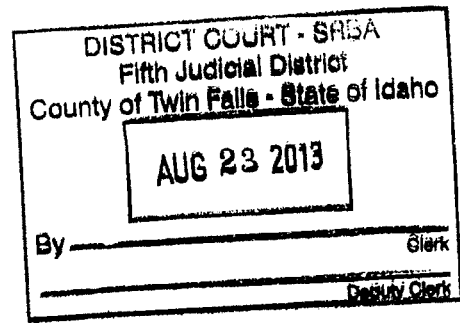




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DEPT. OF WATER RESOURCES

Attorneys for the Idaho Department of Fish and Game

**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 39576

)
) Subcase Nos. 21-00014, 21-00015, 21-2153,
) 21-2129, 21-4006, 21-4007, 21-4008, 21-7151
)
) **MEMORANDUM IN SUPPORT OF**
) **MOTION TO SET ASIDE PARTIAL**
) **DECREES**
)
)

The Idaho Department of Fish and Game (“IDFG”) submits this memorandum in support of its “Motion to Set Aside Partial Decrees” in subcase nos. 21-00014, 21-00015, 21-2153, 21-2129, 21-4006, 21-4007, 21-4008, and 21-7151 pursuant to Administrative Order (“AO1”) Rule 14(d) and Idaho Rule of Civil Procedure 60(b).

I. STANDARD OF REVIEW

In the Snake River Basin Adjudication (“SRBA”), a motion to set aside a partial decree is treated similar to a motion to set aside a final judgment and determined in accordance with the criteria set forth in I.R.C.P. 60(b). AO1 § 14(d) (“Parties seeking to modify a partial decree shall comply with I.R.C.P. 60(a) or 60(b). Rule 60(b)(6) provides that a judgment may be set aside for “any other reason justifying relief from the operation of the judgment.” *Id.*¹ Rule 60(b) requires that a motion to set aside a judgment must be filed “within a reasonable time.”

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). Although a court is vested with broad discretion in determining whether to grant or deny a Rule 60(b) motion, its discretion is limited and the motion may only be granted on a showing of “unique and compelling circumstances justifying relief.” *Dawson v. Cheyovich Family Trust*, 149 Idaho 375, 380, 234 P.3d 699, 704 (2010).

II. STATEMENT OF FACTS AND ARGUMENT

IDFG manages the Sand Creek Wildlife Management Area (“SCWMA”) located near St. Anthony, Idaho. *Affidavit of Tom Bassista in Support of Motion to Set Aside Partial Decrees* (“*Bassista Affidavit*”) at 2. The SCWMA consists of five inter-connected ponds that are used primarily as wildlife habitat and recreation. *Bassista Affidavit* at 2. There are several water rights associated with the SCWMA. Water rights 21-00014, 21-00015, 21-2153, 21-2159, 21-4006, 21-4007, 21-4008, and 21-7151 (“Partial Decrees”) have been partially decreed in the Snake River Basin Adjudication (“SRBA”). In addition, IDFG recently filed two late claims, 21-

¹ In addition to stating a reason that justifies setting aside a partial decree, typically the moving party must “allege facts which, if established, would constitute a meritorious defense.” *Memo. Decision and Order on Mot. to Set Aside Partial Decree* at 8, SRBA Subcase No. 55-02373 et al. (May 1, 2001). Since IDFG seeks to set aside a decree in its favor, the meritorious defense element does not apply in this case.

2039 and 21-2170, for use with the SCWMA. IDFG has filed an objection to the recommendations on late claims 21-2039 and 21-2170 on the basis that the source should state “tributary to Sinks,” rather than “tributary to Sand Creek.”

During its investigation for late claims 21-2039 and 21-2170, IDFG reviewed its Partial Decrees for the SCWMA. While reviewing the Partial Decrees, IDFG discovered several errors on the Partial Decrees. *Bassista Affidavit* at 3.

Partial decree 21-00014 has the following errors:

- 1) The Source element is incorrect because it lists “Sand Creek” as the source rather than as an Unnamed Stream tributary to Sand Creek. *Bassista Affidavit* at 3.
- 2) The quantity element is incorrect because the quantity was decreed as an acre-feet per year (“AFY”) volume rather than in cubic-feet per second. *Bassista Affidavit* at 3.
- 3) The Point of Diversion is incorrect because it lists an incorrect location in Section 9 and omits the correct location in Section 10. *Bassista Affidavit* at 3.
- 4) The Period of Use is incorrect because it lists the entire year instead of just the irrigation season. *Bassista Affidavit* at 3.
- 5) The Place of Use is incorrect because it includes two incorrect locations in Section 9 but omits a quarter/quarter in Section 9 that should be included. *Bassista Affidavit* at 4.

Partial Decree 21-00015 has the following errors:

- 1) The Source element is incorrect because it lists “Sand Creek” as the source rather than as an Unnamed Stream tributary to Sand Creek. *Bassista Affidavit* at 4.

