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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. 34-2459, 34-2460, 34-2461,
) 34-2462, 34-10925
)
)
)
)

JOINT OPENING BRIEF ON PERMISSIVE REVIEW

*On Permissive Review from Special Master Bilyeu's
September 9, 2009 Order on Motion to Set Aside Partial Decree*

Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Ave. West, Suite 103
P.O. Box 485
Twin Falls, Idaho 83303-0485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

*Attorneys for Doug Schureman, Tyler
Felton & Jim Huelsman*

James P. Speck, ISB #2067
**SPECK & AANESTAD, A Professional
Corporation**
120 East Ave.
P.O. Box 987
Ketchum, Idaho 83340
Telephone (208) 726-4421
Facsimile: (208) 726-0752

*Attorneys for Darrell McDonald & Norm
Sowards*

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INTRODUCTION

This case is born out of the Claimants' assertion that the failure to identify certain points of diversion (i.e. the so-called "Island Wells") on amended claims warrants an order from this Court setting aside 15 year old partial decrees. Although the Special Master held that setting aside the partial decrees pursuant to Idaho Rule of Civil Procedure 60(a) ("Rule 60(a)")¹ was warranted, a review of the law and record demonstrates that the Special Master's decision was in error and that Claimants cannot meet their burden under Rule 60(a).

First, since the amended claims in question were not a part of the Court's record, Rule 60(a) cannot apply.

Second, the law reserves the extreme remedy of setting aside a judgment under Rule 60(a) for instances where the judgment fails to reflect the original intention of the court. Here, there is no claim that the partial decrees reflect any element that is contrary to the Court's intent.

Finally, in order for the Court to accept the Claimants' "clerical error" theory, it must overlook the host of actions and inactions of the Claimants since the amended claims were filed in 1990. These actions and inactions include (i) failing to include the Island Wells as points of diversion on the amended claims, (ii) failing to file an objection or otherwise challenge the Director's 1992 recommendation that did not include the Island Wells as alternate points of diversion, (iii) failing to take any action when the rights were partially decreed in 1997 without the Island Wells as alternate points of diversion, and (iv) failing, again, to take any action when the partial decrees were amended in 2001 (again, without the Island Wells identified as points of diversion). In fact, the Claimants did not even create their "clerical error" theory until 2008 –

¹ Idaho Rule of Civil Procedure is similar but not identical to its Federal Counterpart, Federal Rule of Civil Procedure 60(a). In analyzing Rule 60(a), Idaho Courts have routinely looked to the Federal Courts for their analysis of Federal Rule 60(a)'s application. *See, Silsby v. Kepner*, 140 Idaho 410, 412 (2004); *Dursteler v. Dursteler*, 112 Idaho 594, 597 & 598 (Ct. App. 1987) (Federal Courts recognize that Rule 60(a) is the proper remedy to amend a judgment to include post judgment interest).

more than a decade after the partial decree was issued and nearly 17 years after the original recommendations were submitted to this Court.

Failure to take advantage of the statutorily mandated procedures to address perceived errors in a recommendation, should not allow the Claimants a second bite at the apple under a “clerical error” theory – that is not the intent of Rule 60(a).

Granting a motion to set aside the partial decrees in this matter flies in the face of the binding nature of a partial decree. I.C. § 42-1420. Accordingly, the Court should deny the Claimants’ motion.

FACTUAL & PROCEDURAL BACKGROUND

On February 28, 1989, the Claimants filed their *Notices of Claim* for water rights 34-2459, 34-2460, 34-2461 and 34-2462 (the “Airport Well Licenses”). *Second Affidavit of Paul L. Arrington* Exs. A-D. None of these Notices of Claim identified the two wells commonly referred to as the “Island Wells” as points of diversion for the water rights. *Id.* Each of these Notices of Claim described the diversion works as “WELLS OPEN DISCHARGE **TO PRIVATE DITCH** PUMP MAINLINE TO SPRINKLERS.” *Id.* (emphasis added).

On November 14, 1990, the Claimants submitted an *Amended Notice of Claim* for each of the Airport Well Licenses to the Idaho Department of Water Resources (“IDWR”). *Id.* at Ex. E-H. Each Amended Notice of Claim listed and identified the same points of diversion as the original Notice of Claim. *Id.* As with the original Notices of Claim, the Claimants made no mention of, and did not identify, the Island Wells as points of diversion in their *Amended Notices of Claim*. *Id.* at Exs. E-H. Each amended claim described the diversion works as “Wells open discharge **to private ditch** – pump mainline to sprinklers.” *Id.* (emphasis added). There was no

indication that the Claimants were intending to assert an accomplished transfer.² *Id.* However, the claimed place of use for each water right was amended to identify a 1,989 acre permissible place of use for irrigation based on an accomplished transfer of the original licensed place of use for each of these water rights. *Id.*³

On November 14, 1990, the Claimants also filed a late Notice of Claim for water right 34-10925 based on the enlargement statute (then, Idaho Code § 42-1416(2)). *Id.* at Ex. J. Importantly, this right, which was claimed on the same day as the *Amended Notices of Claim*, did include the Island Wells as listed points of diversion in the proper space on the first page. *Id.* This new Notice of Claim also described the diversion works as “Wells open discharge to private ditch *or Munsey Ditch* – pump mainline to sprinklers.” (Emphasis added). *Id.* Water right 34-10925 was claimed as an enlargement of the above water rights as well as water right 34-7037, which, at that point, was only a permit⁴ to divert water from the Island Wells for irrigation.

Each of the Amended Notices of Claim and the new Notice of Claim were signed by Willard O. Bell as president of Crater Farms, Inc. on October 30, 1990. *Id.* Kent W. Foster, a very experienced water rights attorney, signed the Notice of Appearance on each of the Amended Notices of Claim and the new Notice of Claim on November 6, 1990. *Id.* Mr. Foster then sent the Amended Notices of Claim and the new Notice of Claim to the Idaho Department of Water Resources under his cover letter dated November 14, 1990. *2nd McDonald Aff.* Ex. A.

On or near May 27, 1992, the Department issued its Directors Report for Basin 34, recommending the above water rights to the SRBA District Court. *Arrington Aff.* at Exs. L-P.

² In fact, Claimants do not even identify Idaho Code § 42-1416A, the “accomplished transfer” statute then in effect as a basis for the claimed water right. This statute, along with Idaho Code Section 42-1416, have since been repealed and replaced by new statutes found at Idaho Code Sections 42-1425 (Accomplished Transfers) and 42-1426 (Enlargements).

³ In a subsequent analysis, the Department reviewed each of the claims and concluded that the accomplished transfer of the place of use had been completed. *Id.* at Ex. I.

⁴ Water right 34-7037 was licensed on September 2, 1994.

None of the recommendations identified the Island Wells as a point of diversion. *Id.* Mr. Foster sent copies of these Director's Reports to Willard Bell under his cover letter dated July 14, 1992. *2nd McDonald Aff.* at Ex. B. Notwithstanding the absence of the Island Wells as points of diversion, the Claimants did not object to the recommendations in the SRBA Court.

On December 16, 1997, the SRBA District Court entered partial decrees for the above water rights.⁵ Again none of the partial decrees included the Island Wells as points of diversion. Claimants failed to take any action at that time to change these partial decrees to add the Island Wells as points of diversion.

These partial decrees were issued before the property was sold by the original Claimant. Crater Farms, Inc. sold the property and water rights on January 7, 1998, less than one month after the partial decrees were issued by this Court. *Id.* at Ex. Q. The new owners also failed to take any action to address any perceived errors on these partial decrees. Indeed, amended partial decrees were issued for each of the water rights in 2001. However, they failed to take any action to correct what they now claim are "clerical errors."

On April 24, 2008 – nearly two decades after the original recommendations were filed and more than a decade after the original partial decrees were entered – the Claimants filed their motion to set aside the partial decrees. On April 25, 2008, the Presiding Judge issued an *Order of Reference Appointing Special Master Brigitte Bilyeu*, charging the Special Master with reviewing the motion and determining if the partial decrees should be set aside.

On September 9, 2009, the Special Master issued her *Order on Motion to Set Aside Partial Decree*, wherein the Special Master concluded:

⁵ On December 14, 2001, the partial decrees were amended to establish beginning and ending days for the irrigation season. See *Order Amending Irrigation Period of Use Element in Partial Decree and Incorporating into Partial Decree an Express Statement Regarding General Provisions, Nunc Pro Tunc* (in each subcase).

