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

12 In Re SRBA) Subcase Nos. 41-8C (Taysom), 41-8D
13) (Weston), and 41-8F (7UD Ranches)
14 Case No. 39576) **JAMES JUAN SPILLETT'S**
15) **BRIEF IN RESPONSE TO**
16) **CHALLENGE**
17)

18 COMES NOW, Juan James Spillet, by and through his attorney of record, Jason D.
19 Walker, of the firm of Ling, Robinson & Walker, Rupert, Idaho, and pursuant to SRBA AO1, and
20 respectively responds and objects to 7UD Challenge to the Special Master's Report and
21 Recommendation dated May 2, 2005. This Response is timely filed pursuant to the Challenge
22 Scheduling Order issued by the Court. As set forth herein, and pursuant to AO1 13(f), the court
23 must accept the Special Master's findings of fact unless clearly erroneous. Furthermore, the
24 Challenge must fail as a matter of law and equity.
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ISSUE PRESENTED

The question presented in this case is whether to follow the Special Master's Report and Recommendation to set aside the partial decrees of 7UD Ranches, Weston and Taysom.

BACKGROUND AND HISTORY

In June 2004, Juan James Spillett (hereinafter "Spillett") filed a motion to set aside Partial Decrees of sub case nos. 41-00008C, 41-00008D, 41-00008E and 41-00008F pursuant to ICRP 60(b).¹ The motion was based on the following grounds:

1. Historically, water right 41-0008 was established by beneficial use and confirmed by a decision of arbitration executed on or about April 1, 1890.
2. The decision of arbitration was recorded in Oneida County Book of Judgments, but was never endorsed by the District Court as a judicial review decree.
3. Attached hereto as Exhibit "A" is a true and correct copy of the Final Order Adopting Proposed Memorandum Decision and Order dated October 1, 1992, together with the Second Proposed Memorandum Decision and Order adopted by that Order, in the matter of the application for transfer of number 3518/water right number 41-00013 and transfer number 3519/water right number 41-0008 in the name of James Juan Spillett
4. The Second Proposed Memorandum Decision and Order adopted by the Department of Water Resources sets forth the history of water right 41-0008. Pursuant to the Memorandum Decision and Order, water right number 41-0008 was originally for 3.2 cfs or 160 inches of water.

¹ It is clear upon a review of the Motion filed by Spillett that the motion was pursuant to ICRP 60(b) in general and not the specific subsection (1) as argued by the Challenger at page 3 of the Challenger's Opening Brief.

1 5. Water right number 41-0008 has been delivered to five water users through
2 the Adshead ditch. The five water users each have been identified by split water rights in
3 the SRBA. These water users have historically rotated the water under water right 41-0008
4 on a 12-day rotation schedule with each water user diverting the entire decreed flow for his
5 proportionate share of the time. Juan Spillett is entitled to divert water for 2 days out of
6 every 12 for a total diversion rate of .6 cfs or 30 minor inches.

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8 6. Attached hereto as Exhibit "B" are true and correct copies of the Partial
9 Decrees for right number 41-0008C, 41-0008D, 41-0008E and 41-0008F. Based on the
10 decrees entered for these other four water users, the water right was over appropriated to the
11 other users leaving Juan Spillett without enough water to satisfy the amount he is entitled by
12 historical use.

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14 7. Based on the District Court's Order on Challenges in subcases 36-0003A,
15 etc., the court cannot decree more water than exists. The granting of more water to other
16 users than they are entitled to, thereby diminishing the amount of water available to Juan
17 Spillett is mistake, inadvertence, surprise or excusable neglect and therefore the Partial
18 Decrees discussed herein should be set aside to correct this mistake.

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20 8. A motion to set aside the partial judgments and decrees is in the best interests
21 of justice and in the interests of the proper administration of the water rights so established.
22 See *Motion to Set Aside Partial Decrees*. It is important to note that in addition to allegations of
23 mistake, inadvertence, etc. paragraph 8 of the motion argues that setting aside the partial decrees
24 is "in the best interests of justice."

25 The matter was referred to the Special Master on July 9, 2004 with an express
26 instruction from Presiding Judge John M. Melanson. The Court instructed the Special Master to
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1 only set aside the partial decrees if “there is an express acknowledgement from IDWR in [an
2 I.R.E.] 706 Report of Supplemental Director’s Report to the Special Master that errors were
3 made in allocating water from the source of the subject rights.” See *Order of Reference to*
4 *Special Master Terrence Dolan with Special Instructions*, at 2-3.

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6 Subsequently, the Special Master entered an *Order for I.R.E. 706 Report* on September
7 22, 2004. On December 13, 2004, IDWR filed its *Supplemental Director’s Report Regarding*
8 *Subcases 41-8D and 418F*. The report was somewhat detailed and concluded the IDWR did not
9 “know whether its quantity recommendations are in error or not. It does not know what the true
10 quantities of these rights in fact are.” *Supplemental Director’s Report*, at 15. The Special
11 Master made an express finding of fact that the *Supplemental Director’s Report* was “express
12 acknowledgement from IDWR . . . that errors were made in allocating water from the source of
13 the subject rights.” *Special Master Report and Recommendation*, at 7. The Special Master then
14 went on to recommend that the partial decrees be set aside since that option provided the most
15 compelling solution to avoid the unjust deprivation of lawful appropriations or the creation of
16 “sunshine water.” *Special Master Report and Recommendation*, at 8.

