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Department of Water Resources

Attorney for 7UD Ranches

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

In Re SRBA	)	Subcases 41-8C (Taysom), 41-8D
	)	(Weston), 41-8F (7UD Ranches)
Case No. 29576	)	plus
	)	41-8E (Robert R. and James V. Spillet)
	)	
	)	7UD RANCHES' RESPONSE TO
	)	SUPPLEMENTAL DIRECTOR'S
	)	REPORT DATED DECEMBER 10, 2004
	)	

Comes now, 7UD Ranches, by and through its attorney of record, Scott J. Smith of the firm of Racine Olson Nye Budge & Bailey, Chartered, and submits its Response to the Supplemental Director's Report dated December 10, 2004. Pursuant to the Special Master's Order dated December 15, 2004, 7UD Ranches has timely filed this Response.

INTRODUCTION

Currently before the Special Master is Juan James Spillet's Motion to Set Aside Partial Decrees identified as 41-8C, 41-8D, and 41-8F.¹ These partial decrees were issued on **July 28, 2000.**² See IDWR's Supplemental Directors Report at pp. 8-10.

¹ Spillet's Motion to Set Aside also requested that Partial Decree 41-8E be set aside. However, Partial Decree 41-8E (which decreed water to Spillet) was set aside by the Court a number of years ago.

² A clerical omission in these partial decrees was corrected *nunc pro tunc* by amendment on March 12, 2001.

Spillet filed his Motion to Set Aside on **June 15, 2004**, on the basis of “mistake, inadvertence, surprise or excusable neglect.” A public hearing was held on September 9, 2004. During the public hearing, the Special Master asked IDWR whether any errors or mistakes had been made in the adjudication of these claims. IDWR verbally responded by stating that it could not say that there had been errors. By Order dated September 22, 2004, the Special Master requested that IDWR file a written report concerning whether “errors had been made in allocating water from the source of the subject rights.” IDWR issued its Supplemental Director’s Report on December 10, 2004, to address the narrow question proffered by the Special Master.

This is 7UD Ranches’ response to the Supplemental Director’s Report. 7UD Ranches does not dispute any of the factual statements or conclusions set forth in the Supplemental Director’s Report. As stated at the last public hearing, it is 7UD Ranches’ position that Spillet’s Motion to Set Aside must be denied.

RESPONSE

A. Spillet’s Motion to Set Aside is untimely and must be denied.

In the SRBA, a motion to set aside a partial decree is treated similar to a motion to set aside a default judgment and determined in accordance with the criteria set forth in Idaho Rule of Civil Procedure 60(b). *See* AO1 § 14d; *Memorandum Decision and Order on Motion to Set Aside Partial Decrees*, Subcase 55-02373 (May 1, 2001). Idaho Rule of Civil Procedure permits a court to relieve a party from a final judgment, order, or proceeding because of:

- (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 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; or
- (6) Any other reason justifying relief from the operation of the judgment.

I.R.C.P. 60(b). Idaho Rule of Civil Procedure 60(b) also requires that a motion to set aside be made within a reasonable time and, for subsections (1), (2), (3) and (6) of I.R.C.P. 60(b), not more than **six months** after entry of 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.” *Memorandum Decision and Order on Motion to Set Aside Partial Decrees*, Subcase 55-02373, at p. 8 (May 1, 2001)(emphasis added). “The time limit is also applied as a matter of course in the SRBA.” *Id.*

Spillet’s Motion to Set Aside expressly states that it is based upon “mistake, inadvertence, surprise or excusable neglect.” *See* Spillet’s Motion to Set Aside at 3. Therefore, Spillet’s Motion to Set Aside is based upon Subsection (1) of I.R.C.P. 60(b), which as stated above has a **six month** deadline.

The partial decrees at issue in this matter were issued on **July 28, 2000**. *See* IDWR’s Supplemental Directors Report at pp. 8-10. Spillet’s Motion to Set Aside was not filed until **June 15, 2004**.

Because Spillet failed to file his Motion to Set Aside within the six month time period provided by I.R.C.P. 60(b), it is untimely and must be summarily denied as a matter of law. *See Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcase 65-19812 *et al*, at p. 13 (Jan. 31, 2001)(denying an untimely Motion to Set Aside).