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.⁶ 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.

Order at 3-4.

On December 10, 2009, the Department submitted its *Amended Director's Report* for the above water rights. For the first time, the Department included the Island Wells as points of diversion for the Airport Well Licenses and for 34-10925.⁷ On January 28, 2010, the Objectors, Schureman, Heulsman and Felton, filed a timely objection. On March 28, 2011, the Special Master allowed the remaining Objectors, McDonald and Sowards, to file late objections.

On May 23, 2011, July 27, 2011 and September 7, 2011, the parties all participated in settlement discussions, seeking to resolve the objections filed in these subcases. However, notwithstanding the parties' good faith efforts to resolve the objections, no settlement was reached.

On September 15, 2011, the Objectors filed their *Motion for Permissive Review*. On January 27, 2012, the Special Master issued her *Order Granting Motion for Permissive Review*, in which she recommended that the Court review her decision granting the Rule 60(a) motion.

⁶ It is not surprising that "this *Motion* was not contested" at the time of filing. As originally claimed, recommended and partially decreed, the above water rights did not include the Island Wells as points of diversion. As such, the Objector's diversions were not impacted and no objection was necessary. With partial decrees entered in 1997, it was understood that these rights were resolved. See I.C. § 42-1420. The Objectors were not served copies of the *Motion to Set Aside Partial Decrees*. The Objectors learned of the Claimants' efforts to add the Island Wells as points of diversion shortly before the Amended Director's reports were issued in late 2009. They filed timely objections or were given leave to file late objections in this matter. The Objectors have always challenged the Claimants' theories in this matter – including their theory that an alleged "clerical error" in the Amended Claims warrants setting aside the partial decrees.

⁷ The amended recommendations improperly included the Island Wells as points of diversion for water right 34-10925 (the enlargement right). See I.C. § 42-1425 (the accomplished transfer statute is "not applicable to any claim based upon an enlargement of use").

On February 1, 2012, this Court issued an *Order Granting Permissive Review*, in which the Court held that permissive review is appropriate. Trial is currently set for June 20-22, 2012.

STATEMENT OF ISSUES

Objectors raise the following issues on Permissive Review:

1. Whether Rule 60(a) applies where the “clerical mistake” is in a document that was not part of the Court’s record?
2. Whether Rule 60(a) applies where (i) any correction of the alleged “clerical mistake” would require further factual and legal analysis; (ii) claimants were represented by competent counsel who did not take any action; and (iii) the change would impair the interest of other water users?
3. Whether Rule 60(a) applies to the facts of these subcases?

STANDARD OF REVIEW

Pursuant to the Court’s Rules, permissive review may be had of an “interlocutory determination which involves a controlling question of law as to which there are substantial grounds for difference of opinion.” *SRBA Administrative Order No. 1* § 9.e. On permissive review, the Court’s inquiry is limited to review of the Special Master’s legal conclusions and the application of those legal conclusions to any facts that exist at the time of the permissive review. A Special Master’s conclusions of law are not binding upon a district court, although they are expected to be persuasive. This permits a district court to adopt a special master’s conclusions of law only to the extent they correctly state the law. *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho 370, 378 (1991). Accordingly, a district court’s standard of review of a trial court’s (special mater’s) conclusions of law is one of free review. *Higley v. Woodward*, 124 Idaho 531, 534 (Ct. App. 1993).

ARGUMENT

I. Rule 60(A) Does Not Apply To These Subcases.

A. Since the Amended Claims are not Part of the Court's Record, Rule 60(a) Cannot Apply.

Rule 60(a) gives the Court limited authority. The Rule provides:

Clerical mistakes in *judgments, orders or other parts of the record* and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

(Emphasis added). Such an alleged “clerical mistake” must be in the record. The Court does not have authority to amend a judgment based on documents that are outside of the Court’s record.

Here, the only alleged “clerical error” is in a document that is not in the Court’s record – i.e. the amended claims submitted in 1990. Importantly, the amended notices of claim were filed with IDWR – *not the Court*. See 2nd *McDonald Aff.* at Ex. A. As such, the 1990 Amended Notices of Claim are *not part of the “record” in the Subcases* for the Airport Well Licenses.⁸ Indeed, they were *not* filed with this Court until attached to affidavits filed by Claimants in support of their April 24, 2008 *Motion to Set Aside Partial Decrees*. See Attachment to this Memorandum.

Since the amended claims are not part of the record, Rule 60(a) cannot apply and the Claimants’ motion should be denied.

B. Rule 60(a) only Applies to Correct Clerical Mistakes and Not Legal Errors.

Even if the Court considers the amended claims to be a part of the record, relief cannot be granted here. Rule 60(a) only gives the Court authority to correct a “clerical mistake.” The Rule provides, in part:

⁸ For the Court’s convenience, the Objectors have attached the ROA for water right 34-2459. This ROA is representative of the ROA’s for the other subcases and demonstrates that the 1990 amended claims were not a part of the Court’s record prior to issuing the partial decrees.

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. (Emphasis added).

Under Idaho case law, Rule 60(a) applies only to clerical errors and not legal errors. *Silsby v. Kepner*, 140 Idaho 410, 412 (2004);⁹ *State v. Phillips*, 99 Idaho 354, 355 (1978); *State v. Allen*, 144 Idaho 875, 878 (Ct. App. 2007). “Clerical error” is defined as “an error resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination.” *Blacks Law Dictionary* (9th ed. 2009).¹⁰

The distinction between a “clerical” error and a “legal” or “judicial” error is vital to the Rule 60(a) analysis since a judgment may not be given *nunc pro tunc* effect to correct a judicial.¹¹ *Ward v. Lupinacci*, 111 Idaho 40; *Silsby v. Kepner*, 140 Idaho 410, 412 (Failure to calculate offsetting tax benefit to obligee spouse was legal error and not clerical error where magistrate did not intend to offset tax benefit).

Other jurisdictions have further clarified the “clerical” v. “judicial” error analysis – holding that the distinction is determined by whether the alleged error was made in *recording* the judgment or in *rendering* the judgment. See, e.g., *Rochin v. Johnson Manufacturing Co.*, 79 Cal. Rptr. 2d 719 (Cal. 1999); *Stranger v. Sentinel Sec. Life Insurance Co.*, 669 P.2d 1201, 1206 (Utah 1983). If the error was made in *recording* the judgment, Rule 60(a) applies. If the error was made in *rendering* the judgment, Rule 60(a) does not apply. *Id.*; *Richards v. Siddoway*, 471

⁹ Idaho Courts often refer to Motions under Rule 60(a) as motions for entry of judgment *nunc pro tunc* – meaning “now for then.” Motions for judgments *nunc pro tunc* may also only correct clerical errors, not legal errors. *Ward v. Lupinacci*, 111 Idaho 40, 42 (Ct. App. 1986) (Judgment entered *nunc pro tunc* may not correct a judicial error or contain a ruling or recite an event that did not actually occur).

¹⁰ Rule 60(a) may not be used to change something that was deliberately done; even it is later discovered to be wrong. *Macarthur v. San Jun County*, 405 F. Supp. 2d 1302, 1308 (D. Utah 2005); see also *State Union Bank & Trust v. District Court*, 91 P.2d 403 (Montana 1939) (Judgment *nunc pro tunc* may make an order speak the truth, but not to make it speak what it did not speak but ought to have spoken).

¹¹ The Courts and treatise authors interchange the terms “legal” and “judicial” error to mean the same thing – an error which is more substantive in nature.

