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Department of Water Resources

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Attorney for Claimant

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 37-10271
)
) MOTION TO SET ASIDE
) PARTIAL DECREE; I.R.C.P.
) 60(b)(1)
)
) MOTION TO FILE LATE
) OBJECTION
)
) MEMORANDUM IN SUPPORT
) THEREOF

I. MOTION

Comes now the claimant of the above-captioned water right, and moves for an order of this Court setting aside the *Partial Decree* issued for the subject water right on December 11, 2002, and allowing the Claimant to file a late objection thereto.

This Motion is based upon I.R.C.P. 60(b)(1) (inadvertence and excusable neglect).

MOTION TO SET ASIDE PARTIAL DECREE -1

II. MEMORANDUM

A Notice of Claim was filed for the above captioned water right on June 27, 1988. The property to which the water right is appurtenant was subsequently purchased by the Claimants in this matter, John and Carole Bennett (hereinafter "Bennett"). At that time, the Bennetts notified IDWR of the change in ownership.

The Bennetts changed residences in September of 1999, but neglected to notify the Idaho Department of Water Resources as to their new mailing address (the new address is the property to which the subject water right is appurtenant). Consequently, correspondence from IDWR requesting information as to the claimed water right, and ultimately the notice of filing the Director's Report, were returned to IDWR as undeliverable. IDWR did not attempt to ascertain the new address of the Bennetts. A *Partial Decree* was issued for this water right on December 11, 2002. No previous objections have been filed thereto.

The Bennetts became aware that a *Partial Decree* had been entered for this water right on or about January 9, 2003, less than one month after issuance. Because the *Partial Decree* omitted the claimed irrigation purpose of use for this water right, the Bennetts immediately consulted counsel seeking to remedy this situation.

It is respectfully submitted that the Bennetts failure to notify IDWR in September of 1999 as to their change in mailing address constitutes inadvertence and

MOTION TO SET ASIDE PARTIAL DECREE -2

excusable neglect as contemplated under I.R.C.P. 60(b)(1). This motion is timely as it is made well within the six month time limit set forth in that Rule. Wherefore, the Bennetts respectfully request an order of the Court allowing the *Partial Decree* be set aside for the purpose of filing a late objection thereto.

A completed *Standard Form 1 Objection* is enclosed herewith, to be lodged by the Court until such time as this motion may be granted, at which time the objection may be filed.

Pursuant to SRBA docket sheet procedures, a this matter will be heard at the SRBA monthly status conference on **April 15, 2003**, at **1:30 o'clock p.m.** at the **Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls Idaho.**

DATED this 14th day of January, 2003.

ARKOOSH LAW OFFICES, CHTD.

A handwritten signature in dark ink, appearing to read 'Theodore R. Booth', is written over a horizontal line.

Theodore R. Booth
Attorney for Claimants

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of January, 2003, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

Clerk of the District Court	<u>X</u>	United States Mail, Postage Prepaid
Snake River Basin Adjudication	<u> </u>	Overnight Courier
253 Third Avenue North	<u> </u>	Via Facsimile
PO Box 2707	<u> </u>	Hand Delivered
Twin Falls, ID 83303-2707		

IDWR Document Depository	<u>X</u>	United States Mail, Postage Prepaid
PO Box 83720	<u> </u>	Overnight Courier
Boise, ID 83720-0098	<u> </u>	Via Facsimile
	<u> </u>	Hand Delivered

Chief, Natural Resources Division	<u>X</u>	United States Mail, Postage Prepaid
Office of the Attorney General	<u> </u>	Overnight Courier
State of Idaho	<u> </u>	Via Facsimile
PO Box 44449	<u> </u>	Hand Delivered
Boise, ID 83711-4449		

US Department of Justice	<u>X</u>	United States Mail, Postage Prepaid
Environment and Natural	<u> </u>	Overnight Courier
Resource Division	<u> </u>	Via Facsimile
550 West Fort Street, MSC 033	<u> </u>	Hand Delivered
Boise, ID 83724		



Theodore R. Booth
Attorney for Claimant

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**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

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Subcase Nos. Attached

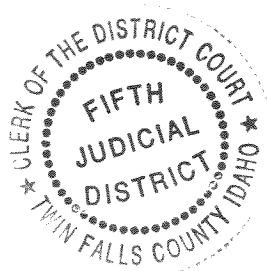
CERTIFICATION

State of Idaho

County of Twin Falls ss.

I hereby certify the attached Partial Decrees to be full, true and correct copies of the originals on file with the Snake River Basin Adjudication District Court.

DATED December 11, 2002.



