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DEPARTMENT OF
WATER RESOURCES

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**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), and
Case No. 29576	)	41-8F (7UD Ranches)
	)	
	)	
	)	CHALLENGER'S OPENING BRIEF
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COMES NOW, 7UD Ranches, by and through its attorneys of record, Scott J. Smith and Brent L. Whiting of the firm of Racine Olson Nye Budge & Bailey, Chartered, and timely submits this Challenger's Opening Brief pursuant to the Scheduling Order issued by this Court. As more fully set forth below, the Special Master's Report and Recommendation from which this Challenge arises must be rejected as a matter of law.

INTRODUCTION

This Challenge involves the resolution of the following two legal questions:

- (1) Whether the partial decrees entered over five (5) years ago in this case could be set aside under the terms of Idaho Rule of Civil Procedure 60(b)(5)?
- (2) Whether a third party who failed to object or otherwise protest a water claim prior to the issuance of a partial decree has standing to file a motion to set aside the partial decree years after its issuance?

PROCEDURAL HISTORY

As set forth in the Supplemental Director's Report,¹ there are five water rights appropriated from the South Fork of Rock Creek through the Adshead Ditch, consisting of 41-8B, 41-8C, 41-8D, 41-8E and 41-8F. The claimant for 41-8B was James Juan Spillet. The claimants for 41-8C were Kelvin and Suzanne Taysom. The claimants for 41-8D were R. Scott Weston and Herbert R. Weston. The claimant for 41-8E was Grace Spillet. The claimant for 41-8F was 7UD Ranches.

These five water rights were initially recommended by IDWR in the Director's Report for Irrigation and Other Rights filed with the SRBA Court on November 2, 1999. The recommendation of 41-8B was timely objected to by its claimant James Juan Spillet (hereinafter "Juan Spillet"). Because the other recommendations were not contested, partial decrees were summarily entered on July 28, 2000. On July 3, 2002, the partial decree for 41-8E was set aside at the request of its claimants Robert and James Spillet.

¹ IDWR issued the Supplemental Director's Report on December 10, 2004, at the request of the Special Master. A copy of the Supplemental Director's Report should be contained in the record.

Approximately four years after the partial decrees were entered, Juan Spillet filed a Motion to Set Aside the remaining partial decrees on June 15, 2004. The motion requested that the partial decrees be set aside under I.R.C.P. 60(b)(1). As discussed at length in the Supplemental Director's Report, Juan Spillet had been attempting to effectuate a water transfer in conjunction with the final arbitration of his water claim 41-8B. It was undisputed that his proposed water transfer would reduce the water flow in the Adshead Ditch and detrimentally impact the water rights described in the partial decrees issued with respect to the other water users on the ditch. Consequently, 7UD Ranches had a valid objection to the proposed transfer. Having no real defense to 7UD Ranches' objection, Juan Spillet sought to set aside the remaining partial decrees (which included 7UD Ranches' partial decree) in the hope of reducing those water rights through a re-adjudication of all the water rights on the Adshead Ditch and thereby avoid the objections to his water transfer.

On July 9, 2004, this Court issued its Order of Reference to Special Master Terrence Dolan with Special Instructions. The special instruction contained in the Order state, in pertinent part, the following:

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* to be set aside and the entire matter opened to be re-litigated unless there is an express acknowledgment from IDWR in a I.R.C.P. 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. The parties were previously accorded sufficient opportunity to raise and litigate these issues. However, the Court acknowledges that the qualities decreed under the *Houtz Arbitration* did not use conventional standards (i.e. Houtz box) . . . The Court further acknowledges that the above-captioned rights were uncontested and therefore claimants implicitly were reliant on the accuracy of IDWR's allocation of the subject source. . . .

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. standards.

7UD Ranches opposed Juan Spillet's Motion to Set Aside Partial Decrees. 7UD Ranches principally argued that I.R.C.P. 60(b)(1) (the only rule upon which the motion was based) was inapplicable because the motion had been filed long after the six-month filing deadline imposed by that rule. 7UD Ranches also argued that the motion should not be granted because the Supplemental Director's Report did not contain an "express acknowledgment from IDWR . . . that errors were made in allocating water for the source of the subject rights" as required by this Court's Order of Reference.