P.2d 143, 145 (Utah 1970) (Distinction between a judicial error and a clerical error does not depend upon who makes it. Rather, it depends upon whether it was made in *rendering* the judgment or in *recording* the judgment as rendered); *see also Bell v. Farmers Insurance Exchange*, 38 Cal. Rptr. 3d 306 (Cal. Ct. App. 2006) (The court must ask whether the challenged portion of the judgment was entered inadvertently, which is clerical error, versus advertently, which is not clerical error). Unless the challenged portion of the judgment was entered inadvertently, it cannot be changed post judgment under the guise of the correction of a clerical error. *Id.*

Idaho Courts have held that the evidence must be clear and convincing that an error was clerical and not judicial. *Fall River Irrigation Co. v. Swendsen*, 41 Idaho 686 (Idaho 1926) (While the court has the power to correct a clerical mistake, the evidence must be clear and convincing that a clerical, and not a judicial mistake was made). In *Fall River Irrigation Co.*, a water user sought to change the priority date of a water right decreed in a prior adjudication. According to the water user, the priority date should be 1895 – instead of the decreed 1898 priority date. *Id.* According to the water users, that is what the court had originally intended. The Court held that the evidence must be “clear and convincing” that a clerical and not a judicial mistake was made. *Id.* As such, notwithstanding testimony from two witnesses at trial, each asserting that 1898 was the wrong priority, the Court held that the water user failed to meet his burden and refused to amend the prior decree. *Id.*

In the end, the purpose of Rule 60(a) is to ensure that the Court’s original intent – ***as evident at the time the judgment was entered*** – is memorialized in the final judgment. *Guenther v. United States*, 44 F. App’x 149, 150 (9th Cir. 2002) (In considering a Rule 60(a) motion our focus is on what the Court originally intended to do); *Sanchez v. City of Santa Ana*, 936 F.2d

1027, 1033 (9th Cir., 1990) (The focus is on what the Court originally intended to do); *Blanton v. Anzalone*, 813 F.2d 1574, 1577 (9th Cir. 1987) (Court may only invoke Rule 60(a) **to reflect the actual intentions of the Court**).

In *Silsby*, *supra*, the Idaho Supreme Court provided further guidance as to the application of Rule 60(a). In that case, the Court was asked to modify a divorce decree to allow for a pro rata share of tax benefits. The original complaint failed to identify any division of benefits and the lower court's decree mirrored the complaint. *Id.* In denying the Rule 60(a) motion, the Court provided further insight into the application of the rule:

Rule 60(a) applies to those errors 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.**"

...

Rulings in other jurisdictions and in the federal appellate circuits generally favor the determination that legal errors, as opposed to clerical errors, are not entitled to correction under Rule 60(a). In *Blanton v. Anzalone*, 813 F.2d 1574 (1987), the 9th Circuit found: "Errors correctable under Rule 60(a) include those where what is written or recorded is **not what the court intended to write or record**. The error can be corrected whether it is **made by a clerk or by the judge**." 813 F.2d at 1577. The court further explained:

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 411-12 (emphasis added).

A leading commentator on the civil rules provides further insight into the application of Rule 60(a):

Rule 60(a) is reserved for "clerical mistakes" or "mistakes arising from oversight or omission." Because the district courts enjoy the broadest discretion in correcting these types of mistakes, accurately defining them is

essential. *Most simply, the distinction lies with intent. Where the judgment, as entered, fails to reflect the original intention of the court, the error can be corrected with Rule 60(a). Conversely, where the judgment was entered accurately, but ought to have been done differently, Rule 60(a) does not apply. Rule 60(a) errors are minor and ministerial ones, not substantively factual or legal. This is a distinction between “blunders in execution” and “a change of mind.” Thus, the Rule provides a remedy for clerical mistakes, inaccurate transcriptions, inadvertent omissions, mathematical errors, and similar flaws in recitation, but not for missteps in judgment or reasoning. Where the error lies in accurately reducing the court's original intentions to paper, a Rule 60(a) motion is appropriate;* however, where the written order accurately captures the court's intentions, but that ruling is allegedly in error, a Rule 60(a) motion is not proper.

Federal Civil Rules Handbook, Baiker-McGee, Steven, William M. Janssen & John B. Corr (West, 2012), at 1207-08 (emphasis added).

When this law is viewed in relation to the record here, it is apparent that Rule 60(a) does not apply.

C. Failure to Include the Island Wells as Additional Points of Diversion for the Airport Licenses is Not a “Clerical Mistake” Which May Be Corrected By This Court Using Rule 60(a).

Claimants are wrong in asserting that the alleged error is a “clerical error.” This is not a matter where the Court can simply add points of diversion to the partial decrees. *See infra* Part II.D (discussing other SRBA subcases where “clerical mistakes” included correcting legal descriptions following a survey). Indeed, there is nothing to justify that change since the amended claims were not a part of the Court’s record. As such, the Special Master required the filing of amended claims, *Order on Motion to Set Aside Partial Decree* (Sept. 4, 2009), which were filed on September 21, 2009. The amended claims asserted a legal theory that was not before the Court in the prior proceedings – i.e. an accomplished transfer of the points of diversion. This new legal theory required further analysis from IDWR.

After the filing of the new amended claims, IDWR was required to investigate the amended claims – including whether or not an accomplished transfer occurred. Next, amended Director’s Reports were filed with the Court on December 10, 2009. Notice was provided via the docket sheet, and the matter was open for opportunities for objections and responses. Objections were filed.

This matter was then remanded to IDWR for an injury hearing pursuant to Idaho Code § 42-1425.¹² IDWR then conducted further analysis and filed its *Supplemental Director’s Reports* on July 27, 2011.

Even at that point, the matter could not be resolved by merely adding the additional points of diversion to the partial decrees. Rather, the “correction” sought by the Claimants requires a full blown trial with findings of fact, conclusions of law and a judicial decision first recommended by the Special Master and then issued by this Court.

Correcting each of these alleged “clerical errors” requires IDWR to investigate the amended claims and make a “legal decision” that the requirements of the Accomplished Transfer Statute had been met as of November 19, 1987. This Court must then accept and approve IDWR’s findings and analysis.

In the end, this matter does not involve a “clerical mistake” that can be corrected through Rule 60(a). As noted by Special Master Bilyeu in her January 27, 2012 *Order Granting Motion for Permissive Review*, the most common application of Rule 60(a) by this Court has been to correct legal descriptions of points of diversions or places of use. In those cases, no one disputed where the point of diversion or place of use was located on the ground, but the legal description

¹² Section 42-1425 requires the SRBA Court to remand a recommendation for a water right involving an accomplished transfer whenever there is an objection asserting injury.

in the decree did not accurately reflect that location. Instead, there was a clerical error or mistake in the legal description.

To the contrary, the asserted “clerical error” in this case required new filings with IDWR, which resulted in amended Director’s Reports included new points of diversion on the water rights based on new legal theories that were never addressed before the Court in the original proceedings. Such analysis goes far beyond the correction of a mistake in “judgments, orders or other parts of the record.” As such, Claimants motion should be denied.

D. Claimants Failure to Act When Statutorily Required Cannot be Construed as a “Clerical Mistake” under Rule 60(a).

The Court cannot overlook the Claimants’ failure to act when the law required. Rule 60(a) allows this Court to correct “blunders in execution” – not failures to act. It applies only to “mechanical errors” – not willful disregard of the mandated procedures. It grants an opportunity to “correct” a mistake made by the Court – not a second bite at the apple to the Claimants.

Importantly, Claimants have never asserted that the partial decrees are in error, or that they reflect a decision that the Court did not intend to “write or record.” *Silsby, supra*; *see also Federal Rules Handbook, supra* (“Where the error lies in accurately reducing the court’s original intentions to paper, a Rule 60(a) motion is appropriate”). Indeed, they cannot because the partial decrees are identical to the original recommendations to which the Claimants never objected.

Accordingly, the Court’s decision in *Silsby, supra*, governs disposition of this case. There, the Court refused to amend a prior judgment that failed to calculate offsetting tax benefits where the magistrate did not intend to offset tax benefits. *Id.* According to the Court, the alleged error, therefore, constituted a “legal” error that was subject to correction under Rule 60(a).

The same holds true in this case, where the Court never intended to identify the Island Wells as alternate points of diversion on the Airport Well Licenses. The Claimants had the opportunity nearly 15 years ago to address this alleged “clerical error” and refused to act. Their failure to act cannot be construed as justification for relief under Rule 60(a).

E. Rule 60(a) Cannot Be used to Correct Alleged “Clerical Mistakes” that are Actually Judgments or Decision By an Attorney.

It cannot be overlooked that the Claimants have been represented by capable counsel throughout the SRBA process. This is importantly because, as the *Silsby* Court confirmed, Rule 60(a) does not apply to decisions made by attorneys. *Silsby, supra*.

It has been nearly two decades since the original recommendations were filed with the Court. At that time, the Claimant, Crater Farms, was represented by attorney Kent Foster. *Second Affidavit of Darrell E. McDonald* (“2nd McDonald Aff.”) at Ex. A; *see also Notice of Appearance* (filed in each subcase). Importantly, Mr. Foster “prepared” the amended claims. *Memorandum of Authority Regarding Motion to Set Aside Partial Decrees*, at 3 (Apr. 8, 2009) (“On October 30, 1990, amended claims were filed by Willard Bell of Crater Farms, Inc. **which were prepared by Kent W. Foster of Holden, Kidwell, Hahn & Crapo, PLLC** (emphasis added).”

