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DEPARTMENT OF
WATER RESOURCES

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

Case No. 39576

ORDER ON MOTION TO SET ASIDE
PARTIAL DECREE

WATER RIGHTS: 34-2459, 34-2460,
34-2461, 34-2462, and 34-10925

I. PROCEDURAL BACKGROUND

In 2008, Mitchell Sorensen moved to set aside the *Partial Decrees* in water rights 34-2459, 34-2460, 34-2461, 34-2462, and 34-10925. Mr. Sorensen seeks to set aside the *Partial Decrees* because he asserts they should have included certain wells as points of diversion under an accomplished transfer. Mr. Sorensen's *Motion* relates to another water right, 34-7037 which was licensed with points of diversion from two wells commonly referred to as the "Island Wells."

Water Rights 34-2459, 34-2460, 34-2461, 34-2462, and 34-10925 were partially decreed to Crater Farms, Inc. in December 1997. The rights were again partially decreed *Nunc Pro Tunc* in December of 2001 to include a specific period of use as required in *A & B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 958 P.2d 568, 580 (1998).

II. STANDARD OF REVIEW

Partial Decrees for these rights were issued in December of 1997 and again in December of 2001. *Motions to Set Aside Partial Decree* may be considered under Idaho Rule of Civil Procedure 60(a) or 60(b). I.R.C.P. 60(a) allows a court to correct clerical errors at any time. I.R.C.P. 60(b) allows a court to relieve a party from a final judgment, order or proceeding for the following reasons:

- 1) mistake, inadvertence, surprise, or excusable neglect;
- 2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
- 3) fraud, misrepresentation or other misconduct of an adverse party;
- 4) the judgment is void;

- 5) the judgment has been satisfied, released or discharged; and
- 6) any other reason justifying relief from the operation of the judgment.

Mr. Sorensen's primary argument was under I.R.C.P. 60(a).

III. DISCUSSION

The claims for these rights were filed by Willard Bell of Crater Farms, Inc. The original claims only identified the "Airport Wells" as points of diversion under these water rights and did not include the "Island Wells." Amended Claims were filed by Willard Bell of Crater Farms, Inc. on October 30, 1990. The Amended Claims included two attached maps. One map showed the place of use and three claimed points of diversion at the "Airport Wells." The second map showed the points of diversion at the "Island Wells." The second map and statements included in the remarks section of the Amended Claims show that Mr. Bell intended to claim the "Island Wells" as additional points of diversion. However, the "Island Well" points of diversion were not included in the legal description on the front of the Amended Claims. The *Director's Report* did not recommend the "Island Well" PODs. Mr. Sorensen asserts that omission of the "Island Wells" on the front of the form was a clerical error. He argues that the clerical error in the Amended Claim resulted in omission of the "Island Wells" as points of diversion in the *Director's Reports*. That omission was then carried over to the *Partial Decrees*.

At the hearing, IDWR reported that the error in the Amended Claim resulted in a *Director's Report* which did not make a determination about the "Island Wells." IDWR reviewed its files and determined there was no intent to determine whether the "Island Wells" should be included as points of diversion.

IRCP 60(a) provides that clerical mistakes in judgments or orders may be corrected at any time either on the court's own initiative or on motion of the party. Sorensen cited *Silsby v. Kepner*, 140 Idaho 410, 95 P.3d 28 (2004) in favor of its argument. In *Silsby*, the husband filed a petition to modify child support payments and motion to correct clerical error in the default divorce decree. The default divorce decree did not include an offset to the husband for the tax benefit to the wife of the child dependency exemption. The court entered a default judgment and decree which was based on wife's divorce complaint. Neither the complaint nor the default decree accounted for the tax benefits. The husband filed a motion under Rule 60(a). The magistrate held that the failure to include the tax benefit offset was a clerical error, even though the divorce decree contained the same provisions the wife had requested in her petition. The

Idaho Supreme Court reversed, holding that the magistrate had not intended to include the offset, and the error was a legal error which could not come within Rule 60(a).