On May 2, 2005, the Special Master issued his Report and Recommendation, which recommended that the Motion to Set Aside Partial Decrees be granted pursuant to I.R.C.P. 60(b)(5) rather than I.R.C.P. 60(b)(1) upon which the motion had been based. The Special Master also found that the Supplemental Director's Report somehow contained an express acknowledgment from IDWR that an error had been made.

On May 13, 2005, 7UD Ranches filed its Motion to Alter or Amend the Special Master's Report and Recommendation. 7UD Ranches later filed a Supplemental Memorandum. 7UD Ranches argued that I.R.C.P. 60(b)(5) was inapplicable as a matter of law and that the Special Master had erroneously found that the Supplemental Director's Report somehow contained an express acknowledgment from IDWR that an error had been made. 7UD Ranches also argued that Juan Spillet did not have standing to file his motion.

On July 29, 2005, the Special Master issued his Order denying 7UD Ranches' Motion to Alter or Amend. The Special Master rejected each of the arguments made by 7UD Ranches.

7UD Ranches filed a timely Notice of Challenge.

ARGUMENT

I. IT WAS IMPROPER FOR THE SPECIAL MASTER TO RECOMMEND THAT THE PARTIAL DECREES BE SET ASIDE UNDER I.R.C.P. 60(B)(5)

It is well established that the setting aside of a partial decree is governed by I.R.C.P. 60(b). *See* SRBA Administrative Order #1, at 14(d). Under Rule 60(b), a party seeking to set aside a partial decree must show at least one of the following:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . . (3) fraud, misrepresentation, or other misconduct . . . (4) the judgment is void; (5) . . . it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from operation of the judgment.

Pursuant to Rule 60(b), motions to set aside based upon subsections (1), (2), (3) and (6) must be filed within six months after the partial decree was entered. Because Juan Spillet's Motion to Set Aside Partial Decrees was filed approximately four years after the partial decrees were entered, subsections (1), (2), (3) and (6) under Rule 60(b) are inapplicable. Likewise, there has been no argument or assertion whatsoever that subsection (4) was applicable. Therefore, the sole remaining subsection allegedly of any application in this matter is subsection (5) of Rule 60(b).

A. Juan Spillet's Motion to Set Aside was Untimely

Rule 60(b) requires that all motions seeking to set aside a partial decree under subsection (5) must be filed "within a reasonable time." In this case, Juan Spillet filed his Motion to Set Aside Partial Decrees approximately four years after the partial decrees were entered. Under no reasonable stretch of the imagination can a period of four years constitute a "reasonable time" as required by Rule 60(b). Moreover, Juan Spillet as the moving party failed to provide any affidavit or other evidence showing that waiting approximately four years was reasonable. *See Harter v. Products Mgt. Corp.*, 117 Idaho 121, 785 P.2d 685 (Ct. App. 1990) (a motion to set aside filed one year after judgment was not timely brought in the absence of an affidavit or other

showing to establish the timeliness of the defendant's motion). Because it was not filed in a "reasonable time" as required by Rule 60(b), Juan Spillet's Motion to Set Aside Partial Decrees should have been denied.

B. Rule 60(b)(5) only applies to judgments that have "prospective" application

A party seeking to set aside a partial decree under Rule 60(b)(5) "must show . . . that the judgment is prospective in nature." *Rudd v. Rudd*, 105 Idaho 112, 118, 666 P.2d 639, 645 (1983); *see also Curl v. Curl*, 115 Idaho 997, 1002, 772 P.2d 204, 209 (1989) "Normally, a prospective judgment is one in the nature of an injunction or restraining order." *Id.* If a judgment "adjudicates all the rights as between the parties as of the date of the judgment," it does not have prospective application. *McBride v. McBride*, 112 Idaho 959, 962, 739 P.2d 258, 261 (1987); *see also Curl*, 115 Idaho at 1002, 772 P.2d at 209. For example, "a judgment which quiets title to land, although certainly having an impact on future dealings with such land, is not a judgment having prospective application within the meaning of such term in Rule 60(b)(5)." *Curl*, 115 Idaho at 1002, 772 P.2d at 209. When a judgment does not have prospective application, the trial court lacks jurisdiction to allow it to be set aside under Rule 60(b)(5). *Id.*