- 2) The quantity element is incorrect because the quantity was decreed as an acre-feet per year (“AFY”) volume rather than in cubic-feet per second (“CFS”). *Bassista Affidavit* at 4.
- 3) The Point of Diversion is incorrect because Section 9 does not include the point of diversion and it also incorrectly lists the Quarter-Quarter in Section 10. *Bassista Affidavit* at 4.
- 4) The Period of Use is incorrect because it lists the entire year instead of just the irrigation season. *Bassista Affidavit* at 4.
- 5) The Place of Use is incorrect because it includes two incorrect quarter/quarter locations in Section 9 but omits a quarter/quarter in Section 9 that should be included. *Bassista Affidavit* at 5.

Partial Decree 21-2153 has the following errors:

- 1) The Source is incorrect because it lists Blue Creek as tributary to “Sand Creek.” *Bassista Affidavit* at 5.
- 2) The Place of Use is incorrect because it does not include a quarter/quarter in Section 3. *Bassista Affidavit* at 5.

Partial Decree 21-2159 has the following errors:

- 1) The Source is incorrect because it lists Blue Creek as tributary to “Sand Creek.” *Bassista Affidavit* at 5.
- 2) The Point of Diversion is incorrect because it incorrectly lists the quarter/quarter location. *Bassista Affidavit* at 5.

- 3) The Place of Use is incorrect because it includes a quarter/quarter in Section 9 that is incorrect and omits a quarter/quarter in Section 9 that should be included. *Bassista Affidavit* at 5.

Partial Decree 21-4006 has the following errors:

- 1) The Source element is incorrect because it lists “Sand Creek” as the source rather than as an Unnamed Stream tributary to Sand Creek. *Bassista Affidavit* at 5.
- 2) The Quantity is incorrect because it fails to include a diversion to storage quantity amount in CFS. *Bassista Affidavit* at 5.
- 3) The Point of Diversion is incorrect because Section 9 does not include the point of diversion and it also incorrectly lists the quarter/quarter in Section 10. *Bassista Affidavit* at 6.
- 4) The Purpose of Use is incorrect because it does not include “diversion to storage.” *Bassista Affidavit* at 6.

Partial Decree 21-4007 has the following errors:

- 1) The Source is incorrect because it lists Blue Creek as tributary to “Sand Creek.” *Bassista Affidavit* at 6.
- 2) The Point of Diversion is incorrect because it includes a location in Section 3. *Bassista Affidavit* at 6.
- 3) The Place of Use is incorrect because it omits a quarter/quarter location in Section 10. *Bassista Affidavit* at 6.

Partial Decree 21-4008 has the following errors:

- 1) The Source is incorrect because it lists Blue Creek as tributary to “Sand Creek.” *Bassista Affidavit* at 6.

2) The Point of Diversion is incorrect because it omits a quarter/quarter location in Section 10. *Bassista Affidavit* at 6.

3) The Place of Use is incorrect because it omits a quarter/quarter location in Section 10. *Bassista Affidavit* at 7.

Partial Decree 21-7151 has the following errors:

1) The Source is incorrect because it lists Blue Creek as tributary to “Sand Creek.” *Bassista Affidavit* at 7.

Idaho Rule of Civil Procedure 60(b)(6) provides the authority for this Court to set aside the Partial Decrees for “any other reason justifying relief from the operation of the judgment.” In this case, several mistakes were made in the Partial Decrees that only came to light with investigation of late claims 21-2039 and 21-2170. Because all of the water rights associated with the SCWMA are interconnected and are managed as a whole, IDFG requests the Court set aside the partial decrees so as to make them consistent both with its late claims 21-2039 and 21-2170, and with how the water is managed on the ground. *Bassista Affidavit* at 2–3. IDFG has worked with the Idaho Department of Water Resources (“IDWR”) to identify the changes that will need to be made to the Partial Decrees. IDWR concurs in the changes that IDFG is proposing for the Partial Decrees.

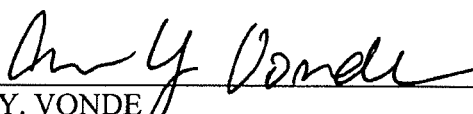
III. CONCLUSION

For the reasons set forth above, IDFG requests that partial decrees 21-00014, 21-00015, 21-2153, 21-2159, 21-4006, 21-4007, 21-4008, and 21-7151 be set aside.

DATED this 22nd day of August 2013.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



ANN Y. VONDE
Deputy Attorney General

CERTIFICATE OF SERVICE

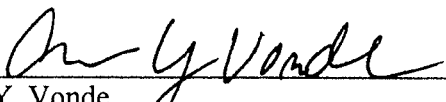
I HEREBY CERTIFY that on this 22nd day of August 2013, I caused a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION TO SET ASIDE PARTIAL DECREES to be filed with the Court and served on the following parties by the indicated methods:

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- ☐ Hand Delivery
- ☐ Statehouse Mail
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