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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JUL - 8 2013

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. 38576

**MOTION TO SET ASIDE PARTIAL
DECREE I.R.C.P. 60(a) and 60(b)(6)**

Water Right 47-11558

COMES NOW, South Hills Cattle Co., LLC, an Idaho limited liability company ("South Hills"), by and through its counsel of record, Brooke B. Redmond of Wright Brothers Law Office, PLLC, and pursuant to Idaho Rules of Civil Procedure, Rules 60(a) and 60(b)(6), moves this Court to set aside the *Partial Decree for Water Right 47-11558* (the "Partial Decree").

On or about February 15, 2006, South Hills acquired certain real property in Twin Falls County (the "Property"). *Affidavit of John Hepton in Support of Motion to Set Aside Partial Decree I.R.C.P. 60(a) and 60 (b)(6)* (the "Hepton Aff."), ¶4. As part of this acquisition, South Hills acquired all water rights appurtenant to the Property, including without limitation, water right number 47-11558 (the "Water Right"). *Hepton Aff.* ¶5. Shortly after purchasing the Property, South Hills attempted to file a Notice of Change in Ownership with the Idaho Department of Water Resources (the "IDWR"). *Hepton Aff.* ¶5. Subsequently, South Hills

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learned that the *Partial Decree* for the Water Right did not have the same property description as the Property. *Hepton Aff.* ¶5. Specifically, the *Partial Decree* included portions of section 2, Township 10S, 17E, whereas the Property does not include any portion of section 2, Township 10S. *Hepton Aff.* ¶¶5-6.

A review of the adjudication file reveals that on or about March 14, 1995, previous owners of the Water Right filed an *Notice of Claim to a Water Right Acquired Under State Law* (the “Notice”). *Hepton Aff.* ¶6. A review of the *Notice* reveals that the above-described portions of section 2, Township 10S were never included in the *Notice* or any amendments thereto.

Hepton Aff. ¶6. Specifically, when describing the place of use, the *Notice* provides as follows:

Township	Range	Section	¼ of	¼	Lot	Use	Access
10S	17E	<u>35</u>	SW	NE		STOCK	
11S	17E	2	SW	NE		STOCK	
			NW	NE		DOMEST	

Hepton Aff. ¶6 (emphasis added). In fact, the only reference to a Township 10S was in section 35, not section 2.

Likewise, on or about August 20, 1997, previous owners of the Water Right filed an *Amended Notice of Claim to a Water Right Acquired Under State Law* (the “First Amended Notice”). *Hepton Aff.* ¶6. The *First Amended Notice* describes the place of use for the Water Right as follows:

Township	Range	Section	¼ of	¼	Lot	Use	Access
10S	17E	<u>35</u>	SW	NE		STOCK	
11S	17E	2	SW	NE		STOCK	
11S	17E	2	NW	SE		STOCK	

Hepton Aff. ¶6 (emphasis added). In the remarks section, the *First Amended Notice* reads as follows:

ADDRESS CHANGE 3/14/95 jr

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CLAIM AMENDED TO CORRECT THE POINT OF DIVERSIONS AND PLACE OF USE FOR STOCKWATER. AS THE DOMESTIC USES ARE OWNED BY OTHER PARTIES THEY WERE DROPPED FROM THIS CLAIM. CLAIMANT INDICATED THAT THE DOMESTIC USES EXISTED PRIOR TO THIS STOCKWATER DEVELOPMENT. STOCKWATER IS FOR 900 HEAD BEEF FEEDLOT.

Hepton Aff. ¶6 (emphasis added).

Finally, on or about April 17, 1998, previous owners of the Water Right filed a second *Amended Notice of Claim to a Water Right Acquired Under State Law* (the “Second Amended Notice”). *Hepton Aff.* ¶6. The *Second Amended Notice* describes the place of use for the Water Right as follows

Township	Range	Section	¼ of	¼	Lot	Use	Access
11S	17E	2	SW	NE		STOCK	
			NW	SE		STOCK	

Hepton Aff. ¶6. Likewise, in the remarks section, the *Amended Notice* reads as follows:

ADDRESS CHANGE 3/14/95 jr
CLAIM AMENDED TO CORRECT THE POINT OF DIVERSIONS AND PLAXE OF USE FOR STOCKWATER. AS THE DOMESTIC USES ARE OWNED BY OTHER PARTIES THEY WERE DROPPED FROM THIS CLAIM. CLAIMANT INDICATED THAT THE DOMESTIC USES EXISTED PRIOR TO THIS STOCKWATER DEVELOPMENT. STOCKWATER IS FOR 900 HEAD BEEF FEEDLOT.

CLAIM AMENDED TO REMOVE PLACE OF USE IN SECTION 35.
4/17/98 jr

Hepton Aff. ¶6. (underlined emphasis added).

Despite the fact that there Township 10, Section 2 was never part of the *Notice* or any amendments thereto, the *Partial Decree* includes the portions of Township 10S, Section 2, as part of the decreed *Water Right*.

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I.R.C.P., Rule 60(a) provides, in pertinent part, as follows:

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. ...

In this matter, it appears that the IDWR and South Hills both acknowledge that the inclusion of the above-described portions of section 2, Township 10S in the *Partial Decree* for the Water Right was an inadvertent clerical mistake arising from an oversight or omission. *See Hepton Aff.* ¶5 (email from the IDWR stating that the “10S is an error”).

As such, South Hills requests that the Court set aside the *Partial Decree* and submit a new decree for the Water Right that corrects this clerical error.

Alternatively, I.R.C.P. 60(b) provides, in pertinent part, that “the court may relieve a party ... from a final judgment, order, or proceeding for the following reasons: ... (6) any other reason justifying relief from the operation of the judgment.” In this matter, it appears that the *Partial Decree* does not correctly identify the property affected by the Water Right. As such, it would be unjust and inappropriate to continue to allow the *Partial Decree* remain in effect without such a modification.

Based on the foregoing, South Hills requests that the *Partial Decree* be set aside and that a new partial decree be entered for the Water Right that corrects the property description for the Water Right.

DATED this 8 day of July, 2013.



Brooke B. Redmond
Counsel for South Hills

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