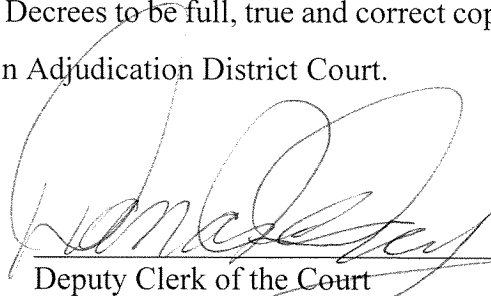

Deputy Clerk of the Court
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

37-02499	37-02761A	37-07199	37-07438	37-07662	37-10158
37-02513	37-02761B	37-07205	37-07440A	37-07677	37-10161
37-02514	37-02804B	37-07213	37-07440B	37-07679	37-10172
37-02515A	37-04039	37-07214	37-07447A	37-07694	37-10198
37-02515B	37-04051	37-07221	37-07447B	37-07695	37-10211
37-02515C	37-04052	37-07231	37-07453	37-07699	37-10216
37-02517	37-04078	37-07232	37-07454	37-07700	37-10217
37-02519	37-04080	37-07242	37-07457	37-07716	37-10223
37-02526A	37-04084	37-07247	37-07458A	37-07726	37-10237
37-02526B	37-04085	37-07252A	37-07458B	37-07755	37-10238
37-02527A	37-04087	37-07252B	37-07469	37-07757	37-10244
37-02527B	37-04111	37-07255	37-07470	37-07761A	37-10254
37-02531A	37-04173	37-07259	37-07473	37-07761B	37-10271
37-02532B	37-04229	37-07260	37-07475	37-07766	37-10315
37-02549	37-04263	37-07264	37-07476	37-07768	37-10317
37-02550	37-04273	37-07278	37-07480	37-07772	37-10363
37-02558	37-04274	37-07279	37-07484	37-07805	37-10446
37-02564	37-04305	37-07313	37-07488	37-07814	37-10450
37-02592C	37-04306	37-07314	37-07491	37-07816	37-10477
37-02592D	37-04309	37-07315A	37-07498	37-07837	37-10555
37-02592E	37-04317	37-07315B	37-07517	37-07877A	37-10597
37-02592F	37-04328	37-07316	37-07531	37-07949	37-10609
37-02605	37-04344	37-07331	37-07533A	37-07952	37-10621
37-02622	37-04373	37-07337	37-07533B	37-08005B	37-10632
37-02626	37-04374	37-07343	37-07538	37-08005C	37-10646
37-02644A	37-04390	37-07357	37-07545	37-08007	37-10681
37-02647	37-04391	37-07363	37-07547	37-08010	37-10689
37-02654	37-04401	37-07370	37-07551	37-08054	37-10809
37-02657A	37-04419	37-07376	37-07570	37-08055	37-10896
37-02657B	37-07001	37-07379	37-07572	37-08060	37-10903
37-02660	37-07003	37-07380A	37-07576	37-08061	37-10907
37-02663	37-07005	37-07380C	37-07581	37-08065	37-10910
37-02666	37-07009	37-07380D	37-07591	37-08093	37-10953
37-02667	37-07012	37-07381	37-07593A	37-08108	37-11006
37-02669	37-07051	37-07385A	37-07593B	37-08112	37-11054
37-02670	37-07072	37-07385B	37-07597	37-08138	37-11190
37-02675	37-07078	37-07388	37-07600	37-08145	37-11202
37-02679	37-07081	37-07394	37-07602	37-08212	37-11203
37-02680A	37-07089	37-07412	37-07617A	37-08289	37-11221
37-02680B	37-07092	37-07415A	37-07617B	37-08690	37-11376
37-02687A	37-07149	37-07415B	37-07621D	37-10019	37-12380
37-02687B	37-07157	37-07419B	37-07621E	37-10053	37-12434
37-02697	37-07160	37-07419C	37-07621F	37-10055	37-12535
37-02704	37-07189	37-07419D	37-07621G	37-10087	37-12773
37-02719	37-07191	37-07420A	37-07629	37-10088	37-12787A
37-02724	37-07194	37-07420B	37-07634	37-10117	37-12790
37-02729	37-07197	37-07421	37-07639A	37-10119	37-12908
37-02733	37-07198B	37-07432	37-07639B	37-10121	37-12909
37-02753	37-07198C	37-07435A	37-07649	37-10129	37-12910
37-02760	37-07198D	37-07435B	37-07650	37-10142	37-13385

(Subcase list: 37READY)
12/13/02

EXHIBIT A

Subcase Nos:

37-13386
37-19816
37-19847
37-19848
37-20270
37-20271
37-20492
37-20589
37-20590
37-20608
37-20613
37-20614
37-20712
37-20713
37-20714
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37-20747