

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED 4
2004 JUN 25 PM 4 10

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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION ON MOTION TO
	)	SET ASIDE PARTIAL DECREE
Case No. 39576	)	
	)	WATER RIGHT NOS.: 29-10594, 29-11816,
	)	29-11817, 29-13117, 29-13138, AND 29-13141

I. PROCEDURAL BACKGROUND

The SRBA District Court issued *Partial Decrees* for water rights 29-10594, 29-11816, 29-13117, 29-13138, and 29-13141 on March 22, 2004. The SRBA District Court issued a *Partial Decree* for water right 29-11817 on December 2, 1998. On May 24, 2004, Joyce Orders sent *Objection* forms to the SRBA Court indicating she had a problem with some water rights, but the objection forms did not identify any water right numbers. The SRBA clerk's office docketed the correspondence in the six subcases listed above since these subcases were claimed by the claimants listed in the objection forms.

Presiding Judge John Melanson issued an *Order of Reference* relating to the objection forms. A hearing was held on June 16, 2004. At the hearing, Mrs. Orders asserted that she intended to ask the court to set aside the *Partial Decrees* for 29-10594, 29-11816, 29-11817, 29-13117, 29-13138, and 29-13141. Mrs. Orders and claimants Kevin and Sharon Baird, Jay and Goldie Anthony, Tim and Brenda Figone, and Deloy and Marjorie Armstrong were allowed to present argument and evidence relating to the *Motion*.

At the hearing, Mrs. Orders withdrew her Motion to set aside for 29-10594.

II. FINDINGS

Mrs. Orders asks the court to set aside the *Partial Decrees* issued by the SRBA District Court for these water rights because she wants to assert *Objections* to the recommendations contained in the *Director's Report*.

A. Rule 60(b)

Motions to Set Aside Partial Decree are generally considered under Idaho Rule of Civil Procedure 60(b).¹ 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.

There was no evidence of record, that indicates that Mrs. Orders may be relieved from these *Partial Decrees* based on the criteria of Rule 60(b). Mrs. Orders did not present any evidence of mistake, inadvertence, surprise, or excusable neglect as required under subpart (1) of rule 60(b).

Mrs. Orders did not allege the existence of any "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial" as required under the second subpart of Rule 60(b).

Mrs. Orders did not allege facts to show "fraud, misrepresentation or other misconduct of an adverse party" as set forth under subpart three of Rule 60(b).

Mrs. Orders did not allege that the *Partial Decrees* were void as required in subpart four of the rule.

Mrs. Orders did not assert that the *Partial Decrees* had been satisfied, released or discharged as set forth in subpart five.

Mrs. Orders did not allege any facts to show any "other reason justifying relief from the

¹ IDWR attempted to make legal arguments at the hearing regarding the standard of review for *Motions to Set Aside Partial Decrees*. However, since IDWR is not a party it cannot argue for or against positions advocated by the parties in the SRBA. Therefore, this Special Master disregarded IDWR's legal argument.

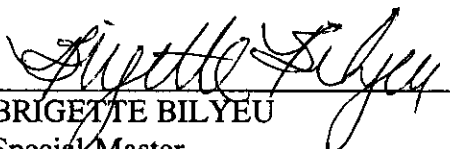
operation of the judgment” as required under subpart six of the Rule.

III. CONCLUSIONS OF LAW

The movant withdrew her motion on 29-10594. Therefore, IT IS RECOMMENDED that the *Partial Decrees* for 29-10594 **not be set aside**.

The movant did not show sufficient evidence to justify setting aside a *Partial Decree* under the requirements of I.R.C.P. 60(b), Therefore, IT IS RECOMMENDED that the *Partial Decrees* for 29-11816, 29-11817, 29-13117, 29-13138, and 29-13141 **not be set aside**. Accordingly, no *Amended Partial Decrees* should issue.

Dated June 25, 2004.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT AND RECOMMENDATION ON MOTION TO SET ASIDE PARTIAL DECREE was mailed on June 25, 2004, with sufficient first-class postage to the following:

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