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MAY 30 2017

DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 37576

Subcase No. 21-12901

**MOTION FOR CORRECTION OF OR
RELIEF FROM PARTIAL DECREE**

Petitioners, Petitioners, R T Kandler LLC; Clen Atchley; Squirrel Creek Irrigation & Canal Company, Limited; and Conant Creek Canal Company (collectively the “Petitioners”), by and through their counsel of record Holden, Kidwell, Hahn & Crapo, P.L.L.C., and pursuant to Idaho Rules of Civil Procedure 60(a) and 60(b)(6), submit this *Motion for Correction of or Relief from Partial Decree*, which is supported by the *Memorandum in Support of Motion for Correction of or Relief from Partial Decree* and the *Declaration of Robert L. Harris in Support of Motion for Correction of or Relief from Partial Decree*, both submitted contemporaneously herewith.

The record of Water Right No. 21-12901 (hereinafter simply “21-12901”) demonstrate that when 21-12901 was transferred to Conant Creek in 1984, concerns about the transfer—given that there is less water available on Conant Creek near Drummond than at Shelley (where 21-12901 was originally used)—were addressed by the imposition of a condition that 21-12901 could not “be exercised against, or water demanded from any upstream users on Conant Creek who divert

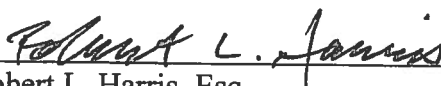
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water with a priority earlier than to [sic] June 6, 1983” (the “Subordination Condition”). *Proposed Memorandum Decision and Order* (dated Oct. 18, 1984). The Subordination Condition was erroneously omitted from the recommendation of the Director of the Idaho Department of Water Resources (the “Director”) regarding 21-12901 to the SRBA Court. Accordingly, this Court did not include the Subordination Condition in the Partial Decree of 21-12901 (the “Partial Decree”). This error can be corrected under either Rule 60(a) or Rule 60(b)(6).

Under Rule 60(a), this was a clerical mistake—a transposition error—that is evidenced by the record of 21-12901. Not only is this error apparent in the record, but is beyond contestation because all of the parties involved in the adjudication of 21-12901 (*i.e.*, S. Lynn Loosli (the owner of 21-12901) and the Director) are all of the additional parties involved in the transfer of 21-12901 to Conant Creek already agreed to the Subordination Condition in 1984. Thus, this Court ought to correct this clerical mistake in the *Partial Decree*.

Alternatively, under Rule 60(b)(6), as an error of IDWR—the SRBA Court’s expert—it is beyond the applicability of relief under Rules 60(b)(1) through –(5). The absence of the Subordination Condition from the Partial Decree of 21-12901 has the potential to substantially impact Petitioners, who are other water users on Conant Creek that divert upstream of 21-12901’s authorized point of diversion. The Director’s omission of the Subordination Condition—in violation of Idaho Code § 42-1411 and despite a 1991 memorandum pointing out the error—presents a unique and compelling circumstance warranting relief under Rule 60(b)(6).

Dated this 21st day of May 2017.


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of May, 2017, I served a true and correct copy of the document listed below on the persons listed below by the method indicated.

Document Served: MOTION FOR CORRECTION OF OR
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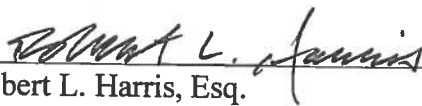
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