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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     | ) Subcases 41-8C (Taysom),   |
|                | ) 41-8D (Weston) and         |
| Case No. 39576 | ) 41-8F (7UD Ranches)        |
|                | )                            |
|                | ) ORDER DENYING 7UD RANCHES' |
|                | ) MOTION TO ALTER OR AMEND   |

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BACKGROUND

Report and Recommendation

The Special Master entered a *Report and Recommendation* on May 2, 2005, and recommended that: 1) J. Juan Spillett's *Motion to Set Aside Partial Decrees* be granted and, 2) the *Partial Decrees* in subcases 41-8C, 41-8D and 41-8F be set aside. The Special Master concluded:

Even though J. Juan Spillett filed his *Motion to Set Aside Partial Decrees* nearly four years after water rights 41-8C, 41-8D and 41-8F were partially decreed, or just over three years from when the *Partial Decrees* were amended, there is ample evidence that that it is no longer equitable that they have prospective application.

...

By any reasonable standards, J. Juan Spillett has: 1) stated a sound reason justifying relief from operation of the *Partial Decrees*; 2) shown that he acted in good faith; 3) exercised due diligence in the prosecution and protection of his rights; and 4) disclosed a meritorious position. The compelling solution, then, is for the Court to set aside the *Partial Decrees* and allow IDWR to review all five water rights in the Adshead Ditch together so that the Court does not deprive any water users of their lawful appropriations or create "sunshine water."

### **7UD's Motion to Alter or Amend**

On May 16, 2005, 7UD Ranches filed its *Motion to Alter or Amend Special Master Report and Recommendation Dated May 2, 2005*. First, it argued that J. Juan Spillett's *Motion to Set Aside Partial Decrees* should be denied because he failed to reference I.R.C.P. 60(b)(5), the basis for the Special Master's decision. Second, 7UD said that Idaho case law requires a "real and substantial change in circumstances" occurring after entry of the partial decree and there was no such showing here. Third, it argued that IDWR did not expressly acknowledge errors in allocating water from the source of the subject rights as required in the Presiding Judge's *Order of Reference*.

### **7UD's Supplemental Memorandum**

On May 25, 2005, 7UD Ranches lodged its *Supplemental Memorandum in Support of its Motion to Alter or Amend Special Master Report and Recommendation Dated May 2, 2005*. It repeated its earlier arguments and added that since J. Juan Spillett is not a party to the above three subcases, he lacks standing to pursue a motion to set aside the *Partial Decrees*. Finally, it argued that the *Partial Decrees* do not have prospective application; hence, they cannot be set aside under Rule 60(b)(5).

### **J. Juan Spillett's Response**

On June 9, 2005, J. Juan Spillett filed his *Response to 7UD Ranches' Motion to Alter or Amend Special Master Report and Recommendation Dated May 2, 2005*. He argued:

The Motion to Set Aside the Partial Decrees was properly made pursuant to Rule 60(b) of the Idaho Rules of Civil Procedure. The special master clearly understood his role in the proceedings and correctly rendered a decision that is both fair and equitable. The decision will allow all parties to be fully and fairly heard and provide for a correct resolution of the water rights. Based on this information, the recommendation should stand as written.

### **Hearing**

A hearing on 7UD Ranches' *Motion to Alter or Amend* was held by telephone on June 30, 2005. Jason D. Walker appeared, along with his client, J. Juan Spillet (41-8B); Kelvin Taysom (41-8C) appeared *pro se*; R. Scott Weston (41-8D) appeared *pro se*; James V. Spillett (41-8E) appeared *pro se*; Scott J. Smith appeared for 7UD Ranches (41-8F); and Nicholas B. Spencer

appeared for IDWR. Only counsel for 7UD Ranches and counsel for J. Juan Spillett argued the matter.

## CONCLUSIONS OF LAW

It may be helpful to discuss each of 7UD Ranches' arguments in the order in which they were made in its filings and during the hearing:

### 1. Failure to Cite I.R.C.P. 60(b)(5)

7UD Ranches argued that because J. Juan Spillett failed to invoke Rule 60(b)(5) – the basis for the Special Master's decision to recommend that his *Motion to Set Aside Partial Decrees* be granted – his *Motion* should be denied. Stated another way, the Special Master can only consider the remedy pled.

