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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL
AUTOMATED SYSTEMS, INC.; LTB1,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

**RECEIVER'S MOTION REQUESTING
APPROVAL OF CORRECTED SALE
ORDERS**

**(Millard County Properties HD-4606-2 and
HD-4606-2-1)**

Civil No. 2:15-cv-00828-DN

District Judge David Nuffer

Pursuant to Rule 60(a) of the Federal Rules of Civil Procedure, Court-Appointed Receiver R. Wayne Klein (the "Receiver") hereby files this motion (the "Motion") requesting that the Court issue corrected orders approving the sale of two properties in Millard County, Utah. Proposed orders ("Sale Orders") are submitted herewith and attached hereto as Exhibit A and Exhibit B.

I. BACKGROUND

1. On December 1, 2020, the Court issued an order approving the sale of a 67.5-acre parcel of land in Millard County having tax parcel number HD-4606-2 (“67.5-Acre Sale Order”).¹ The property was sold at auction on January 19, 2021 and the Receiver prepared to close on the sale to the buyer. During the process of preparing to close, the title company informed the Receiver that the legal description contained in the 67.5-Acre Sale Order omitted a portion of the correct legal description. A copy of the title report for the 67.5 acre property is attached as Exhibit C. The Receiver discovered that the same defect is in the legal description of HD-4606-2 contained in the Corrected Receivership Order (“CRO”).²

2. On February 4, 2021, the Court issued an order approving the sale of a 5-acre parcel of land in Millard County having tax parcel number HD-4606-2-1 (“5-Acre Sale Order”).³ The 5-acre parcel is adjacent to and was formerly conjoined with the 67.5-acre parcel. This property will be sold at auction on March 11, 2021. While preparing a title report for the sale of the 5-acre parcel, the title company discovered that the legal description of the property in the 5-Acre Sale Order and the CRO⁴ were incorrect. A copy of the title report for the 5-acre property is attached as Exhibit D. In addition, the title company warned that the 5-Acre Sale Order did not specify that Water Right No. 68-2388 is associated with the 5-acre parcel and not the two formerly-combined parcels.

3. The correct legal description for the 67.5-acre parcel known as HD-4606-2 is:

¹ [Docket No. 1028](#), filed December 1, 2020.

² [Docket No. 491](#), filed November 1, 2018 at ¶ 20(o).

³ [Docket No. 1076](#), filed February 4, 2021.

⁴ CRO at ¶ 20(p).

Parcel No. HD-4606-2: The South half of the Southeast quarter of Section 2, Township 17 South, Range 8 West, Salt Lake Base and Meridian. Less: Beginning at the Southeast corner of Section 2, Township 17 South, Range 8 West, Salt Lake Base and Meridian, thence South 89°51'00" West 544.50 feet along the South boundary of Section 2, thence North 600 feet paralleling the East boundary of the Southeast quarter of Section 2, thence North 89°51'00" East 544.50 feet paralleling the South boundary to the East boundary of Section 2, thence South 600 feet, along the East boundary of Section 2, to the point of beginning. Less: **Parcel No. HD-4606-2-1:** Beginning at the Northeast corner of the Southeast quarter of the Southeast quarter of Section 2, Township 17 South, Range 8 West, Salt Lake Base and Meridian, thence West 466.7 feet along the North boundary of the Southeast quarter of the Southeast quarter of Section 2, thence South 466.7 feet, thence East 466.7 feet to the East boundary of the Southeast quarter of the Southeast quarter of said Section 2, thence North 466.7 feet along the East boundary of the Southeast quarter of the Southeast quarter of said Section 2, to the point of beginning.

4. The 67.5-Acre Sale Order and the CRO omitted the portion of the legal description of HD-4606-2-1 that was “lessed out” of the HD-4606-2 legal description.

5. The correct legal description for the 5-acre parcel known as HD-4606-2-1 is:

Parcel No. HD-4606-2-1: Beginning at the Northeast corner of the Southeast quarter of the Southeast quarter of Section 2, Township 17 South, Range 8 West, Salt Lake Base and Meridian, thence West 466.7 feet along the North boundary of the Southeast quarter of the Southeast quarter of Section 2, thence South 466.7 feet, thence East 466.7 feet to the East boundary of the Southeast quarter of the Southeast quarter of said Section 2, thence North 466.7 feet along the East boundary of the Southeast quarter of the Southeast quarter of said Section 2, to the point of beginning.

6. The Receiver’s motions seeking approval for the sales of the 67.5-acre parcel and the 5-acre parcel contained identical legal descriptions—both of which are incorrect. The Receiver’s error was repeated in the proposed orders submitted to the Court, which orders were entered by the Court, as proposed by the Receiver.

7. Because the legal descriptions for both properties were identical, both also indicated that Water Right No. 68-2388 belonged to both parcels. That is incorrect. The water right belongs to the 5-acre parcel, which contains a home. The water right is the source of water for the home on the 5-acre parcel.

8. The buyer of the 67.5-acre parcel is aware that that the Receiver is conveying

no water rights with that property.

II. REQUESTED RELIEF

9. Rule 60(a) allows a court to “correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.”⁵ As described above, there was a mistake that was clerical in nature which arose from an oversight or omission. The Court may correct the mistake “on motion or on its own, with or without notice.”⁶

10. The Receiver asks that the Court enter the corrected sale orders attached as Exhibits A and B, to ensure that the orders list the correct legal descriptions for both properties and to clarify that the water right belongs with the home on the 5-acre parcel (HD-4606-2-1). The Receiver is taking this step to reduce the risk of any confusion by buyers and to avoid incorrect legal descriptions being in the chain of title for either property.

11. The legal notices published in the Millard County Chronicle Progress accurately identified the parcel numbers of the two properties. Because the published notices did not contain the legal descriptions, the Receiver believes no bidders or potential bidders were misled about what properties were being offered for sale or the size of the properties. Therefore, the Receiver believes no new publication is necessary to correct any misperceptions that might have been caused by the inaccurate legal descriptions contained in his motions seeking approval of sales of these two properties.

⁵ Fed. R. Civ. P. 60(a); see also McNickle v. Bankers Life & Cas. Co., 888 F.2d 678, 682 (10th Cir. 1989) (“Rule 60(a) may be relied on to correct what is erroneous because the thing spoken, written, or recorded is not what the person intended to speak, write, or record.”)

⁶ *Id.*

CONCLUSION

For the reasons set forth herein, the Receiver requests that the Court enter the proposed sale orders attached hereto as Exhibit A and Exhibit B, thus ensuring that the property sales contain accurate records of the legal descriptions and the property to which the water right attaches. The Receiver also requests any other relief appropriate under the circumstances.

DATED this 23th day of February 2021.

PARR BROWN GEE & LOVELESS

/s/ Michael S. Lehr _____
Jonathan O. Hafen
Michael S. Lehr
Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing was electronically filed with the Clerk of the Court through the CM/ECF system on February 23, 2021, which sent notice of the electronic filing to all counsel of record.

/s/ Michael S. Lehr