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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Hill Real Estate, LLC

**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 NOS.: 63-32253
	)	
Case No. 39576	)	SUPPLEMENTAL MEMORANDUM IN
	)	RESPONSE TO QUESTION OF NOTICE
	)	TO NON-PARTIES
	)	

I. INTRODUCTION

A hearing was held on October 17, 2013, before Special Master Booth on Hill City Real Estate, LLC's Motion to Set Aside Partial Decree and to Enter Corrected Partial Decree. At that hearing, the Court, and all counsel discussed the unique status of the underlying water right no. 63-32253, in that the named owner of the right has disclaimed any continued interest in the water right due to the sale of all of the property to which the right is appurtenant. Of the new owners, only Hill Real Estate, LLC, has filed a Notice of Change of Ownership of Water Right with the Idaho Department of Water Resources ("Department") for that portion of the land that it purchased from the Brocks, the still-named owners of water right no. 63-32253. No other new owners have at any time since purchasing the land notified the Department of his or her ownership of any portion of the property once owned by Brocks.

Counsel for the Department and the Court raised concerns at the hearing regarding whether notice of the change proposed in Hill Real Estate's Motion to Set Aside Partial Decree is required to be served upon the affected landowners who have not notified the Department of the change in ownership. This Memorandum is filed in order to adequately brief the court on Hill Real Estate's position concerning the Court and Department's legal duty to provide notice to these landowners.

II. ARGUMENT

Idaho Code § 42-248 titled "Notification of change in ownership of a water right or change of address of a water right owner – Notice of action affecting a water right," states explicitly that "the director....will be deemed to have provided notice concerning any action by the director affecting a water right or claim if a notice of the action is mailed to the address and owner of the water right shown in the records of the department....at the time of mailing of the notice." I.C. § 42-248(3)(emphasis added). In this case, since no owners have come forward to notify the Department of any change in ownership of the underlying right, the Brocks are still the owners of the water right. The Brocks have disclaimed any continued interest in the right by a letter dated February 8, 2007.¹ Given this representation, it is unclear if the Department has a duty to notify the Brocks of the pending action.

Hill City's Motion appeared on the docket sheet which is intended to provide constructive notice to any interested party in the SRBA proceedings. The Motion was filed on August 9, 2013. It appeared on the September docket sheet, and the hearing was not held until October 17, more than two months after the Motion was filed. The Idaho Supreme Court has repeatedly affirmed the Administrative Order 1 rules as constitutional and necessary for the proper functioning of the Snake River Basin Adjudication. *See In Re SRBA Case No. 39576*, 128

¹ See attached Exhibit 1.

Idaho 246, 255, 912 P.2d 614, 623 (1995); *LU Ranching Co. v. U.S.*, 138 Idaho 606, 608-609, 67 P.3d 85, 87-89 (2003); *In Re SRBA, Bedke v. Oakley*, 149 Idaho 532, 538-539, 237 P.3d 1, 7-8 (2010). Proper notice to any interested party has been provided through the docket sheet procedure pursuant to Idaho Code and the Administrative Rules governing the SRBA.

Furthermore, if the Court grants the relief requested in the Motion to Set Aside Partial Decree, an amended director's report will be issued. At such time, as is customary, a 21-day objection period will be issued prior to an amended partial decree being entered.

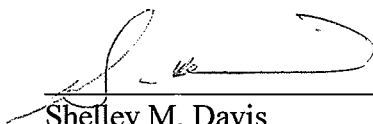
It is inequitable to Hill Real Estate, LLC, for the Department or Court to invite parties into Hill Real Estate's action, where those parties have not properly availed themselves of the protections afforded by complying with I.C. § 42-248.

III. CONCLUSION

For these reasons, it is improper for the Court to require, or the Department to voluntarily provide direct notice to potentially affected landowners.

DATED this 23rd day of October, 2013.

BARKER ROSHOLT & SIMPSON LLP



Shelley M. Davis
Attorneys for Hill Real Estate, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of October, 2013, I caused to be served a true and correct copy of the foregoing **SUPPLEMENTAL MEMORANDUM IN RESPONSE TO IDAHO DEPARTMENT OF WATER RESOURCE'S REQUEST CONCERNING NOTICE TO NON-PARTIES** by the method indicated below, and addressed to each of the following:

Original filed via facsimile with:

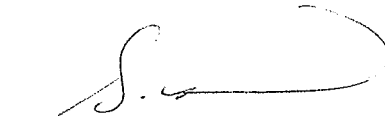
Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707
Fax No. 208-736-2121

Copy mailed to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resc Division
550 West Fort Street, MSC 033
Boise, ID 83724



Shelley M. Davis

EXHIBIT 1

February 8, 2007

Richard C. and Judith A. Brock
27244 Mtn. Ranch Rd.
Caldwell, Idaho 83607-1104

RECEIVED

FEB 12 2007

WATER RESOURCES
WESTERN REGION

RE: Address change per phone instructions. New owners of water rights.
Water right 63-32253

Dear Karl Dreher,

The address you have is as old address. The new address is
27244 Mountain Ranch Rd., Caldwell, Id. 83607.

Also I called in on 10\23\2006 with the land sales we have had. We haven't any
water rights left that we are aware of. I gave the names, addresses and acreages to a lady
on the phone on 10\23\2006. See attached information.

Sincerely,

Judy Brock