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Scott J. Smith (ISB# 6014)
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
201 E. Center St. / P.O. Box 1391
Pocatello, ID 83204-1391
Tel: (208) 232-6101
Fax: (208) 232-6109

Attorneys for 7UD Ranches

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Department of Water Resources

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 REPLY 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 Reply Brief pursuant to the Scheduling Order issued by this Court. As more fully set forth below, the arguments set forth in James Juan Spillet's Brief in Response to Challenge are without merit and the Special Master's Report and Recommendation from which this Challenge arises must be rejected as a matter of law.

INTRODUCTION

On or about October 7, 2005, 7UD Ranches filed the Challenger's Opening Brief in the above captioned matter. The Opening Brief set forth five alternative arguments for rejection of the Special Master's recommendation that 7UD Ranches' partial decree be set aside. It argued that setting aside 7UD Ranches' partial decree was improper because (1) Juan Spillet's motion to set aside was untimely filed; (2) Rule 60(b)(5) was inapplicable since the partial decrees did not have "prospective" application; (3) Rule 60(b)(5) was inapplicable since there had not been a real and substantial change in circumstances; (4) Rule 60(b)(5) was inapplicable since Juan Spillet failed to make a showing of a meritorious defense to the partial decree; and (5) Juan Spillet did not have standing to pursue his Motion to Set Aside.

On or about October 28, 2005, James Juan Spillet (hereinafter "Juan Spillet") filed a Brief in Response to Challenge, in which he failed to respond to the majority of the arguments asserted by 7UD Ranches. For example, Juan Spillet did not dispute the argument that his motion to set aside was untimely filed. He did not dispute the argument that Rule 60(b)(5) was inapplicable since the partial decrees did not have "prospective" application. He also did not dispute the argument that Rule 60(b)(5) was inapplicable since he failed to make a showing of a meritorious defense to the partial decree. Because he did not challenge these alternative arguments, it is respectfully requested that this Court find in favor of 7UD Ranches as to these arguments and thereby reject the Special Master's recommendation that 7UD Ranches' partial decree be set aside.

ARGUMENT

Juan Spillet's short Brief in Response does address a couple of the arguments raised by 7UD Ranches. Each of these will be discussed below.

A. Rule 60(b)(5) requires a Change in Circumstances.

In his brief, Juan Spillet suggests that a partial decree can be set aside under Rule 60(b)(5) whenever it might be equitable to do so. This suggestion, however, is a blatant misstatement of the law and must be summarily rejected. Rule 60(b)(5) has a number of requirements of which **only one** is that continued enforcement of the partial decree is “no longer equitable.” Even if this element is met, a Rule 60(b)(5) motion must be rejected if the other requirements are not met.

Juan Spillet acknowledges that the Idaho Supreme Court has held that the “no longer equitable” requirement in Rule 60(b)(5) can only be satisfied if there is “some change in conditions that make continued enforcement inequitable.” *See Gordon v. Gordon*, 118 Idaho 804, 807, 800 P.2d 1018, 1021 (1990). However, Juan Spillet fails to recognize that the Idaho Supreme Court also explained that this requires a “**real and substantial change** in circumstances since the issuance of the partial decree. *Gordon*, 118 Idaho at 806-07, 800 P.2d at 1020-21.

The only “real and substantial change” suggested by Juan Spillet in his brief is the fact that he chose not to object or otherwise challenge the entry of 7UD Ranches partial decree. He also suggests that “it was discovered that a mistake may have been made with respect to the quantities of water recommended.” This suggestion is without any evidentiary support. What was discovered was that IDWR could not confirm that such a mistake had been made. *See* Supplemental Director’s Report (stating “IDWR does not know whether its quantity

recommendations are in error or not”).¹ In effect, this means that Juan Spillet has no evidentiary support for his suggestion that there has been a change in circumstances.

Indeed, it appears that any evidentiary support that Juan Spillet may be attempting to rely upon for his allegation that the quantities were improperly recommended and decreed was in existence and readily available **before** the entry of 7UD Ranches’ partial decree. Consequently, there has been no change of circumstances since the entry of that partial decree and setting aside of the partial decree under Rule 60(b)(5) is improper.²

B. Standing to File the Motion to Set Aside.

Juan Spillet contends that he had standing to file his motion to set aside. However, under Rule 60(b), only a “party” has standing to file a motion to set aside a partial decree. AO1 2 unambiguously defines a “party” as the claimant, an objector to the claim, a respondent to a recommendation, a party to a subcase that has been consolidated, a party granted specific leave to participate in a subcase, or a party filing a motion to alter or amend the special master’s recommendation. Juan Spillet is not any of these.

Juan Spillet did not participate in 7UD Ranches’ subcase in any manner. He was not the claimant, an objector, a respondent in that subcase. He was a party to a subcase that was consolidated with 7UD Ranches’ subcase. Nor was he granted leave to participate in 7UD Ranches’ subcase. Nor did he file a motion to alter or amend the special master’s recommendation.

¹ As argued in the Opening Brief, any finding to the contrary by the Special Master is clearly erroneous.

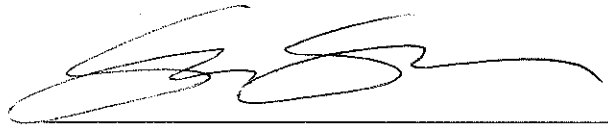
² It should be noted that Juan Spillet also suggested that all of the partial decrees should be set aside because the water that he claims is affected by those partial decrees. This suggestion should also be rejected. There is no procedure under the SRBA that would allow a claimant to have all related partial decrees (no matter when entered) set aside and relitigated for the sole purpose of adjudicating his own claim.

Consequently, Juan Spillet is not a “party” and does not have standing to pursue a Rule 60(b) motion to set aside. The mere fact that the water claimed by Juan Spillet comes from the same ditch as the water decreed under 7UD Ranches’ partial decree does not make him a “party” as defined in AO1 2. Juan Spillet had an opportunity years ago to participate in 7UD Ranches’ subcase and simply decided not to do so despite the fact that he knew even then that his claimed water came from the same ditch.

CONCLUSION

Based upon the foregoing and upon the arguments asserted in Challenger’s Opening Brief, it is respectfully requested that this Court reject the Special Master’s recommendation that 7UD Ranches’ partial decree should be set aside.

DATED this 14 day of November 2005.



SCOTT J. SMITH
Attorney for 7UD Ranches

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14 day of November 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:

Director of IDWR
P.O. Box 83270
Boise, ID 83270-0098

Jason D. Walker
Attorney for James V. Spillet
P.O. Box 396
Rubert, ID 83350-0396

Robert R. Spillet
P.O. Box 144
Rockland, ID 83271

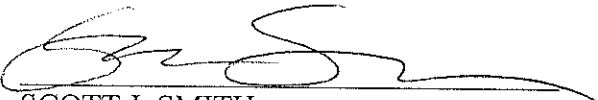
James Robinson
Bench Ditch Irrigation Co.
P.O. Box 157
Rockland, Idaho 83271

Kelvin Taysom
Suzanne Taysom
2809 W. Sandhollow Rd
Rockland, ID 83271

Herbert R. Weston
R. Scott Weston
4448 Rockland Hwy.
Rockland, ID 83271

James V. Spillet
986 W. Bryan
Pocatello, Idaho 83202

James Juan Spillet
P.O. Box 278
Rockland, Idaho 83271


SCOTT J. SMITH