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18 The Challengers then brought a motion to alter or amend the *Special Master Report*
19 *and Recommendation*. After a briefing and a hearing on that matter, the Special Master denied
20 the Motion to Alter or Amend and 7UD Ranches filed a Challenge.
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ARGUMENT

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2 A. There is no question that under IRCP 60(b)(5) the Court can and should grant
3 the Motion to Set Aside because continued enforcement of the partial decrees as entered is
4 inequitable.

5 As setforth in the Challenger's Brief, IRCP 60(b)(5) permits the setting aside of a
6 partial decree when it is "no longer equitable." Furthermore, as stated by the Challenger, the
7 Supreme Court has stated that equity turns on whether real and substantial changes in
8 circumstances have occurred. Gordon v. Gordon. 118 Idaho 804, 806-07, 800 P.2d 1018, 1020-
9 21 (1990). Specifically, the Court stated that IRCP 60(b)(5) refers to "some change in conditions
10 that makes continued enforcement inequitable." Id.

11 This is precisely the situation which is presented in this case. Originally, the court
12 entered partial decrees in sub-cases that were unchallenged. Spillett objected to his right only
13 knowing that the quantity recommended by IDWR was incorrect. The other water right owner's
14 happily accepted the recommendations followed by the Partial Decrees and moved on, never
15 questioning why they may have been decreed a larger quantity of water. Spillett on the other
16 hand did question and did not accept the recommendation for his right, vehemently arguing for a
17 correction. After a number of meetings with IDWR, it was discovered that a mistake may have
18 been made with respect to the quantities of water recommended, not only for Spillett, but for
19 7UD Ranches, Taysom and Weston.
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22 The result of the discovery of this potential mistake meant that if Spillett were to
23 prevail in establishing the true quantity of water he was lawfully entitled to, there would not be
24 enough water in the system to meet all of the parties water demands. Basically, in order to
25 correctly decree Spillet's right, the Court would have to decree water that did not exist. Based on
26 the *District Court's Order on Challenges in sub-cases 36-0003A*, etc., the court cannot decree more
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1 water than exists. To do other wise would result in the creation of "Sunshine Water," which is
2 impossible for IDWR to administer or deliver and inherently inequitable to all water users affected.

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4 In addition, the Special Master made a specific finding of fact that the *Supplemental*
5 *Director's Report* was "express acknowledgement from IDWR . . . that errors were made in
6 allocating water from the source of the subject rights." Under AO1 13(f), the court must accept
7 the Special Master's findings of fact unless clearly erroneous. Here, this factual finding is not
8 clearly erroneous and should be accepted by the District Court. Furthermore, the express
9 acknowledgement of error is a substantial change in circumstances that makes continued
10 enforcement of the existing partial decrees inequitable. It is also the basis for showing that
11 Spillett has a meritorious defense to the partial decrees. Clearly, the correction of an otherwise
12 erroneous recommendation is meritorious. For these reasons, the Special Master Report and
13 Recommendation should be accepted and the court should set aside the partial decrees as
14 requested.
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16 **B. Juan Spillett had standing to file a motion to set aside the partial decrees.**

17 Juan Spillett is a Claimant in the SRBA as to sub-case 41-8B. This is a sister right to
18 the partial decrees at issue in the present Challenge. Each of the rights derived from the same
19 parent right 41-8, and although the have been recommended and adjudicated as though they are
20 separate, they are, for all practicable purposes, inseparable because they all utilize the same point
21 of diversion and the same water on a rotation basis. As argued above, granting excess water to
22 one claimant results in a reciprocal decrease to another user.
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24 Under these circumstances it is illogical to conclude that Spillett is a stranger to this
25 action and lacks standing to request that the partial decrees be set aside. There is no question
26 that Spillett is a claimant in the SRBA. There is no question that if his water rights are decreed
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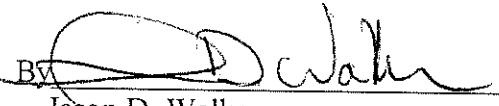
1 with sunshine water they will affect the subject water rights at issue herein. There is no question
2 that if the partial decrees are allowed to remain with out fully and fairly litigating the quantity
3 issue, it will result in inequity. Clearly, Spillett must have standing to request relief from such
4 inequity as a party to SRBA where his rights are so closely tied to sub-cases at issue.
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6 CONCLUSION

7 For the reason's set forth herein, the Challenge should be in all respects denied.

8 Oral argument is requested.

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10 DATED this 28th day of October 2005.

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14 Jason D. Walker
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CERTIFICATE OF MAILING

I hereby certify that on the 28th day of October, 2005, I served a copy of the foregoing **JAMES JUAN SPILLETT'S BRIEF IN RESPONSE TO CHALLENGE** upon:

James Robinson
Bench Ditch Irrigation Co.
P.O. Box 157
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by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said parties/entities at the foregoing addresses.


Jason D. Walker