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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

Case No. 39576

Subcase Nos. 01-23B, 01-297, 35-2543, 35-4246
(Aberdeen-Springfield Canal Company)

**RESPONSE AND OBJECTION TO
MOTION TO ALTER OR AMEND**

COMES NOW Claimant, Aberdeen-Springfield Canal Company ("Aberdeen-Springfield"), by and through counsel of record, and hereby gives notice pursuant to Administrative Order No. 1 ("AO1"), Rule 13(a) and hereby files its *Response and Objection to Objectors' Motion to Alter or Amend* filed by Objectors, American Falls Reservoir District No. 2, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company ("Surface Water Coalition" or "SWC") dated May 28, 2010, seeking an Order altering or amending the April 23, 2010 *Special Master's Report* in the above subcases.

INTRODUCTION

On June 11, 2009, the Special Master entered an *Order Partially Granting Aberdeen-Springfield's Motion for Summary Judgment and Denying Surface Water Coalition's Motion for Summary Judgment and Motion to Strike Affidavits* (June 11, 2009 Order). After the Surface Water Coalition filed a *Motion for Reconsideration*, on January 8, 2010, the Special Master entered an *Order Denying Motion for Reconsideration* (January 8, 2010 Order). In accordance with these Orders on April 23, 2010, the Special Master issued a *Special Master's Report* and

Partial Decree pursuant to I.R.C.P. 54(d) for Water Right Nos. 01-23B and 01-297. In response the Surface Water Coalition filed on May 28, 2010, its *Objectors' Motion to Alter or Amend* scheduled for hearing before the Special Master on July 1, 2010 at 1:30 p.m.

STANDARD OF REVIEW

AO1 does not set forth any criteria or standard of review for a motion to alter or amend a special master report and recommendation. However, the SRBA Court has consistently held that Rule 60(b), IRCP provides the proper standard governing motions seeking relief from judgments or orders of the court and that such relief is only granted in "limited situations".¹ Rule 60(b) provides:

On motion and upon such terms as are just, the court may relieve a party or his legal representative 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 under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct, of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of judgment.

Miller v. Haller, 129 Idaho 345, 349 (1996). In *Miller*, supra, the court describes the standard for Rule 60(b) motions at *hn* 3:

...although the court is vested with broad discretion in determining whether to grant or deny a *Rule 60(b)* motion, its discretion is limited and may be granted only on a showing of "**unique and compelling circumstances**" justifying relief. *Matter of Estate of Bagley*, 117 Idaho 1091, 1093, 793 P.2d 1263, 1265 (Ct. App. 1990) (citing *Puphal v. Puphal*, 105 Idaho 302, 669 P.2d 191 (1983)). (Emphasis added).

¹ See Memorandum Decision and Order on Challenge, Subcases 36-00061, 36-00062 and 36-00063 dated September 17, 1999; *Order Denying Claimant's Motion to Alter or Amend* entered by Special Master Booth on November 27, 2009 in Subcase No. 63-32533; *Memorandum Decision and Order on Challenge* issued July 28, 2006 by Judge Melanson on Consolidated Subcase No. 67-13701 (Nez Perce Tribe and United States "Springs or Fountains" Claims).

In a recent SRBA proceeding, subcase number 63-32533, Special Master Theodore Booth issued an *Order Denying Claimant's Motion to Alter or Amend* on November 27, 2009 ("Order Denying"). In that case the Surface Water Coalition's counsel Barker Rosholt represented Wilder **Irrigation** District successfully argued in their *Response in Opposition to Motion to Alter or Amend* that Rule 60(b) set the applicable standard and that relief could only be granted in "limited situations". Special Master Booth agreed and in his Order Denying rejected the claimant's desire to present additional evidence after the Special Master's Report was issued.

Special Master Booth has also ruled that the issuance of a Special Master's Report is governed by Idaho Rule of Civil Procedure 52(b). His opinion directs the parties to "[s]ee *Memorandum Decision and Order on Challenge*, issued by SRBA Judge Wood in subcases 36-61, 36-62, and 36-63 on September 17, 1999. As discussed by Judge Wood:

"A motion is made under Rule 52(b) for the purpose of amending Findings or Conclusions, or making additional Findings or Conclusions. IRCP 52(b). Under Federal Rule of Civil Procedure 52(b) – which is identical to IRCP 52(b) – such a motion can be made prior to the entry of a judgment. (Citations omitted) Essentially, a motion under Rule 52(b) allows the Court to correct or augment its Findings so that an appellate court may have a clear understanding of how the trial court arrived at its decision. 9 *Moore's Federal Practice*, 52.60(3). The rule is not intended to allow parties to advance new theories or re-litigate the merits of a case. *Id.*

Under Fed. R. Civ. P. 52(b), there are four recognized grounds for granting a motion: (1) correction of manifest error; (2) newly discovered evidence; (3) change in law; and (4) supplement or amplify findings. 9 *Moore's Federal Practice* 52.60[4][a]-[d]." Memorandum Decision and Order on Challenge at 27.

