

Josephine P. Beeman #1806
Anna R. Trentadue #7519
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
jo.beeman@beemanlaw.com
anna.trentadue@beemanlaw.com

Attorneys for City of Weiser

**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. 3-7034 and 3-10198
	)	(City of Weiser)
Case No. 39576	)	
	)	BRIEF IN SUPPORT OF MOTION TO SET
_____	)	ASIDE PARTIAL DECREES FOR WEISER
		WATER RIGHT NOS. 3-7034 AND 3-10198

INTRODUCTION

The City of Weiser respectfully submits this *Brief In Support of Motion to Set Aside Partial Decrees For Water Right Nos. 3-7034 and 3-10198*.

SRBA claims 3-7034 and 3-10198 are two of the City of Weiser's ten interrelated SRBA claims in Basin 03 (lower Snake River) and Basin 67 (ground water and surface water in the Weiser River drainage).¹ The City's *Motion to Consolidate* all ten SRBA claims is set for hearing on August 30, 2007 at 11:30 a.m. before Special Master Dolan. The *Motion to Set Aside Partial Decrees 3-7034 and 3-10198* is directly related to the City's efforts to consolidate its ten SRBA claims in Basins 03 and 67, in order to facilitate appropriate documentation and remarks regarding the interrelated and combined use of Weiser's surface and ground water rights.

¹ The Basin 03 claims for the City of Weiser are: 3-7009, 3-10010, 3-7034, and 3-10198. The Basin 67 claims for the City of Weiser are: 67-2320, 67-4291, 67-4412, 67-10971, 67-10975, and 67-14129.

**THE INADVERTENT SEPARATE ADJUDICATION OF
WEISER'S BASIN 03 AND BASIN 67 CLAIMS
IS CORRECTABLE PURSUANT TO I.R.C.P. 60(a)**

The partial decrees for water rights 3-7034 and 3-10198 may be set aside pursuant to I.R.C.P. 60(a), which allows this Court to correct “[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission. . . .” The City of Weiser understands that it is the practice of the SRBA court to hold entry of a partial decree when an uncontested right is interrelated with other rights not yet presented for partial decree. However, the City’s uncontested Basin 03 rights were decreed separately from the City’s interrelated contested right in Basin 03 and from the City’s Basin 67 rights which are still in the SRBA objection and response period.

The City of Weiser’s SRBA claim 3-7034 was recommended to the SRBA court on August 14, 2006. The City’s SRBA claim 3-10198 was also recommended on August 14, 2006.² No objections were filed to either recommendation, and partial decrees were entered for both water rights on July 9, 2007.³

THE RULE 60(a) STANDARD

There are some limits to I.R.C.P. 60(a). A court may not use this rule to change the substantive results of a case. “[A] motion under Rule 60(a) can only be used to make the judgment or record speak the truth and cannot be used to make it say something other than what originally was pronounced.”⁴ Rule 60(a) also cannot be used to change a decision of the court

² This Court may take judicial notice of its own records in the case before it. *Larson v. State*, 91 Idaho 908, 909, 435 P.2d 248, 249 (1967).

³ In all, three of Weiser’s Basin 03 rights were decreed and one was disallowed. Partial decrees were entered for 3-7009, 3-7034, and 3-10198 on July 9, 2007. Water right 3-10010 was recommended as disallowed on August 14, 2006, and Weiser filed an *SFI Objection* to this disallowance on November 1, 2006. The City subsequently filed a motion to reconsider 3-7009 whose recommendation was the basis for disallowal of 3-10010.