Mr. Foster continued to represent Crater Farms, Inc. when the recommendations for the Airport Licenses were filed with this Court in 1992. *2nd McDonald Aff.* at Ex. B.

Notably, however, Mr. Foster, who both prepared the amended claims and reviewed the recommendations, never filed an objection or took any action to correct what is now alleged to be a “clerical error.” This judgment, on the part of the Claimants’ attorney, defeats any claim for relief under Rule 60(a).

F. Changing the 1997 Partial Decrees for the Airport Licenses to Add the Island Wells as Points of Diversion Substantially and Materially Alters the Rights of Other Parties to the SRBA.

Rule 60(a) should not be applied to substantially alter the rights of the parties.¹³ In *Frost v. District Court of First Judicial District In and For Box Elder County et al*, 83 P.2d 737 (Utah 1938) the Utah Supreme Court refused to amend a water rights decree to include language relating to the respective priority dates of certain water rights. According to the court:

In a decree relating to water rights, dates of priority in fluctuating streams or sources of supply with periods when the supply is insufficient to supply all, and some must go without such priority dates, if not the most important, are, next to quantity, the most important elements of such decree. To vary the quantity or to change the date of priority while priorities exist and are important, may have the effect of reversing the judgment or so materially modifying it as to deprive one entirely of a right which he had, or maintained that he possessed and enjoyed.

Id. at 111.

Herein, adding the Island Wells as points of diversion for the Airport Licenses significantly increases the potential amount of water diverted from those wells. This substantially alters the rights of the Objectors and other parties to the SRBA with wells in the vicinity of the Island Wells. *See Third Arrington Aff.* (Sept. 28, 2011) (attaching injury analysis of increased diversions from Island Wells on the Objectors' water rights). Claimants' requested relief under Rule 60(a) would materially alter the partial decrees and, as such, is far outside the scope of Rule 60(a).

¹³ See e.g., *Thorncreek Cattle Association v. Bonz*, 122 Idaho 42 (Idaho 1992) (Rule 60(a) properly used to correct a notice of sheriff's sale of property which contained an incorrect legal description which was a clerical mistake and there was no dispute as to the land intended to be described and sold); *W.F. Construction Company Inc. v. Kalik*, 103 Idaho 713 (Ct. App. 1982) (Rule 60(a) properly used to correct math error in judgment); *Ross v. Olsen*, 95 Idaho 915 (1974) (Rule 60(a) properly used to correct error in subtraction error in judgment); *Dursteler v. Dursteler*, 112 Idaho 594, 597 (Ct. App. 1987) (Where award of post-judgment interest was mandatory, failure to include interest award was clerical error correctable under Rule 60(a)); *C.A. Merrick v. Western Surety Company*, 97 Idaho 250 (1975) (Rule 60(a) properly used to correct mathematical error of addition in judgment); *Hayes v. Towles*, 95 Idaho 208 (1973) (Amendment of judgment from award of: "\$175 per month" to award of: "\$175 per month *per child*" apparent from record and proper under Rule 60(a)).

II. The Facts do Not Support a Conclusion that “Clerical Errors” in the Amended Claims Warrant Setting Aside the Partial Decrees.

Even if Rule 60(a) does apply to cases such as the ones before this Court, the record defeats the Claimants’ motion. This matter is nothing more than the Claimants’ attempt to take a second bite at the apple and avoid responsibility for failing to act when required by Idaho law. The Court should reject such action.

A. The Record Shows that Claimants Did Not Intend to Add the Island Wells as Points of Diversion to the Airport Well Licenses.

The history of the Airport Licenses in the SRBA reveals that the Claimants did not intend to seek an accomplished transfer of the Airport Well Licenses. In the Amended Notices of Claim for the Airport Licenses, Claimants, with the advice and assistance of legal counsel, did not identify the Airport Wells as points of diversion, described the diversion works as “Wells open discharge to **private ditch**,”¹⁴ and made no reference to the accomplished transfer statute as a legal basis for the claims. Importantly, at the same time, the Claimants, again with Mr. Foster’s legal assistance, filed a separate claim (34-10925) that did include the Island Wells as points of diversion and added the “Munsey Ditch” as part of its description of the diversions works. *2nd Arrington Aff.* Ex. I.

The map attached to the Notice of Claim for 34-10925 identifies the location of the Island Wells as points of diversion, consistent with the list on the first page of the *Notice of Claim*. *Id.* at Ex. J. It is clear, therefore, that the Claimants were aware of the Island Wells and knew that they could be claimed as points of diversion.

Claimants’ entire case rests on the attachment of this same map to the Amended Notices of Claim for the Airport Licenses. Claimants cannot point to anything in the record to support

¹⁴ The Island Wells discharge to a ditch owned and operated by the Big Lost River Irrigation District whereas the Airport Wells discharge to a private ditch.

their “clerical error” theory. Furthermore, the mere fact that the same map was attached to each water right claim does not automatically result in the conclusion that there was a “clerical error.” *See Id.* at Ex. E-H. It is just as likely that the map was included in error. Indeed, when the Court considers the entirety of the Claimants’ actions, and inactions, it becomes apparent that the inclusion of the map with the Airport Well amended claims was an error.

In addition, Item 5 on the amended claims shows that there was no intent to claim an accomplished transfer. Item 5 requires:

Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, headgates, Etc.), including the ***dates of any changes or enlargements in use***, the dimensions of the diversion works as constructed and an enlarged and the depth of each well.

Id. (emphasis added).

Noticeably, the Claimants’ response to Item 5 on the amended claims for the Airport Well Licenses was simply: “Wells open discharge to private ditch – pump mainline to sprinkler.”

Id. In other words, even though they now assert an accomplished transfer moved the points of diversion for these rights, the Claimants failed to include any reference to the Island Wells or any other information indicating a “change ... in use” of the diversions ever occurred on the amended claims. *Id.*¹⁵

Since there was no apparent intent to claim the Island Wells as alternate points of diversion, the Court should deny Claimants’ request to set aside the partial decrees.

¹⁵ Similarly, the Claimants were aware of the accomplished transfer statute (then Idaho Code § 42-1416A), as evidenced by the fact that they claimed a permissible place of use based on an accomplished transfer theory. Yet, they specifically failed to add any additional points of diversion to the Amended Claims and signed the Amended Claims, “solemnly swear[ing]” that they were “true and correct.” 2nd *Arrington Aff.* at Exs. E-H.

B. Even if it Was an Error to Omit the Island Wells from the Amended Claims, the Claimants' Actions and Inactions are Fatal to their Rule 60(a) Request.

Even if the Claimants did intend to claim the Island Wells as alternate points of diversion, their actions and inactions following the submission of the amended claims are fatal to their claim for relief. In particular, the Claimants had multiple opportunities to correct the so-called “clerical error,” but failed to do so. Idaho law does not give them countless opportunities to change their claim or set aside a partial decree.

On May 27, 1992, the Director submitted its original recommendations for the above water rights. 2nd *Arrington Aff.* Exs. L-P. Importantly, none of the recommendations included the Island Wells as points of diversion. *Id.* Crater Farms, which was served with the recommendations, and its attorney, Mr. Foster, apparently agreed with the recommendations, as they failed to object in the SRBA Court. Rather, they allowed the matter to proceed through the SRBA Court until partial decrees were issued on December 14, 1997.

Importantly, Mr. Bell and Mr. Foster, who prepared and submitted both the original and amended claims, would have been in the best position to know whether there was any error in the amended claims and Director’s reports. Yet, Crater Farms did not object.

Mr. Bell was served with copies of the 1997 partial decrees. Still, he failed to take any action to set aside the decrees or correct the alleged “clerical error.” The property was sold to Charles and Fern Isom less than a month later. *Id.* at Ex. Q. The Isoms failed for ten more years to take any action to correct the alleged “clerical error.”

In 2001, the SRBA Court amended the partial decrees to clarify the irrigation season. The amended partial decrees were served on the Isoms who, again, failed to take any action to correct the alleged “clerical error.” It was not until 2008 – nearly two decades after the

recommendations were filed and more than a decade after the partial decrees were entered – that the Claimants finally decided to assert their “clerical error” theory.