B. Spillet's Motion to Set Aside must be denied based upon IDWR's Supplemental Director's Report.

IDWR's Supplemental Director's Report states that Partial Decrees 41-8C, 41-8D, and 41-8F were issued on July 28, 2000, in amounts recommended by Senior Water Resource Agent Steve Clelland. The Supplemental Director's Report further states:

- (a) Mr. Clelland's recommendations were based upon the watermaster's current delivery schedule from 2000 showing the quantities of water "currently delivered to the individual water users" (hereinafter "2000 Schedule").
- (b) The 2000 Schedule contained amounts that mirrored those set forth in a previous watermaster's list of "billed amounts" from 1993 (hereinafter "1993 Schedule").
- (c) An earlier schedule from 1965 (hereinafter "1965 Schedule") listed amounts that differed from the amounts contained in the 2000 Schedule and 1993 Scheduled.
- (d) All three of these documents – the 2000 Schedule, the 1993 Schedule, and the 1965 Schedule – were in the possession of IDWR and publicly available prior to the issuance of Partial Decrees 41-8C, 41-8D, and 41-8F, on July 28, 2000.
- (e) In making his recommendation, Mr. Clelland "relied on what he believed to be the best information available to him at the time" – that being the 2000 Current Delivery Schedule.
- (f) No objections were filed against Mr. Clelland's final recommendations on Partial Decrees 41-8C, 41-8D, and 41-8F.

Based upon these facts, IDWR could not, and did not, conclude that Mr. Clelland made a mistake or committed an error in relying on what he believed to be the best information available

to him at the time – that being the 2000 Schedule. As stated in the Supplemental Director's Report on pages 14-15, there is insufficient evidence that the amounts contained in the 2000 Schedule or the 1993 Schedule were incorrect even in light of the much earlier 1965 Schedule. Consequently, the Supplemental Director's Report at page 15 simply states that **"IDWR does not know whether its quantity recommendations are in error or not."** (Emphasis added).

Attempting to rely upon Subsection (1) of I.R.C.P. 60(b), Spillet's Motion to Set Aside states that the Partial Decrees should be set aside based upon "mistake, inadvertence surprise, or excusable neglect." However, IDWR's Supplemental Director's Report has made it very clear that there is insufficient evidence to show that a mistake was made or that the amounts decreed were in error. Indeed, IDWR simply concluded that it made recommendations consist with the recommendation procedures that it implements as to all water right claims. There being no mistake or error, Spillet's Motion to Set Aside must be denied.³

C. Spillet's Motion to Set Aside must be denied because it fails to plead any facts or legal argument constituting a meritorious defense, as illustrated by the IDWR's Supplemental Director's Report.

Spillet's *speculation* about possible *unsubstantiated* and *unexplained* differences between the amounts listed in the 2000 Schedule and the 1993 Schedule and the amounts listed in the 1965 Schedule is legally inadequate to set aside the Partial Decrees. Under I.R.C.P. 60(b), the moving party must "also allege facts which, if established, would constitute a meritorious

³ Allowing decrees to be set aside in the absence of a mistake would open the door to innumerable challenges to practically all water rights presently decreed and would improperly transfer the burden of proof from the person seeking to set aside the decrees to the person to whom the decree was made. The practical effect would be that the person to whom the decree was made would be put in the position a second time of having to defend his decreed water right. Such a situation is contrary to Idaho water law.

defense . . . and the facts supporting the defense must be detailed.” *Memorandum Decision and Order on Motion to Set Aside Partial Decrees*, Subcase 55-02373, at p. 9 (May 1, 2001). “The detailed factual requirement also goes beyond the mere general notice requirement that would ordinarily be sufficient if pled prior to default.” *Id.*

Spillet’s Motion to Set Aside is bereft of any facts or legal argument that would constitute a meritorious defense (or objection) to the amounts as decreed based upon the recommendation of Mr. Clelland. This is made perfectly clearly in the discussion in the Supplemental Director’s Report concerning the inadequacy of the required evidence and explanation. *See* Supplemental Director’s Report at pp. 14-15. In the absence of any facts or legal argument constituting a meritorious defense, Spillet’s Motion to Set Aside must be denied.

D. Spillet’s Motion to Set Aside must be denied because he failed to object prior to the issuance of the Partial Decrees, as illustrated by IDWR’s Supplemental Directors Report.

Under Idaho Rule of Civil Procedure 60(b), the court generally takes into account the preference for having a case decided on the merit. “In making the determination, the Court must take into consideration that judgments by default are not favored and that the general rule in doubtful cases is to grant relief from default in order to reach a judgment on the merits.”

Memorandum Decision and Order on Motion to Set Aside Partial Decrees, Subcase 55-02373, at p. 10 (May 1, 2001).

