

DEPARTMENT OF
WATER RESOURCES

COPY

GVMCC to deliver to GVMCC shareholders and others that receive water from the GVMCC Canal the quantities of water they have historically used, and continue to require, to irrigate their lands.

I. FACTS

GVMCC owns water rights and operates and maintains the Grand View Mutual Canal to deliver Snake River water diverted from C.J. Strike Reservoir to its shareholders and other water users. *Affidavit of Rohl Hipwell* (“*Hipwell Aff.*”), ¶ 2 at 1. GVMCC’s Snake River water rights diverted from C.J. Strike Reservoir are: 02-0080 for 25 cfs (1952 priority); 02-0081 for 49.5 cfs (1947 priority), and 02-7336 for 1.0 cfs 1981 priority. *Id.*, ¶ 6 at 3. The Grand View Mutual Canal is approximately 15 miles long from its origin at an Idaho Power Company (“IPCo”) canal through which GVMCC receives water from C.J. Strike Reservoir, to its terminus. There is a pumping plant in the canal approximately halfway down the canal where GVMCC diverted water from the Snake River before IPCo constructed C.J. Strike Reservoir 1952. *Id.*, ¶ 3 at 1-2.

In 1952, IPCo entered an agreement with GVMCC and several other water right owners to move their Snake River diversions upstream several miles to receive water from C.J. Strike Reservoir. *Id.*, ¶ 4 at 2, Ex. D. The pumping plant was installed in the canal near GVMCC’s original point of diversion near the City of Grandview to raise the water level and provide sufficient head to enable GVMCC to continue to deliver water to its shareholders, whose lands are all located downstream from the pumping plant. *Id.*, ¶ 4 at 2, Exs. A-C. The 1952 Agreement acknowledged that GVMCC possessed permits to pump up to 75 cfs from the Snake River at GVMCC’s original point of diversion, and provided that IPCo will supply enough water from C.J. Strike Reservoir to deliver 75 cfs to GVMCC’s pumping plat “after allowing for reasonable evaporation, seepage and other canal losses.” *Affidavit of Corbin Knowles* (“*Knowles aff.*”), ¶ 5 at 2, Ex. A at 8.

As provided in the agreement, since 1952, IPCo has provided sufficient water from C.J. Strike Reservoir to the GVMCC Canal to enable GVMCC to deliver, after conveyance losses from the canal, up to 75 cfs of water to the GVMCC pumping plant for GVMCC shareholders, and up to 22.06 cfs to headgates upstream from the pumping plant for other water users. Today there are between 70 and 80 headgates through which GVMCC delivers water for the irrigation of approximately 4,000 acres of land. *Hipwell Aff.*, ¶ 5 at 2-3.

Water District No. 2 was formed in 2012, and Water Master Corbin Knowles was appointed in January of 2013. *Knowles aff.*, ¶ 2 at 1. Water District No. 2 encompasses all surface diversions and Snake River water rights from Milner Dam to the Murphy Gage Station below Sawn Falls Dam, including C.J. Strike Reservoir and GVMCC's water rights. During 2013 Mr. Knowles discovered that the quantities of GVMCC's partial decrees are not sufficient to deliver up to 75 cfs to GVMCC's pumping plant, and do not fully account for GVMCC's current and historic diversion and beneficial use of water from C.J. Strike Reservoir. *Id.*, ¶ 3 at 1-2, ¶ 6, 7 at 3.

After confirming the inadequacy of GVMCC's water rights, Mr. Knowles advised GVMCC that the total quantity of water delivered to the head of the Grand View Mutual Canal will be restricted to 97.06 cfs (the combined rate of GVMCC's water rights and other rights delivered through the canal), whereas historic and current measurements show that diversions into the canal often range between 125 cfs and 134 cfs. Until hearing from Mr. Knowles, GVMCC believed that it would continue to receive a sufficient flow water from C.J. Strike Reservoir deliver 75 cfs to the pumping plant. *Hipwell Aff.*, ¶ 6 at 3; *Knowles Aff.*, ¶ 7 at 4.

The discrepancy between the decreed quantities of GVMCC's water rights and its diversions is unaccounted conveyance loss from the head of the Grand View Mutual Canal to GVMCC's pump

station (7-8 miles of the canal). The failure to properly account for these conveyance losses occurred when the claims for 02-00080 was originally prepared for the Snake River "02" adjudication. GVMCC's SRBA claim was based on the 02 adjudication claim, and processed through the SRBA, without further analysis of the actual, historic diversion and delivery of water from C.J. Strike Reservoir to GVMCC's pumping plant. *Knowles Aff.*, ¶ 6 at 3-4.

