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**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 Number: 75-04062

)

Case No. 39576

) **MEMORANDUM IN OPPOSITION TO**
) **MOTIONS TO SET ASIDE PARTIAL**
) **DECREE**

)

I. INTRODUCTION

The United States of America ("United States"), acting through the United States Department of Interior, Bureau of Land Management ("BLM"), previously settled its objection to the water right decreed in this subcase by filing a Standard Form 5 which was negotiated with the claimant. Now, almost ten months after filing of the Standard Form 5, and more than six months after issuance of the partial decree by the Court, Mr. Rice and Mr. Capps have filed objections to

the original claim. The objections are being treated by the Court as motions to set aside the partial decree entered in this subcase. Because Mr. Rice and Mr. Capps have made absolutely no showing which would meet the legal requirements to set aside a partial decree, the Motions must be denied.

II. FACTUAL BACKGROUND

On October 17, 2007, the BLM filed an objection to the Director's Report for the claim underlying the partial decree. The claim was made by Rainbow Farms Ditch Co. ("Rainbow Farms"). On December 21, 2007, after agreeing with Rainbow Farms on a digital boundary which described the place of use and excluded federal lands, a Standard Form 5 ("SF-5") settling the BLM's objection was filed with the Court. The Special Master filed his Report and Recommendation, consistent with the SF-5, on January 16, 2008, and the claim was decreed by the Court on March 20, 2008.

On October 8, 2008, Mr. Rice filed a Standard Form 1 objection ("SF-1") which did not list a subcase number, but referred to Rainbow Farms as the claimant listed in the Director's Report. The SF-1 goes on to claim that Mr. Rice is the proper owner of the water right, and states that the water right was not recommended but should be as described in the SF-1. The SF-1 lists a point of diversion, source, priority date, and period of use different from that described in the partial decree. On October 10, 2008, Mr. Capps filed a similar objection which, in addition to the elements listed above, also lists a different place of use from that described in the partial decree.

The Court's Order of Reference appointing the Special Master indicates the Court's intent to treat the objections of Mr. Rice and Mr. Capps ("Movants") as motions to set aside the

Rainbow Farms partial decree.¹

III. ARGUMENT

The Motions Fail To Satisfy the Requirements of IRCP 60(b) and Must be Denied.

In the SRBA, motions to set aside a partial decree are treated similar to motions to set aside a judgment and determined in accordance with the criteria set forth in IRCP 60(b). *In Re SRBA*, Case No. 39576, subcase nos. 65-07267 *et al.*, *Order on Motion to Set Aside Partial Decrees and File Late Objections* (Idaho Fifth Judicial Dist., January 31, 2001) (“*AL Cattle*”) at 4; *see L.U. Ranching Co. v. United States*, 67 P.3d 85, 87, 89 (Idaho 2003) (applying IRCP 60(b) in denying motions to set aside SRBA partial decrees). The *AL Cattle* Court cited SRBA Administrative Order 1 § 14d, which states: “Parties seeking to modify a partial decree shall comply with IRCP 60(a) or 60(b).”

In addition to satisfying one of the criteria set forth in IRCP 60(b), a movant must also allege facts which, if established, would constitute a meritorious defense. *AL Cattle* at 5. Rule 60 also provides time limitations which, for subparts (1), (2), (3), and (6), can be no later than six months after the decree is entered and which, in any event, must be within a reasonable time. *AL Cattle* at 6.

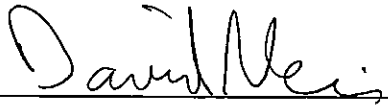
Movants have made no attempt to demonstrate that they are entitled to relief pursuant to Rule 60. Indeed, many of the provisions of the Rule are not applicable since the Motions were brought later than 6 months after entry of the partial decrees. *See* IRCP 60(b), *AL Cattle* at 5. Because the Movants have made no showing which would satisfy Rule 60, the Motions must be

¹ It is not entirely clear to the United States, based on the filings of the Movants, that they intend to request the decree be set aside. Much of the substance of their filings seems to indicate a possible intent to file late water right claims.

denied.

DATED this 22d day of January, 2009.

UNITED STATES OF AMERICA,



David L. Negri
United States Department of Justice

CERTIFICATE OF SERVICE

I certify that on January 22, 2009, I served a true and correct copy of the foregoing
MEMORANDUM IN OPPOSITION TO MOTIONS TO SET ASIDE PARTIAL DECREE upon the
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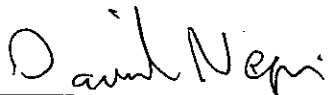
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