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Attorneys for Raymond C. Barker, Jr.,
Charles J. Kritz, Jr. and Diane B. Kritz

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY**

	)	
	)	
In Re SRBA	)	Subcase No. 2-2318A
	)	
Case No. 39576	)	MOTION TO CORRECT CLERICAL
	)	MISTAKE PURSUANT TO I.R.C.P. 60(a)
	)	AND MEMORANDUM IN SUPPORT
	)	

Pursuant to Snake River Basin Adjudication ("SRBA") Administrative Order No. 1 and Rule 60(a) of the Idaho Rules of Civil Procedure, Raymond C. Barker, Jr., Charles J. Kritz, Jr. and Diane B. Kritz, by and through their counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, respectfully move the Court to correct a clerical mistake in the November 18, 2011, *Order Denying Wilkersons' Motion to Alter or Amend October 31, 2011 Amended Memorandum Decision and Order on Challenge* ("November 18, 2011, Order"). This Motion is supported by the record and the Memorandum below.

MEMORANDUM

1. **Rule 60(a), I.R.C.P. Provides for Correction of Clerical Mistakes and Errors in Judgments, Orders or Other Parts of the Record at Any Time.**

Rule 60(a), I.R.C.P. provides for correction of clerical mistakes and errors of oversight “in judgments, orders or other parts of the record” at any time: “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.”

Rule 60(a) reflects the longstanding authority of courts to correct clerical errors in judgments and other court records. *Wilcox v. Wells*, 5 Idaho 786, 51 P. 985 (1898) (correcting legal description of land both in complaint and in the judgment which followed the description in the complaint). When there is a clerical error in a judgment, Rule 60 (a), not an appeal, is the appropriate remedy. *W. F. Construction Company v. Kalik*, 103 Idaho 713, 716, 652 P.2d 661, 664 (Ct. App. 1982) (“From the record it appears that the \$600 offset which the court allowed the owner was either not deducted or that a typographical error was made in preparing the judgment. The total amount of the judgment should be reduced by \$600 to \$22,115.80. We note, however, that it was not necessary for the owner to present this issue on appeal. ”) *See also, Weekes v. Weekes*, 101 Idaho 213, 611 P.2d 133 (1980); *Hayes v. Towles*, 95 Idaho 208, 506 P.2d 105 (1973); *Merrick v. Pearce*, 97 Idaho 250, 542 P.2d 1169 (1975).

2. **The First Paragraph of the “Factual and Procedural Background” Section of the November 18, 2011, Order Incorrectly Incorporates the Procedural Background and Facts Set Forth in the Memorandum Decision, Rather Than the Procedural Background and Facts in the Amended Memorandum Decision that Replaced It.**

Paragraph 1 of the “Factual and Procedural Background” Section of the *November 18, 2011, Order* incorporates by reference the procedural background and facts set forth in the Court’s August 29, 2011, *Memorandum Decision and Order on Challenge and Order of Partial Decree*:

1. On August 29, 2011, this Court issued a *Memorandum Decision and Order on Challenge and Order of Partial Decree* (“*Memorandum Decision*”) in the above-captioned matter. The procedural background and facts set forth in the *Memorandum Decision* are incorporated herein by reference and will not be repeated.

However, as noted in Paragraph 5 of the *November 18, 2011, Order*, the August 29, 2011, *Memorandum Decision* was amended and superseded by the *Amended Memorandum Decision* issued on October 31, 2011:

5. On October 5, 2011, the Court entered a series of *Orders*.... Third, the Court entered an *Amended Memorandum Decision and Order on Challenge and Order of Partial Decree* (“*Amended Memorandum Decision*”).

November 18, 2011, Order at 2. As noted in a footnote in the *November 18, 2011, Order*, the *Amended Memorandum Decision* was identical to the *Memorandum Decision* except that footnote 1 of the *Memorandum Decision* was removed in the *Amended Memorandum Decision*. However, since that footnote 1 was in the “Factual and Procedural Background” section of the *Memorandum Decision*, the Court’s incorporation by reference of that material into the *November 18, 2011, Order* advertently included the deleted footnote 1.

To correct this matter, Movants propose that the second sentence of Paragraph 1 of the *November 18, 2011, Order* be amended as follows and relocated to the end of Paragraph 5 of the *November 18, 2011, Order* which discusses the *Amended Memorandum Decision*:

The procedural background and facts set forth in the *Amended Memorandum Decision* are incorporated herein by reference and will not be repeated.

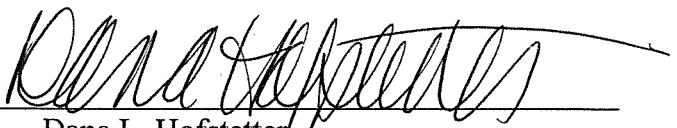
This revision corrects this matter by incorporating by reference the relevant portion of the *Amended Memorandum Decision*, rather than incorporating by reference the portion of the *Memorandum Decision* that is no longer effective.

3. Conclusion.

Pursuant to Rule 60(a), I.R.C.P., the second sentence of Paragraph 1 of the *November 18, 2011, Order* should be revised as described above and relocated to the end of Paragraph 5 of the *November 18, 2011, Order*.

DATED this 13th day of December, 2011.

HOFSTETTER LAW OFFICE, LLC

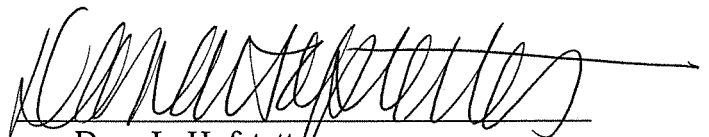
By 
Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of December, 2011, I caused to be served copies of the foregoing document (with any attachments) by the pre-paid method(s) indicated below:

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