

RECEIVED

MAY 14 2007

DEPARTMENT OF
WATER RESOURCES

MATTHEW J. McKEOWN
Acting Assistant Attorney General
Environmental and Natural Resources Division

DAVID W. GEHLERT
Trial Attorney, Natural Resources Section
Environmental and Natural Resources Division
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, CO 80294
(303) 844-1386

Attorneys for the United States of America

**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	)	Subcase No. 25-00224
	)	
Case No. 39576	)	UNITED STATES' MOTION TO
	)	SET ASIDE PARTIAL DECREE
	)	UNDER I.R.C.P. 60(a)
_____	)	

The United States respectfully moves the SRBA Court pursuant to Idaho Rule of Civil Procedure Rule 60(a) to set aside the Partial Decree issued for water right 25-00224 due to a clerical error regarding the digital boundary map.

I.R.C.P. Rule 60(a) states “[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission ay be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.” “[T]he central purpose of Rule 60(a) is to effectuate the contemporaneous intent of the court and to ensure that the judgment reflects that intent.” *Spomer v. Spomer*, 580 P.2d

1146, 1149 (Wy 1978), citing *Jackson v. Jackson*, 276 F.2d 501 (D.C. App. 1960). Idaho courts have ruled that corrections to land descriptions fall within the realm of “clerical mistakes” that can be correct pursuant to Rule 60(a). *E.g.*, *Thorn Creek Cattle Assn., Inc. v. Bonz*, 122 Idaho 42, 47, 830 P.2d 1180, 1185 (1992), citing *Wilcox v. Wells*, 5 Idaho 786, 51 P. 985 (1898).

In the instant case Idaho Irrigation District (“Irrigation District”) filed a water right claim for 25-224. The United States objected to the claim because some of the land described in the place of use (POU) for the water right included federal land. The parties settled the subcase via Standard Form 5, which included a digital boundary map and revised elements that included language stating “[p]lace of use does not include federal public lands.” **Amended Standard Form 5 – Stipulated Elements of a Water Right** (Subcase No. 25-00224), filed 10/12/05.

The Irrigation District also filed claims in the SRBA to water rights 01-00075, 01-00076, 01-00312, 01-00368, 01-00369, and 01-00370 to which the United States recently also objected because some of the land described in the POUs for those water rights also included federal public lands. In the course of negotiating settlement of those subcases, the United States determined that the POU boundaries for those six Basin 01 water rights were identical to the POU boundary for water right 25-00224. The United States also determined, however, that one parcel of federal public land, known as the Ririe Outlet, was inadvertently left off the digital boundary for 25-00224. Both the Irrigation District and IDWR acknowledge that the Ririe Outlet is federal public land, and the Ririe Outlet has been identified as federal public land on the digital boundaries for the five Basin 01 water rights claimed by Idaho Irrigation District.^{1/} The digital

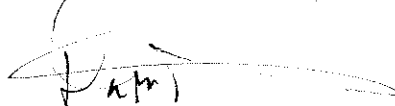
^{1/} Signed SF-5s have been filed with the SRBA Court in SRBA Subcase Nos. 01-00075, 01-00076, 01-00312, 01-00368, 01-00369, and 01-00370.

boundaries created to settle the five Basin 01 water rights objections automatically corrected the digital boundary that IDWR has for water right no. 25-00224; however, it did not correct the digital boundary for water right no. 25-00224 that the SRBA Court has on file. Because the digital boundary for 25-00224 on file with the SRBA Court has been rendered incorrect by the updated digital boundaries for the Basin 01 water rights, and because correcting the digital boundary for water right no. 25-00224 does not change the water right that was decreed to Idaho Irrigation District but only clarifies the limits of that water right, obtaining a new digital boundary for the SRBA Court file of water right no. 25-00224 amounts to a correction of a “clerical mistake” as allowed by I.R.C.P. 60(a). *Thorn Creek*, 122 Idaho at 47.

Therefore, the United States respectfully requests that the SRBA Court set aside the original partial decree issued for water right no. 25-00224, request a revised digital boundary for that water right from IDWR, and then reissue the partial decree for water right no. 25-00224 with the revised digital boundary. Both Idaho Irrigation District and IDWR concur with this motion.

DATED this 10th Day of May, 2007.

Respectfully submitted,



David W. Gehlert
Trial Attorney, Natural Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, CO 80294
(303) 844-1386

Attorney for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **UNITED STATES' MOTION TO SET ASIDE PARTIAL DECREE UNDER I.R.C.P. 60(a)** was mailed by U.S. mail this 10th day of May, 2007 to all individuals listed below.

By FedEx Mail:

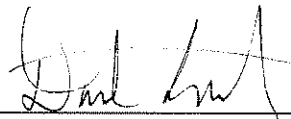
DISTRICT COURT
253 Third Ave., North
Twin Falls, ID 83301
208-736-2121

By First-Class Mail:

Jerry R. Rigby
Rigby, Thatcher, Andrus, Rigby & Moeller, Chtd.
P.O. Box 250
Rexburg, ID 83440-0250

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098

U.S. Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724



David W. Gehlert