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DEPARTMENT OF
WATER RESOURCES

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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	)	Subcases:75-7032, 75-7177 and 75-14179
	)	
	)	MEMORANDUM IN SUPPORT OF
Case 39576	)	MOTION TO SET ASIDE PARTIAL
	)	DECREE
	)	
	)	
_____	)	

The Claimants to the above subcases, SUNSET HEIGHTS WATER DISTRICT, CECIL JACKSON and JUDITH BAILEY JACKSON, jointly move to set aside the Partial Decrees for water rights 75-7032, 75-7177 & 75 14179 pursuant to stipulation of the parties, as well as Rules 54(b) and Rule 60(b) of the Idaho Rules of Civil Procedure.

BACKGROUND

Sunset Heights Water District (hereinafter “Sunset”) filed certain claims for water rights 75-7032 and 75-7177 which were eventually recommended and have now been partially decreed. CECIL JACKSON and JUDITH BAILEY JACKSON (hereinafter “Jackson”) also filed a certain claim for water right no. 75-14179 which was eventually recommended and has now been partially decreed. In addition to the rights described herein, both Sunset and Jackson have other water rights which together with other claimants have been contested and which have now been resolved by an agreement entitled WATER RIGHTS SETTLEMENT AGREEMENT (hereinafter “Agreement”). The Agreement not only impacts the other water rights contained therein, but also impacts water rights nos. 75-7032, 75-7177 & 75 14179 described above. Therefore, in order to fully resolve all related rights with the above described rights herein, the Agreement provides that the parties thereto are required to file this motion in order to ask the Court to grant the above entitled claimants the right to vacate the partial decrees for water right nos. 75-7032, 75-7177 & 75 14179 **for the sole purpose** of adding the following language to the water rights:

The operation, use and administration of this water right is subject to a private water right agreement effective August 24, 2011, between Sunset Heights Water District, Cecil and Judith Bailey Jackson, Michael Tyacke, and the State of Idaho, and recorded in the Lemhi County Recorder's Office as Instrument No. 287204.

By the addition of the proposed language, the claimants water rights will recognize the claimants’ obligation to use water right nos. 75-7032, 75-7177 & 75 14179 in a manner consistent with the Agreement as to other stated water rights owned by Claimants and third parties who also divert from the same source and related sources. None of the other elements of the water right (i.e., diversion rate, priority date, place of use, etc.) will be affected by this motion to set aside.

ARGUMENT

I. The above partial decrees should be set aside because there is common agreement of the parties involved in these subcases.

The Court has discretion to set aside a partial decree when there is agreement between the parties to the subcases, and there are no objections by any party to correcting the partial decree. In a recent ruling from the SRBA Court, the Presiding Judge held the following:

What the Claimant refers to is a process used under certain circumstances by this Court where an error is identified in a *Partial Decree* and there are no objections by any party to correcting the identified error. Under such circumstances, the process utilized by the Court provides a mechanism for all affected parties to not only agree that *Partial Decree* contains an error but also agree to the Court issuing an *Amended Partial Decree* to correct the error. In essence the process is akin to a stipulation to amend the *Partial Decree* to correct the error. The process is not a substitute for a *Motion to Set Aside a Partial Decree* under Idaho Rule of Civil Procedure 60 in order to provide the party alleging the error the opportunity to relitigate the claim due to an error or omission.

Memorandum Decision and Order on Permissive Review, Subcase Nos. 34-2459 et al., March 7, 2012, at 8-9. Thus, errors can be corrected by stipulation of the parties involved in the proceedings. There has been significant involvement by all of the parties in this matter, and the Agreement itself provides that these decrees will be set aside in order to include the proposed language set forth above. There will be no relitigation of issues that have not already been addressed and fully compromised in the Agreement.

The Agreement was executed in order to craft a settlement of numerous claims and rights in order ensure that a complicated system of water use can fully utilize a common and related source for the full economic benefit of all impacted parties. The error was to have allowed water right nos. 75-7032, 75-7177 & 75 14179 to proceed to partial decree, not realizing that the outcome of the contested rights would necessarily impact these rights which have gone to partial decree. Allowing

these rights' partial decrees to be vacated will do no harm or impact in a negative way to any other water rights and will only result in a more accurate description of these water rights for a more efficient management of water diversions by the water master and subsequent owners of the related rights.

Failing to add the requested language which binds the rights and obligations of these water rights to the Agreement will leave these partial decrees inherently flawed. As such, the partial decree of water right nos. 75-7032, 75-7177 & 75 14179 do not, on their face, represent the actual practice and diversionary rights contained in the Agreement. It is within the discretion of the Court to set aside the partial decree so that this water right may have the proposed language added resulting in a proper adjudication of these rights.

II. In the alternative, the partial decrees should be set aside pursuant to Rule 60(b)(6) of the Idaho Rules of Civil Procedure.