Idaho law requires a party to file an objection when they “desire to object to a water right.” I.C. § 42-1412. Filing an objection triggers the litigation process, which includes opportunities for settlement and trial, if necessary. *Id.* Had the Claimants felt that the original recommendations were in error, they were required to file an objection.

Failure to file an objection as required by Idaho’s adjudication code does not warrant setting aside the partial decrees now. The Idaho Supreme Court has made this clear. *Silsby, supra*, (Rule 60(a) is meant to correct “blunders in execution” – not failures to act.)

Likewise, in *Albion-Idaho Lumber v. Adams*, 58 F. Supp. 579 (D. C. Idaho 1945) (“*Albion*”), the court refused to amend a water rights decree for the Raft River and its tributaries under the guise of correcting the judgment under Federal Rule 60(a). Fifteen years after a judgment had been entered awarding water rights to particular parcels of land, the petitioner discovered that counsel had made a serious error in preparing the decree as to the rights of the petitioner’s predecessor in title. That error was to list the season of use for the water right in question as October 1 to October 15 instead of April 1 to October 15. The Court noted:

This is clearly an error in preparing the decree; ***it is also negligence on the part of the attorney representing the International Mortgage Credit Bank in not more carefully checking the decree before submitting it to the Court.*** It is a serious error, as a water right with date of priority of 1884 with the right of the use thereof from April 1 to October 15 of each year is ordinarily a valuable right, while if the use is limited from October 1 to October 15 of each year the right would be worthless, as it is a recognized fact that the irrigation season would be nearly over before October 1 of each crop season.

Id. at 580 (emphasis added).

The petitioner's motion to correct the judgment under Rule 60(a) was denied for several reasons, one of which was the effect the correction might have upon others. The Court noted that the rights of over 400 other parties who had purchased land and water over the intervening years would have been injured if the decree were "corrected." The Court stated:

Although there are exceptions to the rule, freedom from fault and negligence on the part of one seeking such relief is essential, and in the light of the facts here the motion to correct this error cannot be sustained. ***Clearly, this Court should have been advised of the error so that it could have been corrected long before this time.*** It is well established as a principle of equity that a party seeking relief in a matter like this must use due diligence in asserting his right, and that negligence and laches in this regard are equally effectual bars to relief, and this is especially so if the correction would be harmful to intervening rights. The authorities are uniform in so holding.

There is no evidence that either Crane or Booth was hindered in any way from discovering the mistake and it will be presumed that Booth knew what he was buying and of what the water right consisted at the time the deed was issued to him. There was nothing to hinder Booth at the time from finding out. ***He was at least carelessly inattentive to what he was buying unless he knew the contents of the decree.*** He had legal notice of its contents and there is no reasonable showing why both Crane and Booth have slept on their rights for so many years while other rights have intervened by purchase of land and water, not only by the parties appearing here and objecting to the correction of the decree who are injured if the decree is corrected, but no doubt where there are over four hundred other rights, other parties have purchased land and water over the last sixteen years who could claim injury by having the decree corrected.

Id. at 581-82 (emphasis added).

As with *Albion*, "this Court should have been advised of the error" in the Claimants amended claims "so that it could have been corrected long before this time." There was nothing that hindered Crater Farms and its attorney, Mr. Foster, from discovering the mistake. Likewise, it should be presumed that Mr. and Mrs. Isom knew what they were buying from Crater Farms and knew what the partial decrees for the Airport Well Licenses consisted of at the time the deed was issued to them.

In sum, there was nothing hindering Crater Farms or the Isoms from finding out the mistake and seeking to correct it. Rule 60(a) applies only to “mechanical errors” – not willful disregard of the mandated procedures. It grants an opportunity to correct a mistake made by the Court – not a second bite at the apple to the Claimant. Accordingly, the Claimants’ motion should be denied.

C. Prior Decisions by this Court are Instructive.

A recent decision by this Court is instructive here. *See Order of Partial Decrees for Water Rights 74-250, 74-735, 74-739, 74-741 and 74-7147* (Jan. 12, 2009). In that case, the claimants sought a water right with a priority date that was earlier than the priority date decreed in the Lemhi Decree. According to the claimants, there was evidence that the water rights were diverted much earlier than the date in the Lemhi Decree. This information was available to the owners at the time of the Lemhi Adjudication, but, for unknown reasons, was not argued before the Lemhi Court. Now, the claimants, as subsequent owners, sought to correct the oversight in the SRBA Court.

Although the Special Master recommended that the priority date be changed, the Presiding Judge reversed the decision. The Court held, at pages 5-6 of that order:

The Court makes two observations in this respect. First, the fact that the present owner of a previously decreed water right may now have evidence of an earlier use or larger quantity than was previously decreed does not mean that an error or oversight occurred when the predecessor-in-interest filed (or failed to file) the claim in the prior adjudication. There are other plausible explanations. For instance, claims can be made in a manner so as to avoid contests. Existing differences between users over water rights can be worked out prior to the claims being filed so as to avoid litigation in the adjudication process. Settlements such as these may dictate what each user eventually claims in the adjudication. Therefore, parties or their successors-in-interest to the prior decree are entitled to rely upon the prior decree, at least to the extent that the scope of the right will not be expanded beyond what was previously adjudicated.

Next, allowing a claimant to reopen a prior decree to present evidence of earlier use or larger quantity than was previously decreed completely undermines the principles of res judicata and the Supreme Court's ruling in State v. Hagerman Water Right Owners, as well as law-of-the-case in the SRBA. (Emphasis added).

This decision is instructive here. Like that decision, this case involves the subsequent owner of a water right arguing that pre-decree information justifies setting aside the decree. Also like that decision, the Claimants here cannot explain the failure of the previous owners (Crater Farms and Isoms) to take action during the original proceedings to correct the perceived error.

In truth, “the fact that the present owner of a previously decreed water right may now have evidence” of an accomplished transfer “does not mean that an error or oversight occurred when the predecessor-in-interest” failed to challenge a contrary holding in the prior proceedings. Indeed, there is no shortage of possible reasons for Mr. Bell and his attorney’s failure to act. Indeed, Mr. Bell and Mr. Foster could have determined that the requirements of the accomplished transfer statute had not been met and that Crater Farms, Inc. could not show that it had used the Island Wells as points of diversion for the Airport Well Licenses prior to 1987.¹⁶ Or, they could have simply recognized the significant controversy associated with increased diversions from the Island Wells¹⁷ and decided that they did not want to pursue an accomplished transfer theory for these water rights. *See Id.* at 5 (“claims can be made in a manner so as to avoid contests”).

¹⁶ Such a conclusion would be consistent with the pre-1987 conveyance agreements between the Claimants and the Big Lost River Irrigation District (“BLRID”) that did not identify the Island Wells as points of diversion from which the Claimants were authorized to divert water into the BLRID system. *See Arrington Aff.* at Exs. A-D (filed in this matter on Nov. 17, 2010). The conveyance agreements identified the following points of diversion:

E ½ SW, § 23, T3N, R26

SESW, NESE, § 33, T5N, R26

Id. These are not the Island Wells, which are located at the following legal descriptions:

NESENW §3, T4N, R26E

SENWSW, §34, T5N, R26E

¹⁷ *See Arrington Aff.* Ex. E (discussing the numerous protests to the Claimants efforts to amend the application for permit 34-7037 to add a point of diversion and the significant concerns that added points of diversion would result in increased diversions from the Island Wells above the permitted diversion rate).

Furthermore, Mr. Bell was represented by Mr. Foster during these proceedings – who prepared and submitted the amended claims and reviewed the recommendations and partial decrees. Yet, even with legal counsel, no actions were taken to correct what the Claimants now assert are “clerical errors.” In short, there is nothing in the record to support the claim that Mr. Bell’s failure to act constituted a “clerical error” justifying an order setting aside the partial decrees.

Furthermore, allowing the Claimant to set aside a partial decree at this time, based on these facts, would “completely undermine” the principles of *res judicata*. These decrees were issued in 1997, and the Objectors have relied on those decrees, which do not authorize diversions under the above rights from the Island Wells. *See 3rd Arrington Aff.* (providing information regarding impacts of increased diversions from Island Wells); *supra* Part I.E.