The three partial decrees which Juan Spillet seeks to set aside – namely 41-8C, 41-8D, and 41-8F – do not have prospective application. Indeed, this is true as a matter of law with regard to all partial decrees issued under I.C. § 42-1412. Each partial decree is statutorily required to contain a statement of each element of the respective water right (I.C. § 42-1411(2)-(3)) and is "conclusive as to the nature and extent" of the decreed water rights (I.C. § 42-1420).

Although a partial decree will (and is expected to) have “an impact on future dealings” involving the water rights decreed,² it nevertheless does not have prospective application because a partial decree fully adjudicates all of the rights with respect to the claimed water rights and does not require continuing oversight by the Court as would be required with an injunction or restraining order. Because partial decrees of water rights do not have prospective application, the court lacks jurisdiction to permit the setting aside of a partial decree under Rule 60(b)(5). Consequently, Juan Spillet’s Motion to Set Aside Partial Decrees under Rule 60(b)(5) should have been denied.

C. Rule 60(b)(5) requires a “real and substantial change in circumstances” that makes continued enforcement of the partial decrees inequitable.

As mentioned, Rule 60(b)(5) permits the setting aside of a partial decree only when it is “no longer equitable.” The Idaho Supreme Court has emphasized that the “no longer equitable” language implies a “real and substantial change in circumstances since the issuance of the partial decree.” *Gordon v. Gordon*, 118 Idaho 804, 806-07, 800 P.2d 1018, 1020-21 (1990). The Supreme Court has further instructed:

This provision [Rule 60(b)(5)] is not a substitute for an appeal. It does not allow relitigation of issues that have been resolved by the judgment. Instead it refers to some change in conditions that makes continued enforcement inequitable.

Id. at 807, 800 P.2d at 1021 (citing 11 Wright and Miller, *Federal Practice and Procedure: Civil* § 2863, pp. 206-07 (1973)).

² A good example of this is found in I.C. § 42-1424 which governs supplemental adjudication of water rights. Under that statute, a claimant seeking to an appropriation from previously decreed waters is permitted to bring an action to have such right adjudicated; however, the claimant is statutorily required to “accept[] as binding upon him all prior applicable decrees and the findings of fact and conclusions of law upon which they are based.” I.C. § 42-1424(b). As a result, he is specifically prohibited from seeking to set aside previously decreed water rights.

There has been no real and substantial change in circumstances making enforcement of the partial decrees inequitable. This requires a brief explanation. As mentioned above, the five water rights on the Adshead Ditch were initially recommended by IDWR in the Director's Report for Irrigation and Other Rights filed with the SRBA Court on November 2, 1999. That recommendation was made by IDWR after considering principally two documents designating quantities for the respective water rights on the Adshead Ditch. These two documents were presumably dated 1965 and 1993, respectively. *See* Supplemental Director's Report. There was a discrepancy between the 1965 document and the 1993 document. *See id.* IDWR ultimately issued a recommendation based upon the 1993 document. *See id.* IDWR explained its decision to do so as follows:

The obvious and logical explanation for such a discrepancy simply was that the quantities listed for the Adshead Ditch in 1965 had by some means been changed by 1993. If this were not the case, or if in some way the change was contentious or disputed, IDWR would rely upon the claimants on the ditch to explain the true situation in proceedings subsequent to the filing of the SRBA Court of IDWR's recommendations of the rights.

See id. at 14. IDWR explained that it had relied upon the "best information available" at the time and that "in the present case the nature of the change in the quantities listed for the Adshead Ditch has not yet been explained." *See id.* It must also be noted that no objection was ever filed by Juan Spillet or anyone else to the recommendation made by IDWR with regard to water rights 41-8C, 41-8D, 41-8E and 41-8F, which were summarily entered as partial decrees.

