

2005 APR 22 PM 2 05

A hearing on the *Motion to File Amended Claim* was held February 3, 2004. There was no opposition to the motion, and the motion was granted. *Order Granting Motion to File Amended Notice of Claim and Setting Subcase Deadlines* (Feb. 9, 2004) The court set a deadline of February 25, 2004 for IDWR to file an *Amended Director's Report* and a deadline of March 19, 2004 to file objections to the *Amended Director's Report*.

An *Amended Director's Report* was filed February 6, 2004 and was reported on the SRBA docket sheet. The objection deadline was also placed on the docket sheet. The quantity increased from .05 cfs to .08 cfs. The priority date was changed from June 26, 1916 to June 20, 1916.

No objections were filed to the *Amended Director's Report*. After the deadlines for objections had passed, a *Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law* was issued on April 12, 2004.

No motions to alter or amend or challenges were filed to the *Special Master's Report and Recommendation*. On June 1, 2004, a *Order of Partial Decree* was issued by the Presiding Judge of the Snake River Basin Adjudication. No appeal was filed to the *Order of Partial Decree*.

Water Right 29-13557

Harrison Moon and Debbie Sluder filed a claim to water right 29-13557 on April 29, 2003. An *Objection* was filed by Charles and Jennie Winter on November 14, 2003. An Initial Hearing was held in Pocatello on April 22, 2004. At the Initial Hearing, the parties and IDWR represented to the court that they had reached a settlement. A *Standard Form 5 Stipulated Elements of a Water Right* was filed April 22, 2004. Counsel for the Winters, Mr. Moon, and Debbie Sluder signed the settlement agreement. A *Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law* was issued on May 25, 2004. No motions to alter or amend or challenges were filed to the *Special Master's Report and Recommendation*. On June 28, 2004, an *Order of Partial Decree* was issued by the Presiding Judge. No appeal was filed to the *Order of Partial Decree*.

Harrison Moon and Debbie Sluder filed a letter on March 9, 2005 asking that the *Partial Decrees* for both rights be set aside. An *Affidavit of Allen Ruberry* and an *Affidavit of Ernest Carlsen* were filed in support of the *Motion to Set Aside the Partial Decrees*. Mr. Ruberry is a Senior Water Resource Agent who provided information to the parties while they worked on a settlement agreement during the Initial Hearings on April 22, 2004. Mr. Ruberry was not aware

at the time of the Initial hearings that the *Director's Report* for 29-04491 had been amended. The *Amended Director's Report* had increased the amount of water from .05 cfs to .08 cfs consistent with IDWR's policy for recommending quantity on water rights with 5 acres or less. *Affidavit of Ernest Carlsen* at 2, ¶¶6-7. Mr. Carlsen had not informed Mr. Ruberry of the changed quantity at the time of the Initial Hearings.

III. ANALYSIS

Mr. Moon and Ms. Sluder ask the court to set aside the *Partial Decrees* for 29-4491 and 29-13557 because they were unaware at the time they settled water right 29-13557 that an *Amended Director's Report* and *Master's Report and Recommendation* had increased quantity for 29-4491. Mr. Moon and Ms. Sluder ask that both *Partial Decrees* be set aside. Mr. Moon and Ms. Sluder did not file an Objection to the original *Director's Report* for 29-4491, and did not file an Objection to the *Amended Director's Report* for 29-4491. They also did not file a motion to alter or amend or challenge to the *Special Masters' Report and Recommendation* for that right. They did not appeal the *Order of Partial Decree*. Mr. Moon and Ms. Sluder seek to have the *Partial Decrees* set aside.

A. Rule 60(b):

Motions to Set Aside Partial Decree 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, or a prior judgment upon which it was based has been reversed or otherwise vacated . . . 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). The *Partial Decrees* for 29-4491 and 29-13557 cannot be set aside under subparts (1), (2), (3) or (6), since the *Motion to Set Aside* was filed more than six months after the issuance of the *Partial Decrees*.