Aside from accusing the Objectors of “misleading” the Court, the Claimants could not reconcile these subcases with the Lemhi Decree decision before the Special Master. Rather, they asserted that since the prior decision involved the Lemhi Decree – whereas these subcases are SRBA Partial Decrees – a different law or standard applies. Not true. Each of the partial decrees in this matter included a certification pursuant to Rule 54(b). *See also* AO1 2.o (a “partial decree” represents the “final determination of the elements of a water right”). Importantly, the Rule 54(b) certification provides that the decisions – i.e. the partial decrees – are “final judgments” and that “the court has and does hereby direct that the above judgment or order shall be a final judgment.” I.R.C.P. 54(b). As such, there is no basis to assert that the Lemhi Decree is any more final or any more binding than the SRBA Partial Decrees issued in these subcases.

As such, the Claimants’ motion should be denied.

D. The Cases Cited by the Special Master Do Not Justify Application of Rule 60(a) in this Matter.

The subcases cited by the Special Master in the *Order Granting Motion for Permissive Review*, at page 5, further demonstrate why the Claimants' request for Rule 60(a) relief should be denied. As identified by the Special Master, those subcases provide insight into the Court's use of Rule 60(a). Importantly, however, none of the cases involve situations where the Claimants refused to take advantage of their statutory obligations to file objections and participate in the SRBA proceedings.

In Subcase 22-13212, the matter involved a clerical error in the *Rexburg Decree*. As the Special Master made clear, that decision involved a determination that "the *Rexburg Decree* had made a clerical error." *Id.* The element subject to the "clerical error" was therefore changed. However, other Rule 60(a) requests were denied because "the Court found no indication that the *Rexburg Decree* had made a clerical error." *Id.* There is no such claim or finding here. The partial decrees in this matter are exactly the same as the original recommendations. No objections were filed to the recommendations.

The Special Master further discussed situations wherein legal descriptions have been corrected when, after the partial decrees were issued, a survey was completed and the place of use was better identified. Here, however, there is no claim that post-decree information will help refine the elements of the Airport Well Licenses. Rather, the only basis for the "clerical error" theory is the inclusion of a map with the amended claims.

This Court has made it a practice to apply Rule 60(a) in situations where there are clear "clerical mistakes" in the record that can be corrected under the auspices of the Rule. Here, however, the Court is asked to stretch its application of the Rule to allow revisions to partial decrees based on alleged errors on documents that are not even a part of the Court's record.

Given the paucity of evidence demonstrating any clerical mistake and the failure of the Claimants to take any action to address the alleged “clerical error” prior to partial decree, this Court should reject the invitation to expand its application of Rule 60(a) in such a manner. Accordingly, Claimants’ Rule 60(a) motion should be denied.

CONCLUSION

The law simply does not allow the Court to make the changes requested by the Claimants to the partial decrees for the above water rights. First, the amended claims are not in the record, thus rendering Rule 60(a) inapplicable. Furthermore, the only “mistake” here is the Claimants’ failure to act in a timely fashion. Both Crater Farms and its attorney, Mr. Foster, should have acted as required by the Statutes when the original recommendations failed to include the Island Wells as points of diversion.

Now, the “correction” sought by the Claimants then leads to amended claims based on a new legal theory, review and analysis by IDWR and a “legal decision” by this Court that the requirements of the Accomplished Transfer statute were met to allow the Island Wells to be added as points of diversion for the Airport Well Licenses. These required proceedings and ultimate “legal decision” fall far outside the purview of Rule 60(a).

Furthermore, the Claimants’ cannot have a second bite at the apple. Rather than take advantage of the statutorily mandated procedures for addressing disagreements with recommendations to water rights, they sat back and waited until more than a decade had passed.

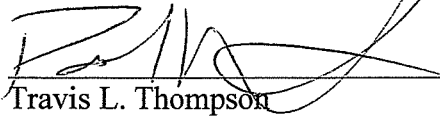
In short, neither the law nor the facts allow this Court to set aside the partial decrees. Accordingly, the Rule 60(a) motion should be denied.

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DATED this 17th day of February, 2012.

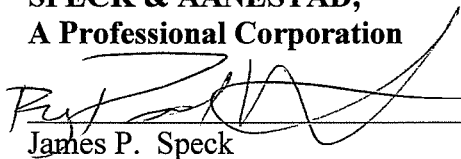
BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read "Travis L. Thompson", written over a horizontal line.

Travis L. Thompson
Paul L. Arrington

*Attorneys for Doug Schureman, Tyler Felton &
Jim Huelsman*

**SPECK & AANESTAD,
A Professional Corporation**

A handwritten signature in black ink, appearing to read "James P. Speck", written over a horizontal line.

Attorneys for Darrell McDonald & Norm Sowards

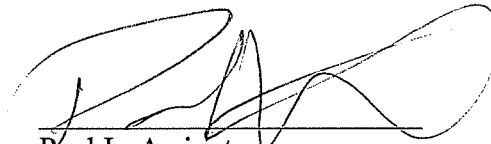
CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of February, 2012, I served a true and correct copy of the foregoing document on the persons listed below, via first class mail, postage prepaid:

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

Robert L. Harris
P.O. Box 50130
Idaho Falls, ID 83405

W. Kent Fletcher
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318-0248



Paul L. Arrington

Attachment

SRBA

SUBCASE SUMMARY REPORT 34-02459

[Return to SRBA Home Page](#)

SRBA
02-17-2012

SUBCASE SUMMARY REPORT

HTML12

SUBCASE: 34-02459 FILE#: 02264
CLAIMANT: TELFORD LANDS LLC
C/O MIKE TELFORD
1450 W HWY 24

PAUL ID 83347
STATUS: PERMISSIVE REVIEW SPECIAL MASTER: WILDMAN, ERIC J
WATER SOURCE: GROUNDWATER
ISSUES: QUANTITY OF WATER USED
POINT(S) OF DIVERSION DESCRIPTION
PLACE OF USE OR IRRIGATED ACRES IN EACH 40 A.
0

**** PARTIES INVOLVED ****

TELFORD LANDS LLC	C ATTY: ROBERT L HARRIS
BIG LOST RIVER IRR DIST	O ATTY: W KENT FLETCHER
CHARLES B & FERN A ISOM	R ATTY: ROBERT L HARRIS
DOUG SCHUREMAN	O ATTY: TRAVIS L THOMPSON
JIM HUELSMAN	O ATTY: TRAVIS L THOMPSON
TYLER FELTON	O ATTY: TRAVIS L THOMPSON
DARRELL E MCDONALD	O ATTY: JAMES P. SPECK
MITCHELL SORENSEN	I ATTY: ROBERT L HARRIS
ISOM ACRES LIMITED PARTNER	I ATTY: ROBERT L HARRIS
CHARLES ISOM	I ATTY: ROBERT L HARRIS
DON ISOM	I ATTY: ROBERT L HARRIS
DARRELL E MCDONALD	I ATTY: JAMES P. SPECK
NORMAN K SOWARDS	I ATTY: JAMES P. SPECK

**** ROA ENTRIES ****

12-22-1994	42-1416/1416A CLAIM PER IDWR	
12-16-1997	PARTIAL DECREE FILED	12-16-1997
06-24-1999	SUPPLEMENTAL DIRECTOR'S REPORTS, RA 1, BASIN 34, PERIOD OF USE & CONJUNCTIVE MANAGEMENT	
12-14-2001	AMEND PARTIAL - SEASON OF USE/CONJUNC MGMT	12-14-2001
12-17-2001	PARTIAL DECREE RETURNED UNDELIVERABLE	12-17-2001
<u>04-24-2008</u>	MOTION TO SET ASIDE PARTIAL DECREES	MG 09-04-2009
<u>04-25-2008</u>	ORDER OF REFERENCE APPOINTING SPECIAL MASTER BRIGETTE BILYEU	
04-29-2008	NOTICE SETTING HEARING	HS 07-23-2008 0200
	MOTION TO SET ASIDE PARTIAL DECREE	
07-23-2008	HEARING HELD	HH 07-23-2008 0200
07-23-2008	MINUTES	
<u>07-24-2008</u>	NOTICE SETTING HEARING	HS 11-17-2008 1100