Given this procedural history, it is interesting to note Juan Spillet's stated purpose for seeking to set aside the partial decrees. This is set forth in the Special Master's Report and Recommendation at page 7, which explains that his purpose for doing so was to have all the water rights on the Adshead Ditch "adjusted to their accurate historical amounts" as set forth in the 1965 document. *See* Special Master's Report and Recommendation at 7. In other words,

Juan Spillet wants to set aside the partial decrees to have another shot at challenging IDRW's initial recommendation for all the water rights on the Adshead Ditch by attempting to prove that the 1965 document should have been relied upon to the exclusion of the 1993 document. Stated another way, Juan Spillet is simply alleging that the partial decrees are somehow incorrect and that he should be given a chance to try to prove it.

However, Juan Spillet has already been given an opportunity to do just that and has simply failed to do so. Under the appropriate rules, Juan Spillet had an opportunity to timely object to IDWR's recommendation for the water rights on the Adshead Ditch. Juan Spillet did not object to the recommendations of the claims made by others on the Adshead Ditch when given that opportunity. Even after the partial decrees were entered, Juan Spillet was afforded the legal opportunity to assert within six months that he mistakenly failed to object and that he wanted an opportunity to challenge the recommendation. *See* I.R.C.P. 60(b). Again, Juan Spillet failed to do so. He now comes before this Court over four years after the partial decrees were entered – without any excuse whatsoever for having failed to challenge the recommendation earlier – and cavalierly claims that he should be permitted to challenge partial decrees based upon evidence that was undeniably available prior to the entry of the partial decrees. The point being that Juan Spillet is not seeking to amend the partial decrees based upon new evidence or a change in circumstances but is attempting to amend the partial decrees upon information that he possessed prior to the entry of the partial decrees.

Juan Spillet is simply attempting to use Rule 60(b)(5) as a belated substitute for his failure to *timely* object or otherwise challenge or appeal the partial decrees. This is improper as a matter of law. A party may not use a Rule 60(b)(5) as a substitute for a timely motion to amend a judgment or a timely appeal. *See First Bank & Trust of Idaho v. Parker Brothers, Inc.*, 112

Idaho 30, 730 P.2d 950 (1986); *Hoopes v. Bagley*, 117 Idaho 1091, 793 P.2d 1263 (Ct. App. 1990); *Bubak v. Evans*, 117 Idaho 510, 788 P.2d 1333 (Ct. App. 1989). With regard to the filing of objections to claims, the SRBA District Court has held that “[a]ny objections which a de minimis claimant or any other claimant may have to any and all claims being adjudicated in this proceeding must be timely raised in this proceeding in accordance with Idaho Code § 42-1412 (Supp. 1988) or be forever barred.” Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses, In Re SRBA, Case No. 39576 (Jan. 17, 1989) at 3 (emphasis added). Consequently, Juan Spillet’s motion to set aside the partial decrees should have been denied.

A comment must be made with regard to the conclusions that the Special Master erroneously believed constituted a “real and substantial change in circumstances.” Each of these conclusions will be addressed individually.

First, the Special Master thought that setting aside the partial decrees was necessary to “fairly apportion[]” the Adshead Ditch because the final adjudication of water rights 41-8B and 41-8E may cause the Adshead Ditch to be “over appropriated or some water users will suffer unfair losses.” See Order Denying 7UD Ranches’ Motion to Alter or Amend at 4; and Special Master Report and Recommendation at 7. However, the applicable rules in the SRBA eliminate any concern regarding over-appropriated water or unfair losses by permitting an injured party to object to IDWR’s recommendation and later appeal if dissatisfied. As mentioned above, Juan Spillet had that opportunity with regard to IDWR’s recommendation for the Adshead Ditch water rights issued in 1999. Likewise, 7UD Ranches will have that opportunity in the event that IDWR issues a formal recommendation in the future with regard Juan Spillet’s claim. Moreover, these laws establish the Idaho legislature’s position with regard to how water rights are “fairly

apportioned.” It was improper for the Special Master in this case to judicially legislate a new procedure not currently contained in the law which would permit setting aside every partial decree along a waterway simply for the purpose of finalizing the adjudication of a single water right – particularly when the claimant for that single water right was already been provided by law with an opportunity to object and the claimant simply did not take advantage of it.

