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September 28, 2011

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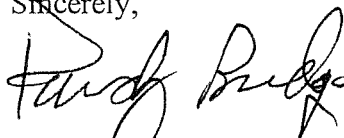
Clerk of the Court
Snake River Basin Adjudication
PO Box 2707
Twin Falls, Idaho 83303-2707

Re: Subcase Nos. 37-296A, 37-717, 37-1216

Dear Clerk:

I am enclosing a corrected page 4 to Indian Creek Ranch Owners Association's *Response to Motion for Reconsideration* which was mailed for filing yesterday. It was brought to my attention that there was an error on page 4, third paragraph. The quantity shown in that paragraph as .09 should be 0.9. Please substitute this page 4 to our *Response*. Thank you for your assistance. Please call if you have any questions.

Sincerely,


RANDALL C. BUDGE

RCB:rr
Enclosure
cc: Service List (w/encl.)

In considering this Motion it is important to note that the City's claim in the SRBA for water right no. 37-1216 only claims a period of use for the non-irrigation season, November 1 to March 31. The Court has made it clear through AO1 §4(d)(1)(b) that a claimant may not amend a claim by filing an objection or a response in subcase proceedings. Idaho Code §42-1409A states that a claimant must seek a leave of court prior to amending a claim. *See also Order on Summary Judgment* entered by Special Master Haemmerle on August 28, 1996, In Re Hagerman 24 Subcases (36-3A, et al.) which states that: "...parties must seek leave of the court to amend their claim." *Id.* at 17. "A claim can only be amended by an Amended Notice of Claim." *Id.* at 18. As such, the relief requested in the City's Motion is not properly before the court and must be denied on that basis alone.

In sum, the *Tucker Decree* and the *Frost Decree* both establish that water right no. 37-1216 is a non-irrigation season water right and the City's Motion should be denied.

Amount of Water Under Right No. 37-717

In 1983, the City contractually agreed that the totally quantity for its water rights is 131 miner's inches, or 2.62 cfs, in the 1983 Agreement with the Homeowners. Thus, the 1983 Agreement also establishes that the quantity the City is entitled to for water right no. 37-717 is 1.72 cfs (2.62 cfs minus .9 cfs covered by water right no. 37-1216 for a total of 2.62 cfs). The City's argument that the 1983 Agreement did not address all of its water rights is contrary to its own arguments and the purpose of the 1983 Agreement.

The City states that "Hailey's and Homeowners' task [in the 1983 Agreement was] of dividing Indian Creek's waters between themselves...." *Memorandum* at 10. Yet, the City goes on to argue that in doing so, it was not necessary to actually address all of its Indian Creek rights.