

COPY

Shelley M. Davis, ISB #6788
Scott M. Magnuson, ISB #7916
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Ste. 102
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for West Indian Cove Canal Company

3-20
RECEIVED

MAR 21 2013

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 NOS.: 02-2044, 02-2055, 02-
	)	2097B, 02-2128, 02-4015, 02-7133, 02-10008,
Case No. 39576	)	and 02-10010
	)	
	)	WEST INDIAN COVE CANAL
	)	COMPANY'S MEMORANDUM IN
	)	SUPPORT OF MOTION TO SET-ASIDE
	)	PARTIAL DECREES

COMES NOW, the WEST INDIAN COVE CANAL COMPANY ("WICCC"), by and through its attorneys of record, the law firm Barker Rosholt & Simpson, LLC, and hereby submits this Memorandum in Support of its Motion to Set-Aside Partial Decrees for the above referenced subcases pursuant to Idaho Rules of Civil Procedure 60(b).

INTRODUCTION

The partial decrees for WICCC's water rights listed above were entered May 20, 2009, and inadvertently incorporated as part of the place of use element a digital boundary ("shapefile") which inaccurately identifies the authorized service area of the WICCC. The correct place of use was recently discovered when its contiguous neighbor, the Indian Cove Irrigation District, discovered a discrepancy in the number of acres recommended by the Idaho

Department of Water Resources in its authorized place of use. Once this inaccuracy was identified in WICCC's shapefile, the Department requested WICCC to take action to correct the inaccurate digital boundary described in the place of use element of its partially decreed water rights.

There are no additional acres that need to be decreed. It is simply a matter of an incorrectly drawn digital boundary, and since the digital boundary was attached to the partial decree, and included in the place of use description in the elements of the partial decree itself, it is necessary that it be corrected by the SRBA court.

Accordingly, WICCC requests that the Court set-aside the partial decree and approve and incorporate the Amended Service Area shapefile prepared by the Department of Water Resources, reflecting the proper service area of the WICCC.

STANDARD OF REVIEW

In the SRBA, a motion to set aside a *partial decree* is treated similar to a motion to set aside a default judgment and determined in accordance with the criteria set forth in I.R.C.P. 60(b). *AOI § 14d* ("Parties seeking to modify a partial decree shall comply with I.R.C.P. 60(a) or 60(b)").

I.R.C.P. 60(b) permits a court to relieve a party from a final judgment, order, or proceeding for the following reasons:

1. mistake, inadvertence, surprise, or excusable neglect;
2. newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial 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 the judgment.

I.R.C.P. 60(b).

The decision to grant or deny a Rule 60(b) motion for relief from a final judgment rests in the sound discretion of the trial court. *Pullin v. City of Kimberly*, 100 Idaho 34, 36, 592 P.2d 849, 851 (1979). Where the trial court “applies the facts in a logical manner to the criteria set forth in Rule 60(b), while keeping in mind the policy favoring relief in doubtful cases, the court will be deemed to have acted within its discretion.” *Eby v. State*, 148 Idaho 731, 734, 228 P.3d 998, 1001 (2010).

ARGUMENT

I. Excusable Neglect and Mistake Provide the Basis for the Special Master to Set Aside the Partial Decrees and Grant the Relief Requested:

When the Idaho Department of Water Resources prepared the shapefile for the place of use of WICCC the Department inadvertently failed to include all of the authorized irrigable acres. The number of acres and legal description of the acres described in the partial decrees is correct. It is only the shapefile that was incorporated in the place of use element of the partial decrees by a comment included on the face of those decrees that incorrectly depicts the authorized irrigable acres. The mistake was only recently discovered when the Department and Indian Cove Irrigation District, which is contiguous to WICCC, discovered a similar mistake in the number of acres that were recommended to Indian Cove Irrigation District. The Department has provided an Amended Service Area shapefile to be substituted for the incorrect depiction.

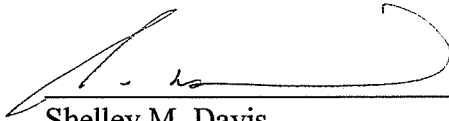
No other party will be prejudiced by this action since the acres are already properly described in the partial decrees, just not properly depicted on the shapefile. There is no just reason for the Special Master to deny the relief requested.

CONCLUSION

For the reasons set forth above, the West Indian Cover Canal Company respectfully requests that this Special Master grant its Motion to Set Aside Partial Decrees, and issue partial decrees substituting the correct shapefile depictions of the West Indian Cove Canal Company's service area.

DATED this 19th day of March, 2013.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'Shelley M. Davis', is written over a horizontal line.

Shelley M. Davis

Attorneys for West Indian Cove Canal Company

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 19th day of March, 2013, I caused to be served a true and correct copy of the foregoing **WEST INDIAN COVE CANAL COMPANY'S MEMORANDUM IN SUPPORT OF MOTION TO SET-ASIDE PARTIAL DECREES** by the method indicated below, and addressed to each of the following:

Original filed via U.S. Mail with:

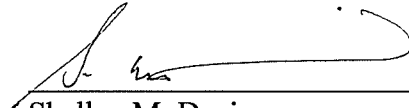
Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707
Fax No. 208-736-2121

Copy mailed to:

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

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resc Division
550 West Fort Street, MSC 033
Boise, ID 83724



Shelley M. Davis