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DEPARTMENT OF
WATER RESOURCES

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Attorneys for William and Imogene Wilkerson

**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 No. 2-2318A
	)	(Wilkerson)
Case No. 39576	)	WILLIAM & IMOGENE WILKERSON
	)	MOTION TO ALTER OR AMEND
	)	OCTOBER 31, 2011 AMENDED
	)	MEMORANDUM DECISION AND
	)	ORDER ON CHALLENGE; RULE 60
_____	)	MOTION REGARDING <i>BEEMAN</i>
		<i>AFFIDAVIT</i>.

INTRODUCTION

William and Imogene Wilkerson (Wilkersons), by and through their counsel of record, Beeman & Associates, P.C., hereby move this Court to alter or amend its October 31, 2011 Amended Memorandum Decision and Order on Challenge pursuant to I.R.C.P. 7(b)(1), 7(b)(3), and 59(e); and, in the alternative, also moves this Court pursuant to I.R.C.P. 60 to order the admission of the last eight pages of Exhibit A and the entirety of Exhibit B to the *Beeman Affidavit*. A brief and affidavit in support of these motions will be filed within 14 days in accordance with I.R.C.P. 7(b)(3). Oral argument is requested.

MOTION

The Wilkersons respectfully move this Court to amend its October 31, 2011 Amended Memorandum Decision and Order on Challenge (Amended Order on Challenge) entered in the above-captioned subcase to address or provide for the following:

The Court should include the last eight pages in Exhibit A in the record of this proceedings and should allow as legal argument Exhibit B to the *Beeman Affidavit*. Except for (1) the more legible copy of the *Notice of Claim* for water right 02-2318 in the “02” adjudication, and (2) the more legible copy of the *Adjudication Claim Report of Examiners* for water right 02-2318, the Court found that

“[t]he remainder of the Exhibit A documents and all of the documents attached as Exhibit B to the *Beeman Affidavit* constitute new evidence that was not included in the record at the time the *Memorandum Decision* was issued. Since Idaho law makes clear that a motion to alter or amend must be directed to the status of the case as it existed when the court rendered its decision, it is inappropriate for the Court in this case to consider such new evidence in conjunction with Claimants' *Motion to Alter or Amend*. *Lowe v. Lym*, 103 Idaho at 263,649 P.2d at 1034; *Johnson v. Lambros*, 143 Idaho at 472 fn.3, 147 P.3d at 104 fn.3. Therefore, the new evidence attached as Exhibits A and B to the *Beeman Affidavit* will be stricken from the record and not considered by this Court. Notwithstanding, the Claimants argue that this Court should consider all of the Exhibit A documents since they are part of the IDWR back file for water right 02-2318B. They note that this Court considered certain documents from the IDWR back file for water right 02-2318A when considering the *Challenge*, after that back file was cited to by the Claimants in their briefing. *Memorandum Decision*, p. 4, fn.3. However, water right 02-2318B is not before the Court in this proceeding, and therefore the back file for that water right is not part of the record in this proceeding.”
Memorandum Decision and Order on Motion to Alter or Amend Judgment [and] Order Granting Motion to Strike at 2.

However, the information at pages 47-54 of the IDWR electronic file for SRBA claim 2-2318B is information pertaining to the claim of “parent” right 2-2318 in the “02” adjudication, and therefore belongs in the IDWR license file for 2-2318 and IDWR’s SRBA adjudication files for

both 2-2318A and 2-2318B. This information is part of the back file for water right 02-2318A and is appropriately part of the record in this proceeding.

This oversight or omission in the IDWR's back file for 02-2318A produced an error in the record for this proceeding which may be corrected by the Court at any time under IRCP Rule 60(a); or, pursuant to IRCP Rule 60(b)(1, 2) these missing pages from IDWR's back file for 02-2318A constitute newly discovered evidence [60(b)(2)] or the correction of a mistake [60(b)(1)], and thus should be considered by this Court in the Second Motion to Alter or Amend. Exhibit B to the *Beeman Affidavit* was submitted for legal argument only and contains September 29, 2011 pleadings in *Wilkerson v. Snake River R. V. Resort, et. at.*, Third Judicial District, Owyhee County (Case No. CV-06-05541), the ongoing proceeding cited in the Court's remark for 02-2318A.

The above arguments pursuant to Rules 59(e) and 60 will be discussed in the supporting brief and affidavit which will be filed within 14 days. Again, oral argument is requested.

Dated this 14th day of November 2011.

BEEMAN & ASSOCIATES, P.C.
Attorneys for William and Imogene Wilkerson

By Josephine P. Beeman
Josephine P. Beeman

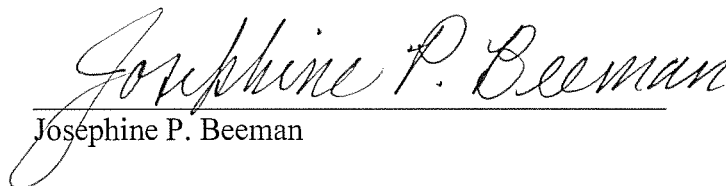
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of November 2011, I caused a true and correct copy of the foregoing document to be served on the following by U.S. Mail:

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