On this basis Judge Wood denied the challenge to the Special Master's Recommendations. Similarly, and applying the same standard, Special Master Booth in his Order Denying in Subcase 63-32533 concluded that the standard had not been met for allowing a Motion to Alter or Amend and refused to reopen the proceeding to allow additional evidence.

ARGUMENT

In this case the Surface Water Coalition has failed to present any evidence or even argue that they have met any of the criteria found in Rules 52(b) or 60(b), I.R.C.P. As such their Motion to Alter or Amend need not be addressed on the merits and should be summarily denied. Inexplicably, the Surface Water Coalition does not even attempt to meet the criteria under Rules 52(b) or 60(b). Instead, the Surface Water Coalition does nothing more than attempt to take a second (or third) bite at the apple by repackaging and reiterating the same stale arguments presented in support of their *Motion for Summary Judgment* and *Motion for Reconsideration*, all of which have been twice rejected by the Special Master. The “unique and compelling circumstances” justifying the requested relief as outlined in the *Haller*, supra, are simply not present in this proceeding.

Furthermore, the Surface Water Coalition’s *Motion to Alter or Amend* presents no new law, arguments or evidence. Since all of the Surface Water Coalition arguments have previously been thoroughly addressed in briefs and oral arguments presented by Aberdeen-Springfield and the State they need not be reiterated. It is respectfully submitted that the Surface Water Coalition is effectively abusing and misusing the rules to file a Second Motion for Summary Judgment and/or a Motion for Reconsideration on issues previously decided which should be considered *res judicata* at this point.

It is clear that the purpose of AO1 13(a) is to permit a party to correct a technical, procedural or scrivener’s error to a Recommended Partial Decree rather than to force the Court to decide the issues a third time, a clear waste of the Court’s time and the parties’ resources. Such is an abuse of the rules of procedure and serves no purpose but to delay and obstruct the Partial Decree of water rights to which Aberdeen-Springfield is entitled. The relief sought by the Surface Water Coalition can and undoubtedly will be presented to the SRBA Presiding Judge by appropriate challenge, not to this Court. It is respectfully requested that the Special Master see through these thinly-veiled efforts and deny the Surface Water Coalition’s Motion without further hearing.

CONCLUSION

The Surface Water Coalition's Motion to Alter or Amend is without merit and should be denied for the reasons that they have failed to make any showing that they have met the criteria found in Rules 52(b) or 60(b), I.R.C.P., have failed to present any new evidence or law, instead reiterating the same arguments presented in support of their Motion for Summary Judgment and again in their Motion for Reconsideration, all of which have been twice rejected by the Special Master.

RESPECTFULLY SUBMITTED this 24th day of June, 2010.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By 
RANDALL C. BUDGE

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of June, 2010, I caused to be served the original and copies of the foregoing document to the following persons by the indicated methods:

Original to:	Clerk of the District Court Snake River Basin Adjudication P.O. Box 2707 253 Third Avenue North Twin Falls, Idaho 83303-2707	U.S. Mail and Email
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Copy to the Claimant:

Aberdeen-Springfield Canal Company P.O. Box 857 Aberdeen, Idaho 83210	U.S. Mail and Email
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Copy to each of the parties and their attorneys:

John K. Simpson/Travis L. Thompson Barker Rosholt & Simpson LLP P.O. Box 485 Twin Falls, Idaho 83303-0485	U.S. Mail and Email
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Twin Falls Canal Company P.O. Box 326 Twin Falls, Idaho 83303-0326	U.S. Mail
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A&B Irrigation District P.O. Box 675 Rupert, Idaho 83350-0675	U.S. Mail
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North Side Canal Company 921 N. Lincoln Avenue Jerome, Idaho 83338	U.S. Mail
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Burley Irrigation District 246 E. 100 S. Burley, Idaho 83318	U.S. Mail
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Milner Irrigation District 5294 E. 3610 N. Murtaugh, Idaho 83344	U.S. Mail
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