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Department of Water Resources

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY**

	)	
	)	
	)	
	)	Subcase No. 36-15155
In Re SRBA	)	
	)	MOTION TO CORRECT CLERICAL
	)	MISTAKE IN JUDGMENT PURSUANT TO
Case No. 39576	)	I.R.C.P., RULE 60(a) AND
	)	MEMORANDUM IN SUPPORT
	)	
	)	
_____	)	

Pursuant to Snake River Basin Adjudication ("SRBA") Administrative Order No. 1 and Rule 60(a) of the Idaho Rules of Civil Procedure, Paul Robertson, by and through his counsel of record, Dana L. Hofstetter, respectfully moves the Court to correct a clerical mistake (season of use) in the SRBA partial decree with respect to Water Right No. 36-15155. This Motion is supported by the record, the Memorandum below, the Affidavit of L. Glen Saxton and the Affidavit of Dana L. Hofstetter.

MEMORANDUM

1. Factual Background.

The SRBA partial decree for water right no. 36-15155 issued in January 2002 with an incorrect irrigation season of June 10 to September 21. The correct irrigation season should be April 1 to October 31.

The origin of the irrigation season error is the licenses for the underlying water right nos. 36-2640 and 36-2641.¹ *Affidavit of L. Glen Saxton*. The licenses for these companion water rights incorrectly designated an irrigation season from June 10 to September 21 based on the period of time the water rights had been used in a particular year. *Id.* However, the Idaho Department of Water Resources ("IDWR") always has based irrigation seasons in its licenses on standard time periods, rather than the time period during which water actually was used in a particular year. *Id.* In this case, the correct standard irrigation season applicable to these water rights is April 1 to October 31. *Id.*

The SRBA Claim for water right no. 36-15155 claimed an irrigation season of April 1 to November 1. *Affidavit of Dana L. Hofstetter, Exhibit A*. In the original SRBA Director's Report for water right no. 36-15155, a correct irrigation season of April 1 to October 31 was designated. *Id., Exhibit B*. The erroneous irrigation season of June 10 to September 21 first appeared in the SRBA in the Supplemental Director's Report filed in August 1999 as a result of apparent transcription from the incorrect licenses. *Id., Exhibit C*. Although the original Director's Report contained the correct irrigation season, the SRBA partial decree ultimately incorporated the incorrect season of use from the Supplemental Director's Report.

¹ Water right no. 36-15155 is a combination of licensed water right nos. 36-2640 and 36-2641. *Affidavit of L. Glen Saxton*.

2. **Rule 60(a), I.R.C.P. Provides for Correction of Clerical Mistakes and Errors in Judgments, Orders or Other Parts of the Record at Any Time.**

Rule 60(a), I.R.C.P. provides for correction of clerical mistakes and errors of oversight in judgments, orders or other parts of the record at any time: "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders."

Rule 60(a) reflects the longstanding authority of courts to correct clerical errors in judgments and other court records. *Wilcox v. Wells*, 5 Idaho 786, 51 P. 985 (1898) (correcting legal description of land both in complaint and in the judgment which followed the description in the complaint). When there is a clerical error in a judgment, Rule 60 (a), not an appeal, is the appropriate remedy. *W. F. Construction Company v. Kalik*, 103 Idaho 713, 716, 652 P.2d 661, 664 (Ct. App. 1982) ("From the record it appears that the \$600 offset which the court allowed the owner was either not deducted or that a typographical error was made in preparing the judgment. The total amount of the judgment should be reduced by \$600 to \$22,115.80. We note, however, that it was not necessary for the owner to present this issue on appeal.") *See also, Weekes v. Weekes*, 101 Idaho 213, 611 P.2d 133 (1980); *Hayes v. Towles*, 95 Idaho 208, 506 P.2d 105 (1973); *Merrick v. Pearce*, 97 Idaho 250, 542 P.2d 1169 (1975).

