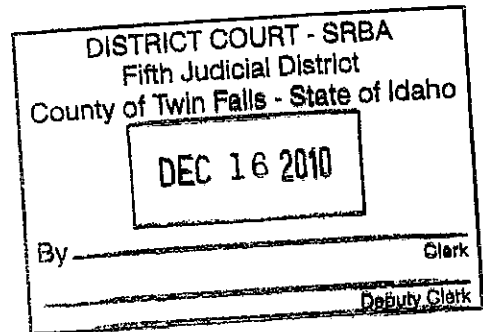


RECEIVED

DEC 17 2010

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

) Subcase 47-07936

Case No. 39576

)
) SPECIAL MASTER'S REPORT AND
) RECOMMENDATION RE: MOTION
) TO SET ASIDE PARTIAL DECREE
)

A *Partial Decree* for the above-captioned water right was issued to Country Acres Water Company c/o Alger A. Todd on June 1, 2010. On June 10, 2010, the SRBA District Court received correspondence from Beulah Todd asserting that the number of irrigated acres and the quantity of water set forth in the *Partial Decree* were incorrect. The correspondence was treated as a motion to set aside the *Partial Decree* pursuant to Idaho Rule of Civil Procedure 60(b). A hearing on the *Motion* was held on July 27, 2010.

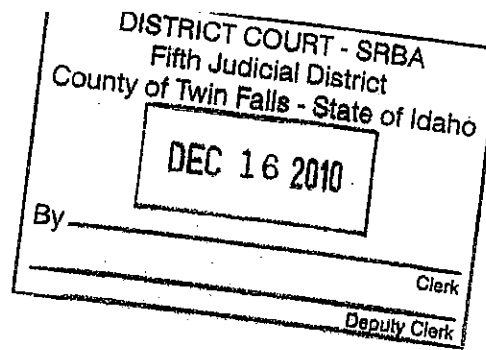
Idaho Rule of Civil Procedure 60(b) provides: "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or procedure for [enumerated reasons]." The decision whether to grant a motion for relief under Rule 60(b) is discretionary with the trial court. *Bull v. Leake*, 109 Idaho 1044, 1047, 712 P.2d 745 (Ct. App. 1986). The trial court is required to determine the facts concerning the circumstances of issuance of the judgment (partial decree) and to apply I.R.C.P. 60(b) criteria to those facts. *Id.* Motions under I.R.C.P. 60(b) involve balancing the competing interests of finality and the desire to achieve justice. *Gordon v. Gordon*, 118 Idaho 804, 806, 800 P.2d 1018, 1020 (1990), citing 11 Wright and Miller, *Federal Practice and Procedure: Civil* § 2872, p. 261 (1973); *see also* § 2857; *Sherwood & Roberts, Inc., v. Riplinger*, 103 Idaho 535, 650 P.2d 677 (1982); *Schraunfnagel v. Quinowski*, 113 Idaho 753, 747 P.2d 775 (Ct. App 1987). In addition to satisfying the criteria of Rule 60(b), the movant must also demonstrate a meritorious position. *Memorandum Decision and Order on Motion to Set Aside Partial Decrees*, subcases 55-02373 *et al.*, *LU Ranching*, (May 1, 2001) *aff'd* 138 Idaho 606, 67 P.3d 285 (2003).

It is well settled in the Snake River Basin Adjudication that a claimant of a water right based upon a previously issued license cannot use the adjudication as a means to change what transpired in the administrative licensure proceedings. *See Memorandum Decision and Order on Challenge; Order on State of Idaho's Motion to Dismiss Claimant's Notice of Challenge*, SRBA Subcase No. 36-08099 (Jan. 11, 2000)("River Grove Farms"). At the hearing the representative from the Idaho Department of Water Resources stated that the *Partial Decree* issued by the Court matched the previously issued water right license for both the quantity and the number of irrigated acres. The claimant is prevented from seeking to exceed the limits of the license in the SRBA. Accordingly, the claimant has failed to demonstrate a meritorious position for setting aside the previously issued partial decree.

Therefore based on the file and record herein, IT IS RECOMMENDED that the SRBA District Court enter a final order denying the *Motion* to set aside the previously issued *Partial Decree*.

Dated Dec. 16, 2010


Theodore R. Booth
Special Master
Snake River Basin Adjudication



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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

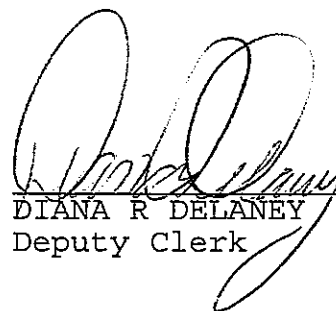
Water Right(s): 47-07936

On December 16, 2010, Special Master THEODORE R. BOOTH 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 December 16, 2010.


DIANA R DELANEY
Deputy Clerk

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
DEC 16 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

CERTIFICATE OF MAILING

Water Right(s): 47-07936

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 December 16, 2010, with sufficient first-class postage prepaid to the following:

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

COUNTRY ACRES WATER CO
C/O BEULAH TODD
3809 N 2500 E
FILER, ID 83328
Phone: 208-734-1740



DIANA R DELANEY
Deputy Clerk

CERTIFICATE OF MAILING

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12/16/10