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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Eckhardt Family LLLP

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

Water Right No.: 67-2097A

**OBJECTION TO REQUEST FOR
CORRECTION OF ERROR AND
ISSUANCE OF AMENDED PARTIAL
DECREE**

COMES NOW Eckhardt Family LLLP ("Eckhardt"), by counsel, pursuant to the *Notice of Court's Intent to Issue Amended Partial Decree, and Notice of Hearing Theron* (March 4, 2019) and *SRBA Administrative Order No. 1 ("AOI")* and files this objection to the Department's *Request for Correction of Error* (February 25, 2019) for the *Partial Decree* (October 20, 2008) and to the proposed issuance of an Amended Partial Decree for the above-captioned water right.

The above-captioned water right was decreed in the name of Double C & J Land Co., Inc. on October 20, 2008, more than 10 years ago. A copy of the *Partial Decree* was properly served on the claimant and the Idaho Department of Water Resources ("Department") at that time. The water right is for irrigation storage on Jenkins Creek.

On September 12, 2018, Eckhardt filed multiple applications for permit and a transfer application with the Department for water rights on Jenkins Creek and various tributaries thereto. At the time of these application filings, Eckhardt was aware of and relied upon the 2008 *Partial Decree* for the above-captioned water right, which has a senior priority of 1914. The quantity element of the *Partial Decree* includes a total diversion rate of 6.54 cfs and 345 AFA.

The claimant, Double C & J Land Co., Inc., filed objections to Eckhardt's Jenkins Creek applications, claiming that its water rights, including the above-captioned water right, would be injured. After the objections were filed by the claimant, the Department filed its *Request for Correction of Error* for the above-captioned water right. The claimant did not file a motion requesting changes to the *Partial Decree*, as allowed under *AOI*, Section 14.d.

The Department seeks, through its proposed correction, to include a diversion rate of 14.5 cfs in the purpose and period of use element. If this request is granted, it will potentially increase the burden placed upon Eckhardt in the application proceedings pending before the Department.

AOI requires a party seeking to modify a partial decree to comply with IRCP 60(a) or 60(b). *AOI*, Section 14.d. That has not occurred here. Rather, the Department (not a party) has submitted a *Request for Correction of Error*. While *AOI* does not provide an "error correction" process (*see AOI*, Section 8, Error Correction Procedure ("This section is reserved")), IRCP Rule 60(a) allows the court to correct a clerical mistake, with or without a motion.

In this matter, the Department's proposed change goes far beyond a simple clerical error of changing "AFY" to "CFS." The effect would be to increase the decreed diversion rate of 6.54 cfs in the quantity element of the water right to 14.5 cfs in the purpose and period of use element. In addition to being internally inconsistent and confusing, it is prejudicial to Eckhardt, who relied

upon the decreed 6.54 cfs quantity in filing its applications with the Department and increase the likelihood of curtailment during times of shortage.

Even after the proposed correction, the quantity element would remain 6.54 cfs and 145 afy in the Amended Partial Decree. *See Exhibit A to Notice of Court's Intent to Issue Amended Partial Decree.* As a result, the addition of the higher 14.5 cfs amount to the purpose and period of use element would be inconsistent with the quantity element. The higher diversion rate would no doubt be relied upon by the claimant, and presumably the Department, in the current Eckhardt application proceedings and future administration of the water rights. The increase from 6.54 cfs to 14.5 cfs is a significant change and prejudicial to Eckhardt. It would also exceed the total quantity of 6.54 cfs claimed by the claimant.

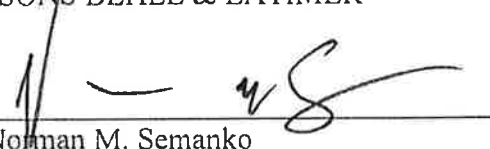
At a minimum, the requested change should not be allowed without a motion being filed by the claimant, pursuant to *AOI*, Section 14.d (requiring parties seeking to modify a partial decree to comply with IRCP 60(a) or 60(b)). Given the increased diversion rate being sought, an amended claim would also be required.

As a result, the Department's *Request for Correction of Error* should be denied, and the proposed Amended Partial Decree should not be issued by the Court.

Eckhardt requests the opportunity to be heard on this objection at the hearing currently scheduled in this matter on June 18, 2019.

DATED THIS 12th day of April, 2019.

PARSONS BEHLE & LATIMER

By 

Norman M. Semanko

Attorneys for Eckhardt Family LLLP

CERTIFICATE OF SERVICE

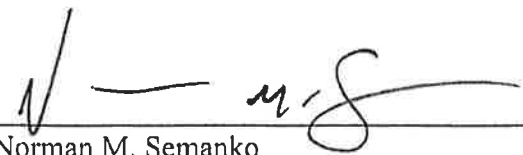
I hereby certify that on this 12th day of April, 2019, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service.

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

- ☒ U.S. First Class Mail, Postage Prepaid
- ☐ U.S. Certified Mail, Postage Prepaid
- ☐ Federal Express
- ☐ Hand Delivery
- ☐ Electronic Mail
- ☐ Facsimile

DOUBLE C & J LAND CO INC
990 JENKINS CREEK RD
WEISER, ID 83672

- ☒ U.S. First Class Mail, Postage Prepaid
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