The clerical mistake to be corrected need not be made by the court, a court clerk or even a party to the litigation. Wright, Miller & Kane, *Federal Practice and Procedure* § 2854 (1995); *Thorn Creek Cattle Association v. Bonz*, 122 Idaho 42, 47, 830 P.2d 1180, 1185

(1992) (where Sheriff's notice of land sale had incorrect legal description). Further, evidence outside the record may be considered on a Rule 60(a) motion. Wright, Miller & Kane, *Federal Practice and Procedure* § 2855 (1995). The Rule covers computational mistakes as well as the incorrect designation of a date. *Id.* § 2854.

3. **The Season of Use Mistake Is Exactly The Kind Of Error Addressed By Rule 60(a).**

a. **The Season of Use Mistake Is Mechanical In Nature and Is Readily Apparent From the Record.**

Rule 60(a) provides a means of correcting unintentional mistakes of a mechanical nature that are readily apparent. *Dursteler v. Dursteler*, 112 Idaho 594, 597, 733 P.2d 815, 818 (Ct. App. 1987). In contrast, substantive legal mistakes are not appropriately corrected pursuant to Rule 60(a). *Id.* Thus, when intentional and deliberate action is later determined to be incorrect, Rule 60(a) is not the applicable remedy:

Rule 60(a) is not a vehicle for relitigating matters that already have been litigated and decided, nor to change what has been deliberately done. The fact that a decision is shown to be erroneous by a subsequent decision of a higher court is not the kind of clerical mistake or error of inadvertence that is within this subdivision of the rule.

Wright, Miller & Kane, 11 *Federal Practice and Procedure*, § 2854 (1995). Rule 60(a) errors have been distinguished from other kinds of mistakes based upon whether the error involves a legal judgment or, rather, whether the mistake is apparent. *Dursteler*, 112 Idaho at 597, 733 P.2d at 818, *citing In Re Mary Queen Transfer Corp.*, 266 F.Supp. 605, 607 (E.D.N.Y. 1967).

Rule 60(a) has been used to correct the dollar amount of monetary awards where the error was either typographical or computational in nature. *See e.g. Weekes v. Weekes*, 101

Idaho 213, 611 P.2d 133 (1980); *Patino v. Grigg & Anderson Farms*, 97 Idaho 251, 542 P.2d 1169 (1975); *Hessing v. Drake*, 90 Idaho 67, 408 P.2d 180 (1965); *W.F. Construction Company, Inc.*, 103 Idaho 713, 652 P.2d 661 (Ct. App. 1982). Additionally, Rule 60(a) has been invoked to correct transcription errors in the legal description of land. *See e.g., Thorn Creek Cattle Association v. Bonz*, 122 Idaho 42, 830 P.2d 1180 (1992).

Of particular importance with respect to this season of use error is Rule 60(a)'s application in addressing errors or omissions concerning dates. In these cases, Rule 60(a) is applied where the correct date is readily ascertainable and there is no need for new factual determinations. For example, in *Employers Mutual Casualty Co. v. Key Pharmaceuticals, Inc.*, 866 F. Supp. 360, 364-65 (S.D.N.Y. 1995), the court concluded that prejudgment interest omitted from a judgment could not be awarded under Rule 60(a) since the court would need to make a new factual determination as to the date the prejudgment interest began to accrue but, at the same time, it also concluded that post-judgment interest could be awarded under Rule 60(a) because the applicable date for post-judgment interest could be determined mechanically, with no discretion as to the date from which such interest was to be calculated. However, in *McNickle v. Bankers Life and Casualty Company*, 888 F.2d 678 (10th Cir. 1989), the applicable date for determining prejudgment interest was readily ascertainable from the record and, there, Rule 60(a) even was used to correct the omission of prejudgment interest. As for the errors corrected in *Employers Mutual* and in *McNickle*, the correct season of use for water right no. 36-15155 is readily ascertainable. *Affidavit of L. Glen Saxton*. There is no need for additional legal determinations or factual findings in this regard. *Id.*