Second, the Special Master thought that setting aside the partial decrees was necessary because there had been “negotiations” between the parties and IDWR concerning the decreed water rights on the Adshead Ditch. *See id.* These so-called negotiations were initiated by IDWR who requested input from the water users on the Adshead Ditch concerning Juan Spillet’s water claim and transfer request. *See* Supplemental Director’s Report. The water users on the Adshead Ditch were entitled under the law to comment and provide input regarding Juan Spillet’s water claim and transfer request. If the Special Master’s position is accepted, it would mean that every person who comments or objects to a water claim automatically consents to the setting aside of their own partial decrees. Such a procedure would effectively scare off viable objectors and clearly not contemplated by the law or the SRBA rules. It must therefore be rejected.

Third, the Special Master noted that the Supplemental Director’s Report concluded that “IDWR does not know whether its quantity recommendations are in error or not” and that this constituted an express acknowledgment from IDWR of errors in the partial decrees. *See* Order Denying 7UD Ranches’ Motion to Alter or Amend at 4-5. This conclusion is a direct response to this Court’s Order of Reference which stated that the partial decrees should not be set aside unless “there is an express acknowledgement from IDWR . . . that errors were made in allocating water for the source of the subject rights.”

The problem is that IDWR's Supplemental Director's Report does not contain an express acknowledgement from IDWR that errors were made in the partial decrees. As mentioned above, IDWR decided in its discretion that the 1993 document was the best information available at the time in recommending the water rights on the Adshead Ditch. IDWR explained that it did so based upon the "obvious and logical" presumption that the 1993 document represented changes that had occurred since the drafting of the 1965 document. *See* Supplemental Director's Report at 14. IDWR also explained that it relied upon parties objecting to the recommendation to prove that it was incorrect. No one objected to or otherwise challenged its reliance upon the 1993 document. IDWR continued to rely upon the 1993 document and partial decrees were ultimately issued. In its Supplemental Director's Report, IDWR even goes on to say that there still hasn't been any evidence provided by anyone even now after the fact that would explain why reliance on the 1993 document was not justified. *See* Supplemental Director's Report at 14-15. The Supplemental Director's Report concludes that "IDWR does not know whether its quantity recommendations are in error or not" and that IDWR simply relied upon "the best information that [was] readily available" at the time. *See id.*

This is not an "express acknowledgement of error" by any stretch of the imagination. Rather, it is a statement that IDWR did the best it could based upon the information available to it at the time and that it has nothing even now to show that its reliance on the 1993 document was misplaced. The Special Master mistakenly found that this was an express acknowledgement of error. It is respectfully requested that this finding be reversed.

In summary, the factors discussed above upon which Special Master relied in finding a "real and substantial change in circumstances" fail as a matter of law because they are nothing but a restatement of the fact that Juan Spillet is currently displeased with the partial decrees and

wishes he could go back in time to challenge IDWR's recommendation. Moreover, Juan Spillet is attempting to do so – not based upon a change in circumstances – but rather based exclusively upon facts that were available to him prior to the entry of the partial decrees.

Because Juan Spillet does not seek to set aside and modify the partial decrees based upon a “change in circumstances” but rather upon evidence readily available at the time, the partial decrees cannot be set aside under Rule 60(b)(5). This is further supported by the fact that IDWR believes that its recommendation was based upon the best information available at the time and that it has not seen anything since then that would change its mind.³ Consequently, Juan Spillet's Motion to Set Aside Partial Decrees under Rule 60(b)(5) should have been denied.

D. Rule 60(b) requires a showing of a meritorious defense to the partial decrees

It is well established that “[i]t is incumbent upon a party seeking relief from a judgment not only to meet the requirements by I.R.C.P. 60(b), but also to show, plead or present evidence of facts which, if established, would constitute a meritorious defense to the action. This policy recognizes that it would be an idle exercise and a waste of judicial resources for a court to set aside a judgment if, in fact, there is no genuine justiciable controversy. *Reeves v. Wisenor*, 102 Idaho 271, 272, 629 P.2d 667, 668 (1981); *Hearst Corp. v. Keller*, 100 Idaho 10, 12, 592 P.2d 66, 68, (1979).

