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Department of Water Resources

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

2004 MAY 7 PM 3 24

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	)	ORDER ON MOTION TO SET ASIDE
	)	ORDER DISALLOWING WATER
Case No. 39576	)	RIGHT AND SETTING SUBCASE
	)	DEADLINES
_____	)	SUBCASE NOS. 29-10783

I. PROCEDURAL BACKGROUND

The SRBA District Court issued a *Final Order Disallowing Water Right Claim* for this claim on March 25, 2004. On March 29, 2004, the SRBA Court received correspondence from Gordon D. Lawlor regarding water right claim 29-10783. Mr. Lawlor's correspondence asks to set aside the *Order Disallowing Water Right*. A hearing was held May 5, 2004

II. STANDARD OF REVIEW

Motions to Set Aside Orders Disallowing Water Rights are considered under Idaho Rule of Civil Procedure 60(b). I.R.C.P. 60(b) allows a court to relieve a party from a final judgment, order or proceeding for the following reasons:

- 1) mistake, inadvertence, surprise, or excusable neglect;
- 2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
- 3) fraud, misrepresentation or other misconduct of an adverse party;
- 4) the judgment is void;
- 5) the judgment has been satisfied, released or discharged; and
- 6) any other reason justifying relief from the operation of the judgment.

The Rule requires that a motion to set aside be made within a reasonable time, and for reasons 1, 2, 3, and 6, not more than six (6) months after the judgment, order or decree. The Idaho Supreme Court has held that the time limits in Rule 60(b) are mandatory, and consequently, any attempt to modify or set aside a judgment or order pursuant to subdivisions (1), (2), (3) or (6)

will not be allowed where the applicable time limit under the rule has clearly expired. *Gordon v. Gordon*, 118 Idaho 804, 800 P.2d 1018 (1990).

III. FINDINGS

Mr. Lawlor explained at the hearing that he failed to timely object to the *Director's Report* disallowing this water claim because he was facing severe financial problems during the time the objections were due. Mr. Lawlor said this water right has been used on a regular basis. There was no opposition to the *Motion*. Therefore, the *Motion to File Amended Notice of Claim* is granted.

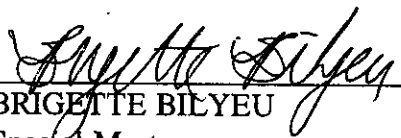
IT IS ORDERED that the following deadlines shall govern further proceedings:

May 7, 2004	5:00 pm	Deadline to submit copy of Affidavit to IDWR
June 25, 2004	5:00 pm	Deadline to file Amended Director's Report
July 16, 2004	5:00 pm	Deadline to file Objection
July 23, 2004	5:00 pm	Deadline to file Response
July 28, 2004	10:00 am	Status Conference

Location: Snake River Basin Adjudication
253 3rd Ave. North
Twin Falls, Idaho 83301

Parties may participate by phone by dialing 1-225-383-1099 and when prompted enter participant code 926509.

DATED May 7, 2004.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION TO SET ASIDE ORDER DISALLOWING WATER RIGHT AND SETTING SUBCASE DEADLINES was mailed on May 07, 2004, with sufficient first-class postage to the following:

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

CINDY LAWLOR
GORDON LAWLOR
8690 PARKS RD
POCATELLO, ID 83201
Phone: 208-478-1927