United States v. Roth, 164 F.2d 575, 576-77 (3rd Cir. 1948), which involved a bankruptcy claim that inadvertently stated an incorrect year, also shares many particulars with this season of use error. In *Roth*, the bankrupt owed taxes for 1938, not for 1939; however, the bankruptcy claim filed by the Internal Revenue Service inadvertently claimed that the taxes were owed for the year 1939. On appeal, the court decided the correction should have been allowed under Rule 60(a) since the undisputed fact that the taxes were owing for 1938 was not accurately reflected in the bankruptcy claim:

In other words, there must be something in the proof of claim which fits closely enough with the relations existing between the bankrupt and the creditor to identify it as a claim based on those relations. Here there was just that; the bankrupt owed no income tax for 1939 but did owe one for 1938, and in the exact amount stated in the proof of claim. No one who knew the relations between the parties could fail to recognize that the proof filed was intended to cover the taxes for 1938, and it was stipulated that the year 1939 was stated inadvertently.

Roth, 164 F.2d at 576-77 (emphasis added). As in *Roth*, no one familiar with irrigation seasons of use in Basin 36 “could fail to recognize” that June 10 to September 21 was an incorrect season of use. *See Affidavit of L. Glen Saxton*. It is readily apparent that a Basin 36 right should not have a June 10 to September 21 irrigation season. *Id.* The error is readily ascertainable by comparison of the season of use attributed to water right no. 36-15155 and the irrigation seasons designated for other Basin 36 water rights. There is no need for the court to engage in substantive factual deliberations to identify the correct season of use for water right no. 36-15155. IDWR policy provides standard seasons of use for irrigation rights. *Id.*

b. Since Rule 60(a) Applies To Mistakes In Any Part Of The Record,
It Applies To The Season of Use Error.

Rule 60(a) states that it applies to mistakes in judgments, orders and “other parts of the record.” While the Rule does not define what is included in the “record,” a broad interpretation of the term generally is recommended: “The interests of judicial administration call for a broad interpretation of the term ‘record’” 12 *Moore's Federal Practice*, § 60.10[1] (Matthew Bender 3d ed.) Rule 60(a) provides for correction of the season of use error, although the error first appeared in the SRBA subcase in the Supplemental Director's Report.

Case law confirms that even complaints and other kinds of claim documents are subject to Rule 60(a) correction. In the *Roth* case which involved the wrong tax year on a bankruptcy claim, the district court denied leave to amend the claim under Rule 60(a) and ordered the claim expunged, reasoning that the amendment would have introduced a new cause of action after the claim deadline had passed. *Roth*, 164 F.2d at 576. On appeal, however, the district court's decision was overturned. In view of the evident nature of the mistake deriving from the bankruptcy claim, the appellate court ruled that the error should have been corrected under Rule 60(a):

[T]he bankrupt owed no income tax for 1939 but did owe for 1938 and in the exact amount stated in the proof of claim....[T]he proof filed was intended to cover the taxes for 1938....Under such circumstances we cannot doubt that the amendment, if not wholly unnecessary, was as [*sic*] least permissible.

Roth, 164 F.2d at 576-77. Similarly, in the early case, *Wilcox v. Wells*, 5 Idaho 786, 787-88, 51 P. 985 (1898), the court corrected a clerical mistake in a judgment that derived from a complaint:

It seems that the land in question was of an irregular shape, and that in describing it, both in the complaint and in the judgment, which followed the description in the complaint, an erroneous description of the land was given.... The mistake was purely a clerical one, of a character frequently occurring in cases of lengthy descriptions of land, as was that in this case. There was no question as to what land was intended to be covered by both the complaint and the judgment.

Emphases added. While *Wilcox* is an older case pre-dating Rule 60(a), it continues to be cited as common law support for cases involving Rule 60(a)-type clerical error principles. See e.g., *Thorn Creek Cattle Association*, 122 Idaho at 47, 830 P.2d at 1185.