³ Idaho Code Section 42-1411(4) provides that the director's report “shall constitute prima facie evidence of the nature and extent of the water rights acquired by state law” and that the “unobjected to portions of the director's report shall be decreed as reported.” Idaho Code Section 42-1411(5) provides that any “party filing an objection to any portion of the director's report shall have the burden of going forward with the evidence to rebut the director's report.” Because the director's report constituted “prima facie evidence,” Juan Spillet had an affirmative duty to object in a timely manner. Because he did not, the recommendations in the director's report were summarily decreed in the partial decrees. It is improper for Juan Spillet to circumvent this affirmative duty and then almost four years after the fact ask the Court for another change to contest the director's report and recommendation.

Juan Spillet had the burden of presenting evidence of facts by affidavit or otherwise that IDWR's reliance upon the 1993 documents was misplaced and that the IDWR should have relied upon the 1965 documents in issuing its recommendation. As stated in the Supplemental Director's Report, no such evidence has ever been presented. Without such evidence, it would be an idle exercise and waste of judicial resources for the court to set aside the partial decrees. Therefore, Juan Spillet's Motion to Set Aside Partial Decrees under Rule 60(b)(5) should have been denied.

II. JUAN SPILLET DID NOT HAVE STANDING IN THIS SUBCASE TO BRING HIS LATE FILED MOTION TO SET ASIDE PARTIAL DECREES

A party to a subcase in the SRBA is "[t]he claimant, any objector or respondent to a water right recommendation, any party to a subcase which has been consolidated with another subcase, any party to the adjudication granted leave to participate in a subcase by the presiding judge or a Special Master, and any party to the adjudication filing a Motion to Alter or Amend the Special Master's Recommendation." O1 2.p.; *see also* Memorandum Decisions and Order on Motion to Set Aside Partial Decrees, Subcases 55-02373 et al (LU Ranching Decision) at 11-12 (reviewing the opportunities for an SRBA party to participate in an individual subcase at different levels of the proceeding prior to the entry of a partial decree).

Juan Spillet was not a party to subcases 41-8C, 41-8D, and 41-8F. He was not a claimant, objector or respondent in those subcases. His claim was not consolidated with those subcases. He did not participate in those subcases. Nor did he file a Motion to Alter or Amend the Special Master's Recommendation prior to the entry of the partial decrees in those subcases.

Idaho Rule of Civil Procedure 60(b) provides, in pertinent part, that "the court may relieve a *party* or his legal representative from a final judgment" if a motion is timely filed and

certain conditions are met. (Emphasis added). Because Juan Spillet was not a “party” to subcases 41-8C, 41-8D and 41-8F, he did not have standing to file a motion to set aside the partial decrees issued in those subcases. Therefore, his Motion to Set Aside Partial Decrees should have been denied.

CONCLUSION

Juan Spillet’s motion was untimely. The partial decrees do not have prospective effect. Juan Spillet is not attempting to set aside and modify the partial decrees based upon a change in circumstances but rather upon alleged evidence that was available prior to the entry of the partial decrees. IDWR has not expressly acknowledged an error in the partial decrees but rather stated that it relied upon the best information available at the time. Lastly, Juan Spillet did not have standing to file his motion because he was not a party to the subcases from which the partial decrees arose. Based upon any one of these alternative reasons, it is respectfully requested that his Court conclude that Special Master erred in recommending that Juan Spillet’s Motion to Set Aside Partial Decrees be granted under Rule 60(b)(5).

DATED this 7 day of October 2005.


SCOTT J. SMITH
Attorney for 7UD Ranches

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27 day of October 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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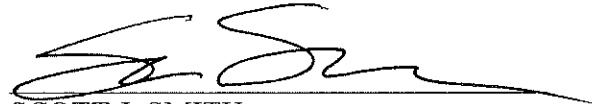
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