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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
MAR - 7 2012
By _____
_____ Clerk Deputy Clerk

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

Case No. 39576

) Subcase No. 51-10323
)
) ORDER GRANTING MOTION TO
) CORRECT CLERICAL ERROR
)
) ORDER OF SECOND AMENDED
) PARTIAL DECREE
)
)
)

A *Partial Decree* was issued for the above-captioned water right on January 30, 1998. In the *Partial Decree*, the following remark was included under the purpose and period of use element: "Domestic Use is for 1 Home and Potato Shed" (hereinafter, "Remark"). On October 24, 2011, the Clerk of the Court received correspondence from the Idaho Department of Water Resources notifying the Court that the *Partial Decree* contained an error with respect to the legal description contained under the point of diversion and place of use elements. Following the issuance of a *Notice of Court's Intent to Issue Amended Partial Decree* and a subsequent hearing thereon, and no objection having been raised to correcting the error, the Court entered an *Order* correcting the error in the legal description and issued an *Amended Partial Decree* on February 22, 2012. However, the *Amended Partial Decree* erroneously omitted the Remark, which should have been carried over from the original *Partial Decree*. On February 27, 2012, the Claimant filed a *Motion to Correct Clerical Mistake Pursuant to I.R.C.P. 60(a)*. The *Motion* correctly asserts that the *Amended Partial Decree* erroneously omits the Remark contained in the original *Partial Decree*.

Idaho Rule of Civil Procedure 60(a) provides for the correction of "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission." The Idaho Supreme Court has directed that Rule 60(a) applies to those errors in which the type of mistake or omission is "mechanical in nature which is apparent in the record."

Silsby v. Kepner, 140 Idaho 410, 411, 95 P.3d 28, 29 (2004). The Court has further directed that clerical errors “include those where what is written or recorded is not what the court intended to write or record,” and where “the error can be corrected whether it is made by a clerk or by the judge.” *Id.* at 412, 95 P.3d at 30.

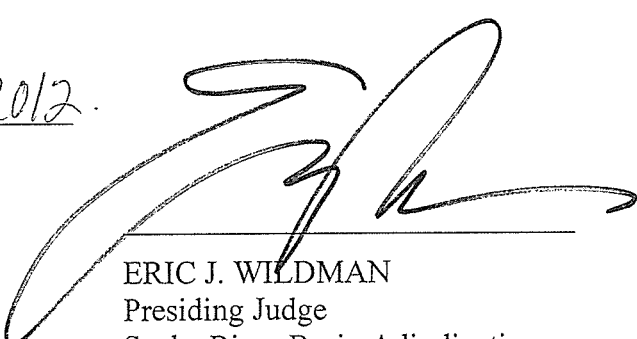
The Court finds the failure to carryover the Remark into the *Amended Partial Decree* to be the result of clerical error. The error in this case is mechanical in nature, and is apparent from the record. The Remark was not at issue when the Court set aside the *Partial Decree* and issued the *Amended Partial Decree* to correct the identified error in the legal description. Therefore, the record establishes there should have been no change in the Remark when the *Amended Partial Decree* was issued. As a result, the Court intended to include the Remark in the *Amended Partial Decree*, but erroneously omitted it therefrom.

THEREOFRE THE FOLLOWING ARE HEREBY ORDERED:

1. The *Motion to Correct Clerical Mistake Pursuant to I.R.C.P. 60(a)* is hereby granted.
2. Pursuant to Idaho Rule of Civil Procedure 60(a), the above-captioned water right is hereby amended as set forth in the attached ***Second Amended Partial Decree***. The previously issued ***Amended Partial Decree*** is superseded thereby.

IT IS SO ORDERED.

Dated: March 7, 2012.



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

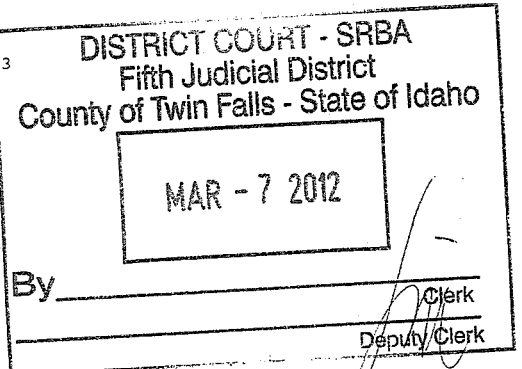
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

2nd **AMENDED**

In Re SRBA)
)
Case No. 39576)
)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 51-10323



NAME AND ADDRESS: DANKIN CATTLE CO
C/O ROBERT C BAKER
PO BOX 488
MOUNTAIN HOME, ID 83647

SOURCE: GROUNDWATER

QUANTITY: 0.16 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 04/01/1988

POINT OF DIVERSION: T06S R08E S03 LOT 12 (SWSW) Within Owyhee County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic	01-01 TO 12-31	0.04 CFS
	Stockwater	01-01 TO 12-31	0.12 CFS

DOMESTIC USE IS FOR 1 HOME AND POTATO SHED.

PLACE OF USE:	Stockwater		Within Owyhee County
	T06S R08E S04	SWSE	
	S05	SESW	
	S08	SWSE	
	S09	NESE	SESE
	S16	SENE	NESE
	Domestic		Within Owyhee County
	T06S R08E S09	NENE	

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO CORRECT CLERICAL ERROR / ORDER OR SECOND AMENDED PARTIAL DECREE was mailed on March 07, 2012, with sufficient first-class postage to the following:

DANSKIN CATTLE CO

Represented by:

DANA L. HOFSTETTER

608 WEST FRANKLIN STREET

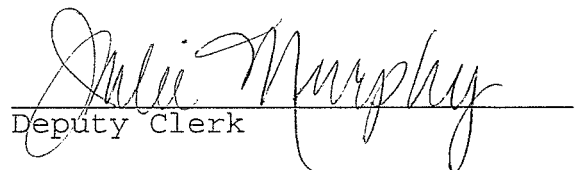
BOISE, ID 83702

Phone: 208-424-7800

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the printed text "Deputy Clerk".