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DEPARTMENT OF
WATER RESOURCES

Attorneys for Elizabeth Ann and Nick Nettleton

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. 61-04029

REPLY IN SUPPORT OF MOTION TO SET
ASIDE, REOPEN AND/OR MOTION TO
ALTER OR AMEND PARTIAL DECREE FOR
WATER RIGHT NO. 61-04029

COME NOW Elizabeth Ann and Nick Nettleton ("Nettleton"), by and through undersigned counsel of record, and hereby submits this *Reply in Support of Motion to Set Aside and Reopen and/or Motion to Alter or Amend Partial Decree for Water Right No. 61-04029*, entered on March 4, 2003 (hereinafter "*Reply*"). This *Reply* is in support of the Nettleton's *Motion to Set Aside, Reopen and/or Motion to Alter or Amend Partial Decree for Water Right No. 61-04029* ("*Motion*") and is in response to the *State of Idaho's Response to Motion to Set Aside, Reopen and/or Motion to Alter or Amend Partial Decree for Water Right No. 61-04029* ("*State's Response*") filed on or about December 13, 2018.

I. INTRODUCTION

The State of Idaho ("State") contends that it has an interest in maintaining the finality of the *Final Unified Decree* and thus Rule 60 of the I.R.C.P. should be applied in the "most

remarkable of circumstances.” *State’s Response*, pgs. 5-6. While the State may desire to limit precedent which may “open the door” to the re-opening of other partial decrees issued in the SRBA, the State fails to mention that both the State and this Court also should have an interest in making sure water rights issued in the SRBA are accurate. For this reason, *AOI* provides for relief under I.R.C.P. 60(a) and 60(b) in those instances where relief is warranted. The standard for such relief is not in those instances which are the most remarkable but rather where there has been a mistake or there are unique and compelling circumstances. In this case, Water Right No. 61-04029 was decreed with a volume limitation that no one intended, is not accurate and which renders the right for irrigation purposes meaningless. These are the unique and compelling circumstances in which the State and this Court should desire to apply and correct under the relief allowed by *AOI* and I.R.C.P. 60 regardless of its interests in protecting the finality of the *Final Unified Decree*.

The Nettletons do not disagree with the State’s request that the Court should “make specific findings as to the unique and compelling circumstances that warrant relief under I.R.C.P. 60(b)(6) or why the inclusion of the 6.7 afy limit in the partial decree could be considered a clerical error under I.R.C.P. 60(a).” *State’s Response*, pg. 12. The Court should consider the circumstances on a case by case basis.

The State takes no position on the ultimate issue of whether relief is warranted because the volume limitation if applied to the irrigation purpose of use essentially renders the water right meaningless. *State’s Response*, pgs. 11-12. The State only requests that the Court tailor its decision on said issue so as to provide guidance as to the limited, distinguishing facts in this case so as to limit the precedent for future motions seeking to amend partial decrees in the SRBA. The Nettletons submit that the facts in this case are unique and compelling and that an

unintended volume limitation on an irrigation right which renders it meaningless are distinguishable facts which will not open the door to a universe of motions seeking to amend partial decrees. The facts in this case are limited and the relief sought in this case is warranted.

II. ARGUMENT

The *State's Response* takes issue with and/or seeks clarification that the Nettletons are not seeking to create some precedent that they did not have "notice" of the volume limitation and the State contends that the Nettletons' predecessor in interest had the same opportunity as other claimants in the SRBA to file an objection to the *Director's Report*. *State's Response*, pgs. 6-10. The Nettletons filed a *Notice of Errata* correcting any misstatement that the volume limit was not included in the preliminary recommendation for Water Right No. 61-04029, and the Nettletons do not dispute that the volume limitation was included in the preliminary recommendation, the Director's Report or the partial decree issued by this Court. However, the volume limitation was not claimed by the claimant for the water right and whether the volume limitation was added at the time of the preliminary recommendation, or at any other time subsequent to the claim, the Nettletons contend it was not intended by the claimant, the Idaho Department of Water Resources or the SRBA Court because the volume limitation is not consistent with the claim and renders the right meaningless.

In other words, to address the *State's Response*, the Nettletons do not dispute that their predecessors had an opportunity to object to the Director's Report. However, the Nettletons do contend that the oversight was an unintended mistake by everyone involved as it is not consistent with the claim and no one intended for the volume limitation to be applied to the irrigation purpose of use as it renders the right meaningless. As previously explained in the Nettletons' *Motion*, if the volume limitation is applicable to the irrigation purpose of use for the water right

then the 5.14 cfs right is available for less than sixteen (16) hours for 235 acres. *See Affidavit of David Shaw.*

The *State's Response* also takes issue with the Nettletons' request for "clarification" of the partial decree as it would suggest it is an issue of administration which must be brought before IDWR. *State's Response*, pgs. 10-11. The Nettletons' *Motion* seeks to amend the partial decree to remove the volume limitation from the irrigation purpose of use of the right. Whether characterized as an amendment, modification or clarification of the partial decree the relief sought is still remove the volume limitation from the irrigation purpose of use on the decree. This is not an issue of administration as IDWR has already informed the Nettletons that they must seek to amend or set aside the partial decree by filing a motion with this Court. Which the Nettletons have now done. Thus, whether the use of "clarify" in the *Motion* was ambiguous, the *Motion* seeks to amend the partial decree to clearly provide that the volume limitation is not applicable to the irrigation purpose of use of the water right.

III. CONCLUSION

This *Reply* responds to the *State's Response* to clarify that the Nettletons do not dispute that the volume limitation was included in the preliminary recommendation and they are not contending that the unique and compelling circumstances for their *Motion* are based on the facts that their predecessor did not have "notice" of inclusion of the volume limitation at the time of the preliminary recommendation. This *Reply* also responds to the *State's Response* to clarify that the *Motion* seeks to amend or modify the partial decree to clearly provide that the volume limitation is not applicable to the irrigation purpose of use of the right and the *Motion* does not seek an interpretation of the partial decree which is an issue of administration for IDWR.

Other than clarifying these two issues, the Nettletons reiterate their position that the relief sought is warranted based upon these specific factual circumstances in this case which includes the fact that the volume limitation renders the right meaningless. While the State does not affirmatively support the relief sought concerning this argument, it also does not oppose the relief, and only requests that this Court tailor its decision to the unique and compelling circumstances of this case. The Nettletons agree that the Court can and should tailor its decision to the circumstances in this case which are unique and compelling and do not result in opening the door to a universe of motions to amend partial decrees. *AOI* specifically provides for relief under I.R.C.P 60 and in this case, which renders a water right meaningless and results in an inaccurate decree against the very purpose of the SRBA, the Court should use the relief available to amend the decree and accurately decree the right.

DATED this 26th day of December, 2018.

SAWTOOTH LAW OFFICES, PLLC

By 

S. Bryce Farris
Attorneys for Elizabeth Ann and
Nick Nettleton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of December, 2018, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION TO SET ASIDE, REOPEN AND/OR MOTION TO ALTER OR AMEND PARTIAL DECREE FOR WATER RIGHT NO. 61-04029** to be served by the method indicated below, and addressed to the following:

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