CONTINUED MOTION TO SET ASIDE PARTIAL DECREE			
<u>11-14-2008</u>	LODGED: MEMORANDUM IN SUPPORT OF MOTION TO SET ASIDE PARTIAL DECREES PURSUANT TO I.R.C.P. 60(A)		
<u>11-14-2008</u>	AFFIDAVIT OF <u>ATTORNEY</u> ROBERT L HARRIS		
11-17-2008	HEARING HELD	HH	11-17-2008 1100
11-17-2008	MINUTES		
11-17-2008	NOTICE SETTING HEARING	HS	03-25-2009 1030
CONTINUED MOTION TO SET ASIDE PARTIAL DECREE			
<u>03-24-2009</u>	AFFIDAVIT OF CHARLES B ISOM		
03-25-2009	HEARING HELD	HH	03-25-2009 1030
03-25-2009	MINUTES		
<u>04-08-2009</u>	LODGED: MEMORANDUM OF AUTHORITY REGARDING MOTION TO SET ASIDE PARTIAL DECREES PURSUANT TO I.R.C.P. 60(A)		
08-11-2009	NOTICE SETTING STATUS CONFERENCE	US	09-02-2009 0300
09-02-2009	HEARING HELD	HH	09-02-2009 0300
09-02-2009	MINUTES		
<u>09-04-2009</u>	ORDER ON MOTION TO SET ASIDE PARTIAL DECREE		
09-04-2009	DEADLINE TO <u>FILE</u> AMENDED CLAIM	ZS	09-25-2009 0445
09-04-2009	DEADLINE TO FILE AMENDED DIRECTORS REPORT	ZS	11-30-2009 0445
09-04-2009	DEADLINE TO FILE OBJECTION	ZV	12-18-2009 0445
09-04-2009	DEADLINE TO FILE RESPONSE	ZV	01-22-2010 0445
09-04-2009	STATUS CONFERENCE	US	03-03-2010 0130
<u>09-21-2009</u>	NOTICE OF <u>FILING</u> OF AMENDED NOTICE OF CLAIM		
<u>09-21-2009</u>	AMENDED NOTICE OF CLAIM TO A WATER RIGHT		
<u>12-10-2009</u>	AMENDED DIRECTOR'S REPORT		
CHANGE: OWNERSHIP/POD/PERD/REMARKS/QTY			
12-10-2009	OBJECTIONS TO ADR DUE: 1/28/10	8B	01-28-2010 0500
12-10-2009	DEADLINE TO FILE RESPONSE	ZS	02-12-2010 0445
<u>12-18-2009</u>	OBJ 01 F/B BIG LOST RIVER IRR DIST	RB	07-01-1996 0001
<u>12-18-2009</u>	NOTICE OF INTENT TO FILE OBJECTION		
<u>01-28-2010</u>	OBJ 02 F/B SCHUREMAN, DOUG	RB	02-12-2010 0002
<u>01-28-2010</u>	OBJ 03 F/B HUELSMAN, JIM	RB	02-12-2010 0003
<u>01-28-2010</u>	OBJ 04 F/B FELTON, TYLER	RB	02-12-2010 0004
<u>02-18-2010</u>	RESPONSE TO OBJ 0001 F/B ISOM, CHARLES B & FE		0001
<u>02-18-2010</u>	RESPONSE TO OBJ 0002 F/B ISOM, CHARLES B & FE		0001
<u>02-18-2010</u>	RESPONSE TO OBJ 0003 F/B ISOM, CHARLES B & FE		0001
<u>02-18-2010</u>	RESPONSE TO OBJ 0004 F/B ISOM, CHARLES B & FE		0001
03-03-2010	HEARING HELD	HH	03-03-2010 0130
03-03-2010	MINUTES		
03-03-2010	NOTICE SETTING HEARING	HS	07-21-2010 1030
SCHEDULING CONFERENCE			
07-21-2010	HEARING HELD	HH	07-21-2010 1030
07-21-2010	MINUTES		
<u>07-26-2010</u>	ORDER SETTING TRIAL SCHEDULE - 1 DAY	TV	03-16-2011 1000
07-26-2010	SUMMARY JUDGMENT HEARING / STATUS CONFERENCE	HS	12-01-2010 1000
07-26-2010	PRETRIAL CONFERENCE	PS	03-02-2011 1130
<u>11-04-2010</u>	MOTION FOR SUMMARY JUDGMENT	MF	11-04-2010
<u>11-04-2010</u>	LODGED: MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT		
<u>11-04-2010</u>	SECOND AFFIDAVIT OF ATTORNEY ROBERT L HARRIS		
<u>11-04-2010</u>	AFFIDAVIT OF CHARLES B ISOM		
<u>11-04-2010</u>	AFFIDAVIT OF JAMES CEFALO		
<u>11-04-2010</u>	AFFIDAVIT OF ERNEST CARLSEN		
<u>11-17-2010</u>	OBJECTOR'S RESPONSE TO CLAIMANT'S MOTION FOR SUMMARY JUDGMENT		11-17-2010

<u>11-17-2010</u>	AFFIDAVIT OF PAUL L ARRINGTON		
<u>11-17-2010</u>	AFFIDAVIT OF DARRELL E MCDONALD		
<u>11-17-2010</u>	(FAX) AFFIDAVIT OF NORMAN K SOWARDS		
<u>11-17-2010</u>	(FAX) MOTION TO FILE LATE OBJECTION OR ALTERNATIVELY TO PARTICIPATE	MF	11-17-2010
<u>11-23-2010</u>	(FAX) NOTICE OF HEARING OF MOTIONS TO FILE LATE OBJECTIONS OR ALTERNATIVELY TO PARTICIPATE	HV	12-01-2010 1130
<u>11-24-2010</u>	OPPOSITION TO MOTION TO FILE LATE OBJECTION OR ALTERNATIVELY TO PARTICIPATE		11-24-2010
<u>11-24-2010</u>	(FAX) AMENDED NOTICE OF HEARING ON MOTIONS TO FILE LATE OBJECTIONS OR ALTERNATIVELY TO PARTICIPATE	HS	12-01-2010 1000
<u>11-26-2010</u>	REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT		
<u>11-26-2010</u>	3RD AFFIDAVIT OF ATTORNEY ROBERT L HARRIS		
<u>11-30-2010</u>	STIPULATION RESOLVING OBJECTIONS OF BIG LOST RIVER IRRIGATION DISTRICT		
12-01-2010	SUMMARY JUDGMENT HEARING HELD	HH	12-01-2010 1000
12-01-2010	MINUTES		
12-01-2010	NOTICE SETTING HEARING CONTINUED MOTION TO FILE LATE OBJECTION/ PARTICIPATE	HS	12-10-2010 1100
12-10-2010	HEARING HELD	HH	12-10-2010 1100
12-10-2010	MINUTES		
<u>01-26-2011</u>	NOTICE OF SERVICE OF FIRST DISCOVERY REQUESTS TO CLAIMANT		
<u>02-17-2011</u>	UNOPPOSED MOTION TO VACATE <u>CURRENT</u> TRIAL DATE AND RESCHEDULE	MG	02-22-2011
<u>02-22-2011</u>	ORDER GRANTING MOTION TO VACATE CURRENT TRIAL DATE AND RESCHEDULE		
02-22-2011	TRIAL VACATED ON 3/16/11 @ 10:00 AM		
02-22-2011	TRIAL SET- 1 DAY	TV	07-27-2011 1000
02-22-2011	PRETRIAL VACATED ON 3/2/11 @ 11:30 AM		
02-22-2011	PRETRIAL CONFERENCE SET	PV	06-29-2011 0230
02-22-2011	STATUS CONFERENCE	US	04-13-2011 0930
<u>03-28-2011</u>	ORDER DENYING MOTION FOR SUMMARY JUDGMENT		
<u>03-28-2011</u>	ORDER GRANTING MOTION TO FILE LATE OBJECTION OR ALTERNATIVELY TO PARTICIPATE AND SETTING DEADLINE		
03-28-2011	DEADLINE TO FILE RESPONSE	ZS	04-21-2011
<u>03-30-2011</u>	OBJ 05 F/B MCDONALD, DARRELL E / SOWARDS	RB	04-21-2011 0005
04-13-2011	HEARING HELD	HH	04-13-2011 0930
04-13-2011	MINUTES		
<u>04-19-2011</u>	NOTICE OF SERVICE		
<u>04-28-2011</u>	ORDER SETTING DEADLINE, SETTLEMENT CONFERENCE AND STATUS CONFERENCE		
04-28-2011	DEADLINE TO PRESENT INJURY INFORMATION TO IDWR FOR IC 42-1425 REMAND	ZS	05-23-2011 1000
04-28-2011	MANDATORY SETTLEMENT CONFERENCE- IDWR SOUTHRN	ZS	05-23-2011 1000
04-28-2011	STATUS CONFERENCE	US	06-01-2011 1130
06-01-2011	HEARING HELD	HH	06-01-2011 1130
06-01-2011	MINUTES		
06-01-2011	TRIAL VACATED ON 7/27/11 @ 10:00		
<u>06-03-2011</u>	ORDER VACATING AND RESETTNG TRIAL DATE SETTING DEADLINES AND INFORMAL SETTLEMENT CONFERENCE		