In his *Motion to Set Aside Partial Decrees*, J. Juan Spillett asked the Court to set aside the *Partial Decrees* "pursuant to Idaho Rules of Civil Procedure 60(b) . . . in the best interests of justice and in the interests of the proper administration of the water rights so established." J. Juan Spillett reminded the Court that the decreed base right 41-8 (160 miner's inches measured through a *Houtz* box) is diverted through the Adshead Ditch and split five ways where the users historically rotate the water on a 12-day rotation. J. Juan Spillett argued that if the quantities for the four decreed water rights (41-8C, 41-8D, 41-8E<sup>1</sup> and 41-8F) are added together, the ditch is over appropriated "leaving J. Juan Spillett without enough water to satisfy the amount he is entitled [to] by historical use."<sup>2</sup>

He concluded by arguing: "The granting of more water to other users than they are entitled to, thereby diminishing the amount of water available to Juan Spillett is mistake, inadvertence, surprise or excusable neglect. . . ." Essentially, J. Juan Spillett cited Rule 60(b)(1)

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<sup>1</sup> It should be recalled that the *Partial Decree* for water right 41-8E (Robert R. and James V. Spillett) was set aside on July 3, 2002, based on Rule 60(b)(5) because "it is no longer equitable that the judgment should have prospective application."

<sup>2</sup> Under the rotation agreement, J. Juan Spillett alleged that he is entitled to divert the entire flow for two days out of every 12 days for a total diversion rate of .6 cfs or 30 miner's inches. The Director of IDWR has recommended that J. Juan Spillett be decreed .533 cfs under claim 41-8B; he claimed .8 cfs. It should be recalled that a unique structure called the *Houtz* box has been used to measure flows in the Rockland Valley for over 100 years, but an inch of water measured through the box is approximately 15-30% less than a normal miner's inch (.02 cfs). For that reason, it will require substantial expertise to correlate the various amounts claimed by the five Adshead Ditch water users.

while the Special Master invoked Rule 60(b)(5): “it is no longer equitable that the judgment should have prospective application.”

J. Juan Spillett’s *Motion to Set Aside Partial Decrees* met the essential requirements for pleadings in Idaho. His *Motion* contained a short and plain statement alleging that he is entitled to relief and a demand for the relief to which he deems himself entitled. Rule 8(a)(1). His *Motion* left no doubt that he sought relief from the impact of ***Partial Decrees*** which he alleged would leave him with less than his fair share of Adshead Ditch water. No opposing party could reasonably claim lack of notice or surprise after reading the allegations. That being said, and after a full and fair hearing, the Special Master was left to apply another fundamental rule: “All pleadings shall be so construed as to do substantial justice.” Rule 8(f). There was no harm in J. Juan Spillett’s failure to cite a specific subsection of Rule 60(b) and the Special Master properly exercised his authority to construe pleadings so as to do substantial justice.

## **2. A Real and Substantial Change in Circumstances**

7UD Ranches correctly pointed out that Idaho case law requires a “real and substantial change in circumstances” before a court can grant relief under Rule 60(b)(5). *Gordon v. Gordon*, 118 Idaho 804, 807, 800 P.2d 1018, 1021 (1990). As noted in the May 2, 2005 ***Special Master Report and Recommendation***, water rights 41-8C, 41-8D, 41-8E and 41-8F were partially decreed on July 28, 2000, when no one objected to the Director’s recommendations. The ***Partial Decrees*** were later amended *nunc pro tunc* on March 12, 2001, to add language about the Houtz box. Since then, there have been real and substantial changes in circumstances.

First, the ***Partial Decree*** in water right 41-8E was set aside on July 3, 2002, changing the dynamics of fairly apportioning water from the Adshead Ditch. Second, water users from the Adshead Ditch, plus related water users and the district Watermaster, engaged in extensive negotiations with IDWR to resolve discrepancies among the claimed amounts through the date of the hearing on J. Juan Spillett’s *Motion*. Finally, IDWR filed its *Supplemental Director’s Report* on December 13, 2004, concerning the above three partially decreed water rights. In that *Report*, IDWR revealed for the first time that while its agent based his recommendations on the best information available to him at the time, IDWR “does not know what the true quantities of these water rights in fact are.” The recommended quantities may be historic or billed or something else: “IDWR does not know whether its quantity recommendations are in error or not.” By any

reasonable standard, there have been real and substantial changes in circumstances since entry of the *Partial Decrees* warranting relief under Rule 60(b)(5).

### 3. Express Acknowledgement of Errors

As noted earlier in the *Special Master Report and Recommendation*, J. Juan Spillet's *Motion to Set Aside Partial Decrees* was referred to the Special Master with special instructions:

It is not the intent of the Court to have all of the *Partial Decrees* issued for the source of the subject rights pursuant to the *Houtz Arbitration* set aside and the entire matter opened to be re-litigated unless there is an express acknowledgement from IDWR in [an I.R.E.] 706 Report or Supplemental Director's Report to the Special Master that errors were made in allocating water for the source of the subject rights. . . . If IDWR determines that errors were not made in allocating the source, then the Special Master should decline to re-open the matter in accordance with the applicable I.R.C.P. 60(b) standards [emphasis added].

