16 is not shown on this map. A copy of the legend for the map found at Exhibit D is attached to the Harris Affidavit at Exhibit E.

As we understand the procedure for adjudicating water rights from Basin 74 in the SRBA, the SRBA simply accepted the partial decrees for individual water rights from the Lemhi Adjudication, and did not require these individuals to file claims or additional filing fees. Therefore, if parties from the Lemhi Basin had not changed their water rights through an accomplished transfer previous to the commencement of the SRBA, it was presumed that all elements of the water rights were consistent with the elements decreed in the Lemhi Decree and were to be adjudicated

accordingly. This was the case with Water Right No. 74-1557. No changes had been made, and the claimant presumed that it was adjudicated in the SRBA as it had in the Lemhi Adjudication.

The claimant only recently discovered that Sections 3 and 16 were not included in the SRBA decree. The issue arose in working on a ditch-related issue, which caused the claimant to more closely examine his water right.

It appears that in moving the claimed elements of Water Right No. 74-1557 into an SRBA decree, there was a clerical error in that Sections 3 and 16 were removed from the authorized place of use.

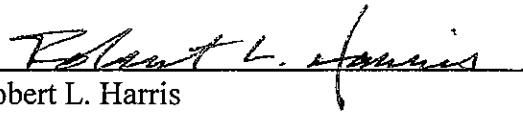
I.R.C.P. 60(a) provides the following:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

Based upon our review of IDWR and court records, it appears that there was a clerical error made to not include Sections 3 and 16 of Township 13N, Range 28E as part of the authorized place of use for Water Right No. 74-1557, and the SRBA partial decree for this water right should be set aside pursuant to Idaho Rule of Civil Procedure 60(a).

We respectfully request this court to set aside the partial decree for Water Right No. 74-1557, and that the clerical error identified be remedied accordingly by including Sections 3 and 16 with in the authorized place of use. We reserve the right to supplement this motion with additional information as necessary. We anticipate that upon receipt of this motion, the Court will set an appropriate time and date for hearing to have the matter heard.

Dated this 17th day of February, 2009.


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

CERTIFICATE OF MAILING

I certify that on this 17th day of February, 2009, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

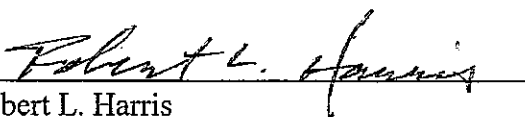
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724


Robert L. Harris

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