06-03-2011	DEADLINE TO FILE EXPERT ANALYSIS	ZS	06-10-2011	0445
06-03-2011	DEADLINE TO FILE RESPONSE TO ANALYSIS	ZS	06-30-2011	0445
06-03-2011	DEADLINE FOR IDWR TO FILE ANALYSIS/ADR	ZS	07-22-2011	0445
06-03-2011	PRETRIAL VACATED ON 6/29/11			
06-03-2011	TRIAL VACATED ON 7/27/11			
06-03-2011	INFORMAL SETTLEMENT CONFERENCE	LS	07-27-2011	1030
06-03-2011	PRETRIAL CONFERENCE	PS	10-05-2011	0230
06-03-2011	TRIAL- 3 DAYS 11/9-10,16/2011	TS	11-09-2011	1000
<u>07-25-2011</u>	SUPPLEMENTAL DIRECTOR'S REPORT REGARDING SUBCASE NOS 34-2459, 34-2460, 34-2461, 34-2462 AND 34-10925			
<u>07-28-2011</u>	NOTICE OF <u>COMPLETED</u> ADMINISTRATIVE PROCEEDING		07-28-2011	
<u>07-28-2011</u>	AMENDED DIRECTOR'S REPORTS CHANGE: SUBSTITUTION OF PARTY			
08-02-2011	ROB HARRIS INFORMED THE CT THAT HE WOULD BE FILING AN APPEARANCE FOR TELFORD			
08-02-2011	NOTICE SETTING STATUS CONFERENCE	US	08-24-2011	1130
08-24-2011	HEARING HELD	HH	08-24-2011	1130
08-24-2011	MINUTES			
<u>08-25-2011</u>	ORDER SETTING SETTLEMENT CONFERENCE AND STATUS CONFERENCE			
08-25-2011	MANDATORY SETTLEMENT CONFERENCE	LS	09-08-2011	1000
08-25-2011	STATUS CONFERENCE	US	09-21-2011	0330
<u>09-15-2011</u>	TELFORD LANDS LLC NOTICE OF SERVICE			
<u>09-15-2011</u>	MOTION FOR PERMISSIVE REVIEW OF THE SPECIAL MASTER'S SEPTEMBER 4, 2009 ORDER & MOTION MOTION TO STAY TRIAL	MG	01-27-2012	
<u>09-15-2011</u>	LODGED: MEMORANDUM IN SUPPORT OF MOTION FOR PERMISSIVE REVIEW OF THE SPECIAL MASTER'S SEPTEMBER 4, 2009 ORDER AND MOTION TO STAY TRIAL			
<u>09-15-2011</u>	SECOND AFFIDAVIT OF PAUL L ARRINGTON			
<u>09-15-2011</u>	NOTICE OF HEARING ON MOTION FOR PERMISSIVE REVIEW OF THE SPECIAL MASTER'S 9/4/09 ORDER AND MOTION TO STAY TRIAL	HS	10-05-2011	0230
<u>09-20-2011</u>	MOTION FOR RECONSIDERTAION OR IN THE ALTERNATIVE MOTION IN LIMINE	MD	01-27-2012	
<u>09-20-2011</u>	LODGED: MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE MOTION IN LIMINE			
<u>09-20-2011</u>	FOURTH AFFIDAVIT OF ATTORNEY ROBERT L HARRIS			
09-21-2011	HEARING HELD	HH	09-21-2011	0330
09-21-2011	MINUTES			
<u>09-28-2011</u>	(FAX) LODGED: MEMORANDUM IN OPPOSITION OF MOTION FOR PERMISSIVE REVIEW OF THE SPECIAL MASTER'S SEPTEMBER 4, 2009 ORDER AND MOTION TO STAY TRIAL			
<u>09-28-2011</u>	JOINT RESPONSE TO MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE, MOTION IN LIMINE		09-28-2011	
<u>09-28-2011</u>	THIRD AFFIDAVIT OF PAUL L ARRINGTON			
09-30-2011	NOTICE SETTING HEARING MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE, MOTION IN LIMINE	HS	10-05-2011	0230
<u>10-03-2011</u>	PAGE CORRECTION TO FOURTH AFFIDAVIT OF OF ATTORNEY ROBERT L HARRIS, FILED 9/20/11			
<u>10-03-2011</u>	REPLY IN SUPPORT OF MOTION FOR PERMISSIVE REVIEW OF THE SPECIAL MASTER'S 9/4/09 ORDER		10-03-2011	

	AND MOTION TO STAY APPEAL		
<u>10-03-2011</u>	SECOND AFFIDAVIT OF DARRELL E MCDONALD		
<u>10-04-2011</u>	(FAXED) REPLY TO JOINT RESPONSE TO MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE, MOTION IN LIMINE		10-04-2011
10-05-2011	HEARING HELD	HH	10-05-2011 0230
10-05-2011	MINUTES		
<u>10-12-2011</u>	ORDER SETTING DEADLINE, CONT PRETRIAL CONF MANDATORY SETTLEMENT CONF & ADD TRIAL DATE		
10-12-2011	MANDATORY SETTLEMENT CONF W/ SM BOOTH	LS	10-21-2011 1000
10-12-2011	CONT PRETRIAL CONF/STATUS CONFERENCE	PS	10-28-2011 0230
10-12-2011	TRIAL BRIEFS DUE	ZS	10-28-2011 0230
10-12-2011	ADDITIONAL TRIAL DATES (2 1/2 DAYS)	TS	01-23-2012 1000
<u>10-26-2011</u>	NOTICE OF SERVICE OF OBJECTORS RESPONSE TO CLAIMANT'S FIRST DISCOVERY REQUESTS TO SCHUREMAN, FELTON & HUELSMAN		
<u>10-27-2011</u>	NOTICE OF SERVICE OF DARRELL MCDONALD AND NORMAN K SOWARDS RESPONSE TO CLAIMANTS 1ST DISCOVERY REQUESTS TO MCDONALD & SOWARDS		
<u>10-27-2011</u>	NOTICE OF SERVICE OF OBJECTORS SUPPLEMENTAL RESPONSE TO CLAIMANTS 1ST DISCOVERY REQUESTS TO SCHUREMAN, FELTON & HUELSMAN		
10-28-2011	HEARING HELD	HH	10-28-2011 0230
10-28-2011	MINUTES		
<u>11-01-2011</u>	ORDER VACATING AND RESETTNG TRIAL DATE AND SETTING STATUS CONFERENCE		
11-01-2011	TRIAL VACATED 11/9-10,16,2011 @ 10:00AM		
11-01-2011	ADDITIONAL TRIAL DATE VACATED 1/23-25/2011		
11-01-2011	STATUS CONFERENCE	US	01-25-2012 0200
11-01-2011	TRIAL - 3 DAYS	TS	06-20-2012 1000
01-25-2012	HEARING HELD	HH	01-25-2012 0200
01-25-2012	MINUTES		
<u>01-27-2012</u>	ORDER SETTING STATUS CONF AND PRETRIAL CONF		
01-27-2012	STATUS CONFERENCE	US	04-04-2012 1000
01-27-2012	PRETRIAL CONFERENCE - 1 HR	PS	05-16-2012 0930
<u>01-27-2012</u>	ORDER GRANTING MOTION FOR PERMISSIVE REVIEW		
<u>01-27-2012</u>	ORDER ON MOTION FOR RECONSIDERATION/ MOTION IN LIMINE - DENIED		
<u>02-01-2012</u>	ORDER GRANTING PERMISSIVE REVIEW; AO1 9.E.		
<u>02-01-2012</u>	SCHEDULING ORDER AND NOTICE OF HEARING ON PERMISSIVE REVIEW	HS	03-02-2012 0130
	OBJECTORS' OPENING BRIEF DUE: 2/17/12	BB	02-17-2012 0500
	TELFORD'S RESPONSIVE BRIEF DUE: 2/24/12	BB	02-24-2012 0500
	OBJECTOR'S OPTIONAL REBUTTAL BRIEF: 2/29/12	BB	02-29-2012 0500
02-01-2012	ORAL ARGUMENT ON PERMISSIVE REVIEW	HS	03-02-2012 0130

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