However, this so-called preference is of little significance as to the adjudication of water rights in the SRBA. This issue has been explained by the presiding District Court:

The SRBA presents its own unique set of circumstances. In a non-SRBA case, the entry of a default or default judgment typically occurs when a party fails to take some required action. Although *AOI* incorporates the standards for

setting aside a default and a default judgment and applies these standards by analogy, water right claims that proceed uncontested through the SRBA are not entirely analogous to a default situation. First, uncontested claims are prosecuted by claimants who are usually active in their subcase but face no objectors. Second, although uncontested, the claims are still in fact “decided on the merits.” Idaho’s statutory scheme for the SRBA, together with *AOI*, set forth a comprehensive process for adjudicating both uncontested and contested state based claims. This process affords additional procedures and safeguards not otherwise present in non-SRBA cases.

To illustrate, a claim of a water right is filed in accordance with Idaho Code § 42-1409. IDWR then investigates the nature and extent of the claim. I.C. § 42-1410. The director then prepares and files a director’s report for the claim. I.C. § 42-1411. The director’s report constitutes *prima facie* evidence of the nature and extent of the water right. I.C. § 42-1411(4). Either the claimant or any other party to the SRBA can file objections and/or responses to objections to the director’s report. I.C. § 42-1412. The objecting party has the burden of going forward with evidence to rebut the director’s report as to all issues raised by the objection. I.C. § 42-1411(5).

Director’s reports that are uncontested are typically decreed as reported. I.C. § 42-1411(4). Although this is normally what occurs, the SRBA Court retains discretion to apply law to the facts and render its own conclusion regarding uncontested water rights. . . . The district court can also delay entry of a partial decree for the uncontested portions of the director’s report if the court determines that the unobjected claim may be affected by the outcome of a pending contested matter. I.C. § 42-1412(7). Ultimately, the claim is subject to a final review by the court prior to the entry of the partial decree.

If a water right is contested, *AOI* provides several opportunities for the parties to participate in the case at different levels of the proceedings prior to the entry of a partial decree. Some occur as a matter of right and others are subject to discretion. . . . Ultimately, the district court also reviews the special mater’s report and recommendation prior to the entry of the partial decree.

In sum, although there is a preference for having a case decided on its merits, an uncontested water right that proceeds to partial decree is subject to more scrutiny than in a typical non-SRBA case where a default judgment is ultimately entered.

Id. at 10-12. “In sum, in the SRBA, ‘deciding a case on the merits’ must be placed in the proper context.” *Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcase 65-19812 *et al*, at p. 9 (Jan. 31, 2001).

Prior to the issuance of the partial decrees at issue in this case, Spillet had every opportunity to object to Mr. Clelland's recommendations and further had access to the 2000 Schedule, the 1993 Schedule, and the 1965 Schedule. Nevertheless, as explained in the Supplemental Director's Report, Spillet chose not to object to Mr. Clelland's recommendations.

Almost four years after the issuance of the partial decrees, Spillet has filed a Motion to Set Aside in an attempt to *now* begin an "investigation" into the amounts recommended and decreed. Spillet has filed a *late* motion and has failed to provide any evidence that the recommendations were mistaken or erroneous. The law does not set aside Partial Decrees simply to begin an unsubstantiated fishing expedition into the propriety of decreed water rights almost four years after the water rights were decreed.

Spillet had a full opportunity to objection to Mr. Clelland's recommendations and chose not to do so. He has missed the six month deadline for filing a motion to set aside. He cannot now be allowed to object to the Partial Decrees, having failed to do so when given the opportunity almost four years ago. Therefore, Spillet's Motion to Set Aside must be denied.

CONCLUSION

Based upon IDWR's Supplemental Director's Report, Spillet's Motion to Set Aside must be denied for any of the following reasons: (1) The motion was untimely filed per the time period provided in I.R.C.P. 60(b); (2) There is no evidence of any "mistake, inadvertence surprise, or excusable neglect" as required by I.R.C.P. 60(b)(1); (3) the motion failed to provide any facts or legal argument constituting a meritorious defense; and (4) because Spillet had a full opportunity to object to the partial decrees prior to their issuance and chose not do so, he should

not now be permitted to unilaterally change his mind and have the partial decrees set aside almost four years later.

DATED this 19 day of January 2005.

A handwritten signature in black ink, appearing to read "Scott J. Smith", is written over a horizontal line.

SCOTT J. SMITH
Attorney for 7UD Ranches

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19 day of January 2005, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following, unless a different method of service is indicated:

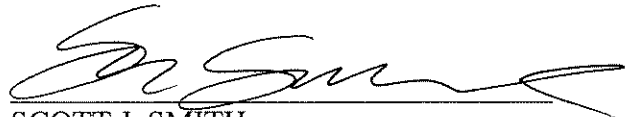
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