Rule 60(b)(6) of the Idaho Rules of Civil Procedure allow a final judgment to be set aside for "any other reason justifying relief from the operation of the judgment." Subpart 6 has no time bar to its application, but only requires that it be filed "within a reasonable time." This is different than subparts 1, 2, and 3 of Rule 60(b), which requires that motions under these subparts be filed within six (6) months of the final judgment.

Water right nos. 75-7032, 75-7177 & 75 14179 were decreed in 2008, shortly before the parties began proceedings where objections were filed to various components of the other water rights addressed in the Agreement. Therefore, the motion to set aside water right nos. 75-7032, 75-7177 & 75 14179 is being made "within a reasonable time," particularly given the circumstances specific to these water users.

Furthermore, the reasons justifying relief under Rule 60(b)(6) are the same as those set forth above. The Agreement was executed in order to craft a settlement of numerous claims and rights in order ensure that a complicated system of water use can fully utilize a common and related source for the full economic benefit of all impacted parties. The error was to have allowed water right nos. 75-7032, 75-7177 & 75 14179 to proceed to partial decree, not realizing that the outcome of the contested rights would necessarily impact these rights which have gone to partial decree. Allowing these rights' partial decrees to be vacated will do no harm or impact in a negative way any other water rights and will only result in a more accurate description of these water rights for a more efficient management of water diversions by the water master and subsequent owners of the related rights.

III. In the alternative, the partial decrees should be set aside pursuant to Rules 60(b)(1) and 54(b) of the Idaho Rules of Civil Procedure.

I.R.C.P. 54(b) states that in cases involving multiple claims, “any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims.” The claims in the SRBA are clearly subject to this rule because this rule applies to judgments upon multiple claims or involving multiple parties. The SRBA has thousands of claims and thousands of parties. In fact, the SRBA specifically allows for appeals to partial decrees pursuant to I.R.C.P 54(b). *Administrative Order 1*, page 22.

The Courts have also established precedent, inside the SRBA and outside of the SRBA, that the Court has the discretion to set aside a partial decree. In *Baker v. Pendry*, the Supreme Court of Idaho ruled that a judge may set aside a partial decree at any time prior to a final adjudication of

claims. 98 Idaho 745, 748, 572 P.2d 179, 182 (1977). In that case, the Supreme Court relied on both IRCP 60(b)(1) and 54(b) to allow a lower court the discretion to set aside a partial decree even more than one year after the partial decree had been entered.

The case currently before the Court is a multi-party case in which no final adjudication of claims has been entered. Relying on this precedent, the Court clearly has discretion to set aside a partial decree under Rules 54(b) and 60(b)(1) of the Idaho Rules of Civil Procedure. The failure to have the settlement agreement in place could be characterized as “excusable neglect” under Rule 60(b)(1) for the reasons set forth in the preceding sections, and therefore, the decrees should be set aside to incorporate the provisions of the Agreement.

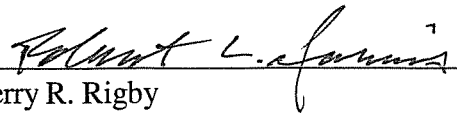
CONCLUSION

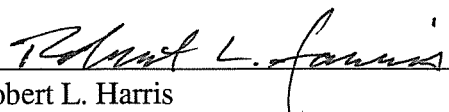
It is clear that the Court has the authority and discretion to set aside the partial decree of water right nos. 75-7032, 75-7177 & 75 14179. This authority and discretion is grounded in the Idaho Rules of Civil Procedure and precedent set by the Idaho Supreme Court and the Snake River Basin Adjudication District Court as well. If the Claimant is not allowed to set aside the Partial Decrees, water right nos. 75-7032, 75-7177 & 75 14179 will not contain the necessary language which clearly binds said rights to the Agreement and therefore will leave said rights partially flawed.

Therefore, Claimants jointly and respectfully submit that the Court should set aside the Partial Decrees on water right nos. 75-7032, 75-7177 & 75 14179 for the sole purpose of allowing the addition of the following language to each right:

The operation, use and administration of this water right is subject to a private water right agreement effective August 24, 2011, between Sunset Heights Water District, Cecil and Judith Bailey Jackson, Michael Tyacke, and the State of Idaho, and recorded in the Lemhi County Recorder's Office as Instrument No.287204.

DATED this 22nd day of March, 2012.


for Jerry R. Rigby


Robert L. Harris

CERTIFICATE OF MAILING

I certify that on March 22nd, 2012, I mailed the original and copies of this objection, including all attachments, to the following persons:

Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

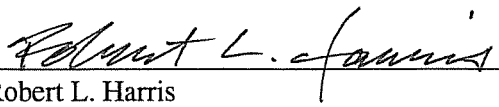
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