The *Silsby* court described clerical errors which can be corrected under Rule 60(a) as those in which the “type of mistake or omission [is] mechanical in nature which is apparent in the record and which does not involve a legal decision or judgment by an attorney.” *Silsby* explained that motions 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.” *Id.* at 411.

Rulings in other jurisdictions distinguish clerical errors which can be corrected from legal errors which are not entitled to correction under Rule 60(a). In *Blanton v. Anzalone*, 813 F.2d 1574 (1987), the 9th Circuit said:

The basic distinction between “clerical mistakes” and mistakes that cannot be corrected pursuant to Rule 60(a) is that the former consist of “blunders in execution” whereas the latter consist of instances where the court changes its mind, either because it made a legal or factual mistake in making its original determination, or because on second thought it has decided to exercise its discretion in a manner different from the way it was exercised in the original determination.

Id. at n. 2. (cited in *Silsby* at 412)

Sorensen argues that a clerical error was made in the Amended Claims. The error was omitting the “Island Wells” on the front of the claim form. The issue is whether the error is correctable under I.R.C.P. 60(a). In *Silsby*, the Idaho Supreme Court concluded that the lower court made a legal error and not a clerical error in failing to provide for the tax credit. In addition, there was nothing in the divorce decree about the tax benefit since the decree was based on the complaint. Therefore, the court concluded there was nothing in the record to correct.

Sorensen argues that this case involves documents in the record which can be corrected. Sorensen argues that if the Amended Claim had not referred to the “Island Wells” with the second map, there would arguably be nothing to correct. However, Crater Farms Inc. did refer to the “Island Wells” but overlooked them on the front of the claim form. Thus, he argues, the Amended Claim contains a clerical error. If Crater Farms had not referred to the “Island Wells” at all, that could be a legal error. Sorensen argues that the Amended Claim is a record which can be corrected.

This court follows the holdings of the Idaho Supreme Court in *Silsby*, noting the analysis

From *Blanton v. Anzalone* regarding clerical errors and legal errors. The Amended Claim contained a clerical error which can be corrected under Rule 60(a) because it is apparent from the attached maps that the claimant intended to claim the "Island Wells." The court also notes that this *Motion* was not contested. This decision may have been different if IDWR had intended to omit the "Island Wells." It is appropriate to allow the Movant to file an Amended Claim.

IV. CONCLUSIONS AND RECOMMENDATIONS

This *Motion* was not contested. Because the face of the Amended Claim omitted the "Island Wells," and because the "Island Wells" were referred to on the attached map, the court considers this a clerical error under I.R.C.P. 60(a). Therefore, based on the file and record herein, IT IS RECOMMENDED that an Amended Claim shall go forward with the following deadlines:

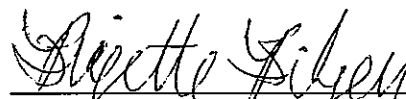
September 25, 2009	5:00 pm	Deadline to file Amended Claim
November 30, 2009	5:00 pm	Deadline to file Amended Directors Report
December 18, 2009	5:00 pm	Deadline to file Objection
January 22, 2010	5:00 pm	Deadline to file Response
March 3, 2010	1:30 pm	Status Conference

Location: Snake River Basin Adjudication
253 3rd Ave. North
Twin Falls, Idaho 83301

Parties may participate by telephone for the Status Conference by dialing 1-225-383-1099 and when prompted enter participant code 926509. Any questions regarding telephone participation, please contact the Clerk's office at (208) 736-3011.

This Special Master notes that Mr. Sorensen has asked that the *Partial Decrees* for these rights be set aside. The Special Master is prepared to rule on that *Motion*, however, the SRBA District Court prefers to have one *Special Master's Report and Recommendation* at the conclusion of the proceedings that includes a recommendation for the elements of each water right. This Special Master presumes without deciding that sufficient grounds exist to support setting aside these *Partial Decrees*. A full decision on that question shall issue after the Amended Claims have been considered.

Dated: September 4, 2009.


BRIGETTE BILYEU, Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION TO SET ASIDE PARTIAL DECREE was mailed on September 04, 2009, with sufficient first-class postage to the following:

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