There is no limitation in Rule 60(a) preventing correction of the season of use error in the Supplemental Director's Report. The Rule itself explicitly states that errors in any part of the record are correctable. In this instance, as in *Roth* and *Wilcox*, the evident nature of the season of use error in the Supplemental Director's Report warrants Rule 60(a) correction.

c. **Although The Season of Use Error Derived From An Error Made By IDWR, It Is Subject To Correction Under Rule 60(a).**

The season of use error originated with IDWR's predecessor agency, the Idaho Department of Reclamation, during the license issuing process. *Affidavit of L. Glen Saxton*. The incorrect season of use from the licenses later were transcribed into the Supplemental Director's Report. Although the error derived from IDWR oversight and was not made by the court or by a court clerk, it is remediable by Rule 60(a).

For correction under Rule 60(a), it is established that the error need not be made by the court, a court clerk or even a party to the litigation. Wright, Miller & Kane, 11 *Federal Practice and Procedure*, § 2854; *Thorn Creek Cattle Association* 122 Idaho at 47, 830 P.2d at 1185 (where Sheriff's notice of land sale had incorrect legal description). Rule 60(a) does not

distinguish between a mistake made by the court and a mistake from another source since the underlying objective of Rule 60(a) is to have the permanent record of the court disclose correct information. *See Note, "A History and Interpretation of Rule 60(a) of the Federal Rules of Civil Procedure," 42 Drake Law Review 461, 472 (1993).* Thus, the season of use error is correctable under Rule 60(a), even though the error did not originate with the court.

4. **The Season of Use for Water Right No. 36-15155 Should Be Corrected To Avoid Undesirable Consequences.**

Based on IDWR's long-standing policies with regard to designating irrigation seasons, the June 10 to September 21 irrigation season is facially erroneous. *See Affidavit of L. Glen Saxton.* The difference in season of use between June 10 to September 21 and April 1 to October 31 is significant. Without correction, the season of use in the decree could impair the water right holder's ability to properly irrigate his farm during the full irrigation season. Rule 60(a) offers the opportunity to correct this apparent mistake of oversight. Without correction, the practical consequences of this error could be dire.

5. **Judicial Economy, And Also Other Policy, Support Rule 60(a) Correction Of The Season of Use .**

Rule 60(a) offers an efficient way for a court, upon motion of a party or upon its own initiative, to correct clerical mistakes and other errors of oversight. It avoids the need for a collateral or independent action as well as the need for a Rule 60(b)(5) proceeding when it is no longer equitable for an incorrect judgment to be given prospective effect. Rule 60(a) provides an opportunity for a court to efficiently ensure justice is served by correction of certain readily apparent errors. Also, Rule 60(a) allows a court to give appropriate notice prior to making a correction. Through the SRBA process other interested parties will receive notice

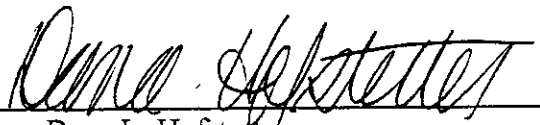
of the season of use error and will have an opportunity to have any concerns heard. Due to the specific kind of mistake involved, granting relief in this subcase also would not create a legal basis for wholesale objections to other partial decrees but would ensure that this evident mistake is not carried forward in the SRBA decree and in administration of the water right.

6. Conclusion.

Pursuant to Rule 60(a), the season of use for water right no. 36-15155 should be corrected to be April 1 to October 31.

DATED this 26th day of August, 2002.

HOFSTETTER LAW OFFICE, LLC
For Paul Robertson

By 
Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2002, I caused to be served copies of the foregoing **MOTION TO CORRECT CLERICAL MISTAKE IN JUDGMENT PURSUANT TO I.R.C.P., RULE 60(a) AND MEMORANDUM IN SUPPORT** by the methods indicated below:

U.S. Department of Justice
Environmental & Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724
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Chief, Natural Resources Division
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Dana L. Hofstetter

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