There are no such time limits for subparts (4) or (5) of I.R.C.P. 60(b). There are no facts of record, however, that indicate that the *Order of Partial Decrees* were “satisfied, released, or discharged” within the language of Rule 60(b)(5). The *Partial Decrees* cannot be set aside under Rule 60(b)(5).

There are no facts of record that come within the terms of Rule 60(b)(4). Rule 60(b)(4) sets forth a method for a court to set aside a void judgment. A judgment is generally found to be void only if it is totally beyond the court’s power to render. A judgment is valid whenever the court that renders it has jurisdiction over the subject matter and the parties. A judgment is void only if the court lacked jurisdiction or in circumstances in which the court’s judgment amounted to a plain usurpation of power constituting a violation of due process. 12 MOORE’S FEDERAL PRACTICE 3D RELIEF FROM JUDGMENT OR ORDER § 60.44[1][a]. There is no suggestion here that the SRBA court lacked subject matter jurisdiction over water rights in the Snake River Basin or over these water rights. There is no evidence that the SRBA lacked personal jurisdiction over the parties. In summary, the *Orders of Partial Decree* for 29-4491 and 29-13557 cannot be set aside under I.R.C.P. 60(b)

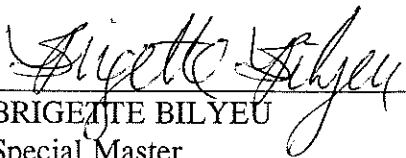
C. Rule 60(a)

There is no time limitation on a court’s ability to correct clerical mistakes under I.R.C.P. 60(a). Courts have some latitude in correcting judgments that misrepresent the court’s intention. For example, the federal version of this rule, F.R.P. 60(a) has allowed a court to resolve an ambiguity in its original order to more clearly reflect contemporaneous intent and ensure that the court’s purpose is fully implemented. 12 MOORE § 60.11[1][c], *See Burton v. Johnson*, 975 F.2d 690, 694 (10th Cir. 1992) Mr. Moon and Ms. Sluder did present evidence that there were clerical errors in the *Partial Decrees*. The facts alleged here do not seem to support a finding of clerical errors covered by Rule 60(a). In summary, the *Orders of Partial Decree* for 29-4491 and 29-13557 cannot be set aside under I.R.C.P. 60(a)

IV. CONCLUSIONS OF LAW

Because the *Orders of Partial Decrees* cannot be set aside under either I.R.C.P. 60(b) or I.R.C.P. 60(a), IT IS RECOMMENDED that the *Partial Decrees* for 29-4491 and 29-13557 not be set aside.

DATED April 22, 2005.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

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

2005 APR 22 PM 2 05

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)
)
Case No. 39576)
)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right (s) : 29-4491 AND
29-13557

On April 22, 2005, Special Master BRIGETTE BILYEU issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase (s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED April 22, 2005.


JANET CONNELL
Deputy Clerk

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

2005 APR 22 PM 2 05

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	)	CERTIFICATE OF MAILING
	)	
Case No. 39576	)	
_____	)	Water Right (s) : 29-4491 and 29-13557

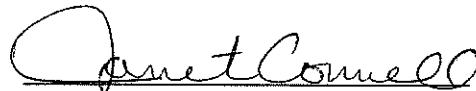
CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT
AND RECOMMENDATION THAT PARTIAL DECREE NOT BE SET ASIDE
was mailed on April 22, 2005, with sufficient first-class postage prepaid to the
following:

Harrison Moon
Debbie Sluder
1750 N Inkom Rd
Inkom, Idaho 83245

Charles and Jennie Winter
Represented by:
Bradley V. Sneed
PO Box 2720
Boise, Idaho 83701-2720

DIRECTOR OF IDWR
PO Box 83720
Boise, Idaho 83720-0098


Deputy Clerk