Presiding Judge John M. Melanson's July 9, 2004 *Order of Reference to Special Master Terrence Dolan with Special Instructions*, at 2-3.

7UD Ranches argued that IDWR did not *expressly* acknowledge errors in allocating water diverted from the South Fork of Rock Creek through the Adshead Ditch. While it may be conceded that IDWR did not *expressly* acknowledge such errors, the Special Master believes that IDWR's statements that "IDWR does not know whether its quantity recommendations are in error or not [and] it does not know what the true quantities of these rights in fact are" are the equivalent of an express acknowledgment of errors.

IDWR made its recommendations as an "independent expert and technical assistant"<sup>3</sup> in the SRBA and by statute, such recommendations "constitute prima facie evidence of the nature and extent of the water rights."<sup>4</sup> However, in these subcases, IDWR acknowledged that it recommended the partially decreed rights based on information that it can no longer substantiate. In all likelihood, the best it can say is that one of its recommendations (41-8C) *may* be right

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<sup>3</sup> I.C. § 42-1401B(1).

<sup>4</sup> I.C. § 42-1411(4).

because it was claimed based on historic quantities while the other two (41-8D and 41-8F) *may* be wrong because they were claimed based on billed quantities.

#### 4. Standing to Pursue Motion to Set Aside Partial Decrees

7UD Ranches argued that because J. Juan Spillett is not a party to subcases 41-8C, 41-8D and 41-8F, he lacks standing to pursue a motion to set aside the *Partial Decrees*. SRBA Administrative Order 1, Rules of Procedure (AO-1) states in relevant part: “Parties seeking to modify a partial decree shall comply with I.R.C.P. 60(a) or 60(b).” AO-1, 14, d, at 22. The rule does not specify whether such a movant must be a “Party to a Subcase” (AO-1, 2, p, at 2) or a “Party to the Adjudication.” AO-1, 2, q, at 2. J. Juan Spillett clearly fits the latter definition having asserted ownership of rights to the use of water within the state of Idaho. I.C. § 42-1401A(1). In any event, because J. Juan Spillett is one of the five claimants along the Adshead Ditch (41-8B) and because of his integral participation in negotiations to resolve the various claims, he effectively became a party to the subcases early on, albeit, unofficially. He has standing to pursue his *Motion to Set Aside Partial Decrees* in subcases 41-8C, 41-8D and 41-8F.

#### 5. Prospective Application of Partial Decrees

Finally, 7UD Ranches argued that the *Partial Decrees* cannot be set aside under Rule 60(b)(5) because they do not have prospective application. “To rely on Rule 60(b)(5), a movant must show two things: (1) that the judgment is prospective in nature; and (2) that it is no longer equitable to enforce the judgment as written.” *Rudd v. Rudd*, 105 Idaho 112, 118, 666 P.2d 639, 645 (1983). The *Partial Decrees* are prospective in nature because of unique circumstances in these subcases. As noted earlier, five water rights (41-8B, 41-8C, 41-8D, 41-8E and 41-8F) were split from base right 41-8. Four of those rights (41-8C, 41-8D, 41-8E and 41-8F) were partially decreed on July 28, 2000. Since then, the *Partial Decree* in 41-8E was set aside on July 3, 2002, leaving J. Juan Spillett’s claim (41-8B) and 41-8E yet to be determined.

Since the SRBA Court is limited to adjudicating no more than the 160 miner’s inches decreed in the 1903 *Houtz Arbitration* as base right 41-8, and that amount must now be allocated to five claimants along the Adshead Ditch, the three partially decreed rights have yet to be determined as proportionately fair to the two remaining rights. So in that sense, the *Partial Decrees* are prospective in nature and relief under Rule 60(b)(5) is warranted.

**ORDER**

THEREFORE, IT IS ORDERED that 7UD Ranches' *Motion to Alter or Amend Special Master Report and Recommendation Dated May 2, 2005* is **denied**.

DATED July 29, 2005.

A handwritten signature in black ink, reading "Terrence A. Dolan". The signature is written in a cursive style with a horizontal line underneath it.

TERRENCE A. DOLAN

Special Master

Snake River Basin Adjudication

## CERTIFICATE OF MAILING

I certify that a true and correct copy of *the ORDER DENYING 7UD RANCHES' MOTION TO ALTER OR AMEND* was mailed on July 29, 2005, with sufficient first-class postage to the following:

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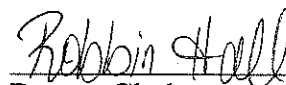
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