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APR 26 2010
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho
APR 23 2010
By _____ Clerk
Deputy Clerk

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	**SPECIAL MASTER'S REPORT AND RECOMMENDATION ON MOTION TO SET ASIDE PARTIAL DECREE** **WATER RIGHT: 34-00368**

I. PROCEDURAL BACKGROUND

The SRBA District Court issued a ***Partial Decree*** for water right 34-368 on April 14, 1998. On August 6, 2008, the court received a *Motion to File Amended Claim* and a *Motion to File Late Objection* from Dennis K. Moss. The court treated the *Motions* as a *Motion to Set Aside Partial Decree*. An ***Order of Reference Appointing Special Master Brigette Bilyeu*** was issued on August 8, 2008. Hearings on the *Motions* were held on February 4, 2009, June 10, 2009, and December 16, 2009. At the hearings, the court determined the following:

1.) No parties to the SRBA objected to the *Motions*

2.) IDWR explained water right 34-368 was recommended in the *Director's Report*, and a ***Partial Decree*** issued in 1998. However, Mr. Moss and IDWR discovered that the predecessor claimant, Brent Morgan submitted an *Amended Claim* in 1992 that was not processed. IDWR and the Court have now adopted procedures for processing *Amended Claims*.

3.) There was no finding of prejudice to other parties.

4.) The *Amended Director's Report* increased the acreage from 80 to 112 acres but did not increase quantity.

An *Amended Director's Report* was issued August 31, 2009. The *Amended Director's Report* was placed on the docket. No objections or responses were filed. At the hearing held on December 16, 2009, IDWR supported allowing the ***Partial Decree*** to be set aside and the changes made pursuant to the *Amended Director's Report.*

II. STANDARD OF REVIEW

A ***Partial Decree*** for this right was issued April 14, 1998. *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. 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.

I.R.C.P. 60(b) has a six month time limit for motions under subparts 1, 2, and 3. However, no such time limits impede a motion under subparts 5 or 6, which must be brought in a "reasonable time." Furthermore, Idaho Courts have inherent power to consider independent actions for equitable relief from a judgment. *See, Harper v. Harper.* 122 Idaho 535, 835, P.2d 1346 (Ct. App. 1992); *Compton v. Compton,* 101 Idaho 328, 333, 612 P.2d 1175, 1180 (1980). Independent actions for relief are unusual remedies which should be available only rarely and under the most exceptional circumstances.

This court could consider a *Motion to Set Aside* under I.R.C.P. 60(b)(5) or (6). This court could also consider the *Motion to Set Aside* as an independent action. Under either scenario, the facts here present exceptional circumstances which justify relief from the ***Partial Decree***. The claimant's predecessor submitted an *Amended Claim* in 1992. The *Amended Claim* was not processed, but was sent back to the claimant. The claimant's predecessor essentially followed the procedures which have since been adopted for amending a claim. Unfortunately, the absence of established procedures for amending claims resulted in the rejection of this amended claim. It is appropriate now for the court to correct an oversight.

III. CONCLUSIONS AND RECOMMENDATIONS

Therefore, based on the file and record herein, IT IS RECOMMENDED that the *Motion to Set Aside Partial Decree* be **granted**, and that this water right be **decreed** with the elements set forth in the attached ***Special Master's Recommendation for Amended Partial Decree.*** The recommended elements are consistent with the *Amended Director's Report*.

Dated: April 23, 2010.

BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho
APR 23 2010
By _____ Clerk
Deputy Clerk

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)
)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 34-00368

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WATER RESOURCES

NAME AND ADDRESS: DENNIS K MOSS
3286 N 3350 W
MOORE, ID 83255

SOURCE: BIG LOST RIVER TRIBUTARY: SINKS

QUANTITY: 1.60 CFS

PRIORITY DATE: 06/01/1886

POINT OF DIVERSION: T05N R26E S04 NWSESE Within Butte County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	05-01 TO 10-15	1.60 CFS

THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED IN SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF 4-20 AND AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES.

PLACE OF USE: Irrigation Within Butte County

T05N R26E S34	NENE 30.0	SENE 20.0
S35	NWNW 30.0	

80.0 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

RECOMMENDATION
APR 23 2010
Brigetta Bilyeu
SPECIAL MASTER

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication

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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	NOTICE OF ISSUANCE OF SPECIAL MASTER'S RECOMMENDATION
Case No. 39576	
	Water Right(s): 34-00368

On April 23, 2010, Special Master BRIGETTE BILYEU issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED April 23, 2010.

Janet Connell
JANET CONNELL
Deputy Clerk

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Fifth Judicial District
County of Twin Falls - State of Idaho
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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)	CERTIFICATE OF MAILING
)	
Case No. 39576)	
)	Water Right(s): 34-00368

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on April 23, 2010, with sufficient first-class postage prepaid to the following:

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

DENNIS K MOSS
DENNIS MOSS
3286 N 3350 W
MOORE, ID 83255
Phone: 208-554-4140

Janet Connell
JANET CONNELL
Deputy Clerk