⁴ *Silsby v. Kepler*, 140 Idaho 410, 411, 95 P.3d 28, 29 (2004) citing *Dursteler v. Dursteler*, 112 Idaho 594, 597, 733 P.3d 815, 818 (1987).

predicated on a factual determination, or a decision based on an exercise of discretion.⁵

However, it is appropriate to use Rule 60(a) to correct a “mistake or omission” that is mostly “mechanical in nature” and “did not involve a legal decision or judgment of an attorney.”⁶ A “mistake” for Rule 60(a) purposes is primarily an error or omission “committed by an attorney or by the court which [is] not apparent on the record.”⁷ The entering of a partial decree for an uncontested water right is considered a “ministerial process,” and there is no time limitation on the court’s ability to correct these kinds of clerical mistakes under Rule 60(a).⁸

Here, Weiser’s uncontested Basin 03 rights were decreed separately from its contested Basin 03 claim (3-10010) and from the City’s pending Basin 67 claims. The entering of partial decrees for these uncontested rights was a ministerial process, not predicated on any kind of factual determination. The entry of these partial decrees also deviated from the SRBA’s common practice to hold entry of a partial decree when an uncontested right is interrelated with other rights not yet presented for partial decree. Setting aside these partial decrees will allow these two claims to be adjudicated in conjunction with the rest of Weiser’s interrelated SRBA claims. The new decrees will truthfully and accurately reflect the history and combined usage of these rights. Thus, the City of Weiser’s *Motion to Set Aside Partial Decrees* is a correct application of Rule 60(a).

**WEISER’S WATER RIGHTS ARE INTERRELATED
AND SHOULD BE ADJUDICATED TOGETHER**

The entry of partial decrees for 3-7034 and 3-10198 prior to the determination of Weiser’s contested Basin 03 claim and pending Basin 67 claims forecloses the City’s ability to

⁵ *Silsby*, 140 Idaho at 411, 95 P.3d at 412.

⁶ *Dursteler*, 112 Idaho at 597, 733 P.2d at 818.

⁷ *Id.* At 598, 733 P.2d 819.

⁸ *Order Recommending Partial Decree Be Set Aside*, (Subcase no. 31-7311) (January 19, 2004) page 6.

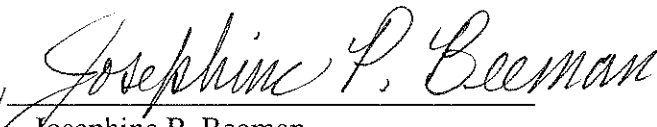
accurately adjudicate both rights with regard to the City's historical water development. It also forecloses the opportunity to accurately adjudicate all ten of the City's interrelated SRBA claims and to ensure that the combined use of these rights is appropriately documented.

CONCLUSION

Based on the foregoing, the City of Weiser respectfully requests that its *Motion to Set Aside Partial Decrees For Water Right Nos. 3-7034 and 3-10198* be granted.

Respectfully submitted this 15th day of August 2007.

BEEMAN & ASSOCIATES P.C.
Attorneys for the City of Weiser

By 
Josephine P. Beeman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of August 2007, I caused a true copy of the foregoing **BRIEF IN SUPPORT OF MOTION TO SET ASIDE PARTIAL DECREES FOR WEISER WATER RIGHT NOS. 3-7034 AND 3-10198** to be deposited in an official U.S. Post Office box with First Class postage affixed, addressed to the following:

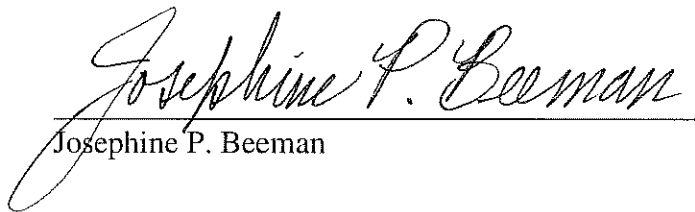
UNITED STATES OF AMERICA
REPRESENTED BY:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
550 WEST FORT STREET, MSC O33
BOISE, ID 83724

STATE OF IDAHO
REPRESENTED BY:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

GARRICK BAXTER
DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF WATER
RESOURCES
322 EAST FRONT STREET
PO BOX 83720
BOISE, IDAHO 83720-0098

ALL PARTIES ON THE SRBA'S EXPEDITED
MAILING LIST



Josephine P. Beeman

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