Administration of GVMCC's water rights as described by Mr. Knowles will significantly reduce the quantity of water available for GVMCC to deliver to its shareholders and to other water users. *Hipwell Aff.*, ¶ 8 at 7; *Knowles Aff.*, ¶ 7 at 4. The total reduction of up to 37 cfs (28%) will impose extreme hardship on GVMCC shareholders and the other water users. The agricultural lands under the Grand View Mutual Canal cannot be successfully irrigated with only 72% of the water that has been historically used. *Hipwell Aff.*, ¶ 8 at 7.

II. ARGUMENT

AO1 provides: Parties seeking to modify a partial decree shall comply with I.R.C.P. 60(a) or 60(b)." Whether to grant a Motion made under Rule 60(b) is a discretionary decision of the trial court. *Bull v. Leake*, 109 Idaho 1044, 1047 (Ct. App. 1986). Relief from a judgment under clause (6) of Rule 60(b) is appropriate "whenever 'such action is appropriate to accomplish justice.'" *First Sec. Bank, N.A. v. Stauffer*, 112 Idaho 133, 142 (Ct. App. 1986). A party must show "unique and compelling circumstances" justifying the relief from the judgment (*Vanderwal v. Albar, Inc.*, 303 P.3d 175, 182 (2013)) and a "meritorious" defense. *Order on Permissive Review Granting Motion to Set Aside Partial Decrees and Order of Recommitment to Special Master*, Subcase Nos. 79-02063, 79-02094, 79-04001 (June 10, 2010) at 13.

As this Court has explained, in the Snake River Basin Adjudication, (“SRBA”), accurately decreeing water rights is of particular importance to accomplishing justice.

The parties, IDWR, and this Court have a compelling interest to facilitate the desirable legal objective of accurately decreeing these water rights in the SRBA. Among other things, an accurate *Partial Decree* is essential to avoid future disputes, for purposes of finality and for the orderly future administration of the right(s). The alternative is that portions of the rights could not be administered without controversy prior to having the error resolved in a different forum. The error undermines any sense of finality and the SRBA is the proper forum for remedying any such error.

Id., at 7-8.

Water right no. 02-00080 was originally claimed in the 02 adjudication to account for GVMCC’s diversion and beneficial use of water after C.J. Strike Reservoir was constructed and IPCo began delivering water to the newly constructed head of the GVMCC canal. The 25 cfs quantity of the 1952 priority 02 claim, when added to GVMCC’s other water rights, provided a combined diversion rate of approximately 75 cfs, reflecting the quantity GVMCC pumped from its original Snake River diversion, and is entitled to receive and has received at the pumping plant that was installed in 1952. Unfortunately, the 02 adjudication claim did not account for conveyance loss in delivering water from C.J. Strike Reservoir through approximately 7-8 miles of the Grand View Mutual Canal to GVMCC’s pumping plant. The quantity of the 02 claim was carried forward into the SRBA claim, and processed through the SRBA without accounting for the conveyance loss. The inadequacy of water right was discovered in 2013 by the newly-appointed Water District 02 Water Master, and this is when GVMCC learned of the problem.

The affidavits of the Watermaster for Water District No. 2 and the Chairman of GVMCC’s Board of Directors clearly establish that the partial decree for GVMCC’s water right no. 02-00080

understates by up to 28% the quantity of water GVMCC has historically delivered for irrigation of lands served by GVMCC. The immediate widespread hardship on GVMCC water users and the Grandview community that would result from a 28% curtailment of irrigation presents a unique and compelling circumstance justifying correction of the partial decree. Correction will serve the SRBA's objective of accuracy in its decrees, and thereby avoid future controversy and the necessity for GVMCC to address the problem through other administrative or judicial procedures.

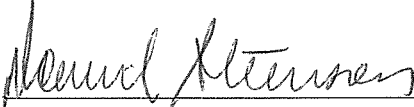
Setting aside the partial decree for water right no. 02-00080 to correct its quantity will not prejudice parties to the subcase. The sole objection, which did contested place of use only, was resolved through an SF-5.

CONCLUSION

For the foregoing reasons, GVMCC respectfully requests that the Court grant its motion to set aside the partial decree for water right no. 02-00080 so that the quantity element of the water right may be amended to include conveyance loss.

Dated this 10th day of December, 2013.

SAWTOOTH LAW OFFICES, PLLC


Daniel V. Steenson

CERTIFICATE OF SERVICE

I certify that on December 10, 2013, I served copies of this document, including all attachments by mailing a copy thereof, postage prepaid, to each of the parties listed below.

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