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Department of Water Resources

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

2005 JUL 6 AM 10 22

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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION ON MOTION
	)	TO SET ASIDE PARTIAL DECREE
	)	
	)	SUBCASE NOS.: 29-07135

I. PROCEDURAL BACKGROUND

The *Director's Report* was filed for this claim, and the deadline for *Objections* was November 14, 2003. No *Objections* were filed, and a *Partial Decree* was issued May 17, 2004 by the SRBA District Court. On June 1, 2005, a late *Objection* was filed by Kenneth R. Degn to the irrigation portion of the recommendation and *Partial Decree*. The court treated the late *Objection* as a *Motion to Set Aside Partial Decree* and a *Motion to File Late Objection*. A hearing on the *Motion* was held on June 22, 2005. Mr. Degn did not submit any affidavits or testimony, but did provide argument.

In support of the *Motion*, Mr. Degn argued that he did not know about the deadline for objections. He argued that the well relating to this water right was not used on the claimant's property for five years or more, and asked that the *Partial Decree* be set aside to allow him to file a late objection to the irrigation component of this right.

II. FINDINGS

Mr. Degn pursued his own water rights in the SRBA, but did not file timely objections to the *Director's Report* for this subcase. He seeks to set aside the *Partial Decree* for 29-07135 and to be allowed to file a late objection. Claimants Randy and Sharon Bertagnole opposed the *Motion*. Mr. Degn did not submit evidence, such as affidavits. Mr. Degn argued that he did not know about the deadline for objections. However, *Notices of Filing Director's Report for Basin 29* were

sent to all claimants of water rights in the basin. *Affidavit of Service, Notice of Filing Director's Report for Basin 29*. (July 29, 2003) Each *Notice of Filing Director's Report* contains the deadline for filing objections. The *Affidavit of Service, Notice of Filing Director's Report for Basin 29* states that Kenneth Degn was served with the *Notice*.

III. STANDARD OF REVIEW

Mr. Degn did not file an Objection to the original *Director's Report* for 29-07135. Mr. Degn also did not file a motion to alter or amend or challenge to the *Special Masters' Report and Recommendation* for that right. Mr. Degn did not appeal the *Order of Partial Decree*. Mr. Degn now seeks to have the *Partial Decree* 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 Decree* for 29-07135 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 Decree*.

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 this water right. There is no evidence that the SRBA lacked personal jurisdiction over the parties. In summary, the *Order of Partial Decree* for 29-07135 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. Degn did not present evidence that there were clerical errors in the *Partial Decree*. In summary, the *Order of Partial Decree* for 29-07135 cannot be set aside under I.R.C.P. 60(a)

IV. CONCLUSION OF LAW

Because the *Order of Partial Decree* 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 Decree* for 29-07135 **not be set aside**.
DATED July 6, 2005.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

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

2005 JUL 6 AM 10 22

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	)	NOTICE OF ISSUANCE OF
	)	SPECIAL MASTER'S
Case No. 39576	)	RECOMMENDATION
	)	
_____	)	Water Right (s) : 29-07135

On July 6, 2005, Special Master BRIGETTE BILYEU issued a SPECIAL MASTER'S REPORT AND RECOMMENDATION ON MOTION TO SET ASIDE PARTIAL DECREE 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 July 6, 2005.



JANET CONNELL
Deputy Clerk

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

2005 JUL 6 AM 10 22

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) : 29-07135

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 July 6, 2005, with sufficient first-class postage prepaid to the following:

Director of IDWR
PO Box 83720
Boise, Idaho 83720-0098

Kenneth Degn
19748 So Degn Rd
Downey, Idaho 83234

Randy Bertagnole
Sharon Bertagnole
Represented by:
Kent Foster
PO Box 50130
Idaho Falls, Idaho 83405


Deputy Clerk