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RECEIVED
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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: 21-97D, 21-96C, 21-94C, 21-2062
	)	& 21-2038
	)	
Case 39576	)	BRIEF AND MEMORANDUM IN
	)	SUPPORT OF THE COLLECTIVE
	)	MOTIONS TO SET ASIDE THIS
	)	COURT'S ORDER CLOSING CLAIMS
	)	TAKING BASINS 21,22,29,32,33,65,
	)	67,69,71,72,73,74,75,77,78 AND 79 AND
	)	DISALLOWAL OF UNCLAIMED
	)	WATER RIGHTS, SRBA SUBCASE NO,
	)	00-92099 (APRIL25,2012)

I. INTRODUCTION

Michael Bryan Moedl (hereinafter "Moedl") files this brief and memorandum in support of the collective motions to set aside this Court's Order Closing Claims Taking Basins 21,22,29,32,33,65, 67,69,71,72,73,74,75,77,78 and 79 and Disallowal of Unclaimed Water Rights, SRBA subcase no, 00-92099 (April25,2012) ("April 25, 2012 Judgment") only specifically to its effect on water right nos. 21-97D, 21-96C, 21-94C, 21-2062 and 21-2038.

Moedl also files this brief and memorandum in support of the collective Expedited Motions to File Late Claims for the same claimed water rights. Moedl makes this motion based on the fact

Brief and Memorandum in Support of the Collective Motions to Set Aside This Court's Order Closing Claims Taking Basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79 and Disallowal of Unclaimed Water rights, SRBA Subcase No., 00-92099 (April 25, 2012) - Page - 1

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that the April 25, 2012 Judgment should be set aside in accordance with Idaho Rule of Civil Procedure 60(b) because he contends “unique and compelling” reasons justify relief from the operation of the judgment. Moedl prays that this Court, sitting in equity, relieve him from the April 25, 2012 Judgment by setting aside its order of disallowance, allowing Moedl and the current titled limited liability companies to pursue their late claims as they were originally decreed, licensed and permitted.

II. FACTUAL BACKGROUND

Moedl holds the following water rights, which were previously either decreed in the Rexburg decree or validly licensed or permitted:

21-97D, 21-96C, 21-94C, 21-2062 & 21-2038

Other than the water rights listed above, Moedl holds no other water rights with which to irrigate the property to which the claimed water rights are appurtenant (the “Lands”). See Motion to File Late Claim. The principal Moedl has owned the Lands since 1994. See Motion to File Late Claim. The Lands have been in family ownership since 1946 and the claimed water rights have been diverted and applied to the Lands since the time they were first developed. See late claims. Like their relatives before them, the Moedl has continuously used the water rights for irrigation and raising livestock. Moedl was only recently alerted by IDWR that the water use might not be associated with any presently valid water rights. Upon looking into the water rights, it was discovered that even though Moedl had instructed the life tenant to the subject lands (who was his now deceased father) timely file the necessary claims in the SRBA and even though he

had paid the life tenant to do so, Moedl recently learned that the rights had not been claimed in the SRBA. Moedl then acted swiftly to investigate the water rights by contacting IDWR and with the help of IDWR personnel, developed the claims which were necessary to be made. He has now hired an attorney to prosecute said claims.

III. LEGAL STANDARDS FOR SETTING ASIDE A PARTIAL DECREE

A motion to set aside a partial decree in the SRBA is treated the same as a motion to set aside a default judgment and determined in accordance with the criteria set forth in I.R.C.P.

60(b).A.0.1 § 14d ("Parties seeking to modify a partial decree shall comply with I.R.C.P. 60(a) or 60(b)")." *Order Denying Motion to File Late Notice of Claim*, SRBA subcase no. 21-13176, p.4 (January 9, 2014). Rule 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;
- 3) fraud, misrepresentation or other misconduct of an adverse party;
- 4) the judgment is void;
- 5) the judgment has been satisfied, released or discharged; and
- 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 Kimherly*, 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). In cases dealing with water rights, public policy weighs against forfeiture: "The courts abhor forfeiture and where no public interest is favored thereby, equity leans against declaring a forfeiture." *Hurst v. Idaho Iowa Lateral & Res. Co.*, 42 Idaho 436, 246 P. 23 (1926) and *Idaho Farms Co. v. North Side Canal Co.*, 24 F. Supp.189 (D. Idaho 1938). "Special Master Report, SRBA subcase no. 45-167A, p. 8 (March 20, 2007). If a movant shows "unique and compelling circumstances justifying relief, the Court has not abused its discretion in granting relief under Rule 60(b). *Miller v. Haller*, 129 Idaho 345, 349, 924 P.2d 607, 611 (1996). Determining whether to set aside a default judgment requires that the court "apply a standard of liberality rather than strictness and give the party moving to vacate the default the benefit of genuine doubt." *Johnson v. Pioneer Title Co.*, 104 Idaho 727, 733, 662 P.2d 1171, 1177 (Ct. App. 1983). Thus, the Court must weigh each case in light of its unique facts. *Id.* at. 732. 662 P.2d at 1176 (citing *Orange Transportation Co., Inc. v. Taylor*, 71 Idaho 275, 230 P.2d 689 (1951).

In addition to requiring a party to state a reason justifying relief from operation of the judgment, Idaho courts require more. A party must first show that he or she has acted in good faith and exercised due diligence in the protection of his or her rights, such as an ordinarily prudent person would exercise under similar conditions. *Council Improvement Co. v. Draper*, 16 Idaho 541, 102

P. 7 (1909) and *Kovachy v. DeLeusomme*, 122 Idaho 973, 842 P.2d 309 (Ct. App. 1992). Not only must a movant satisfy one of the criteria set forth in I.R.C.P. 60(b), the movant must also allege facts, which if established, would constitute a meritorious defense. The meritorious defense standard requires that a movant: 1) allege facts; 2) which if established; 3) would constitute a defense to the action; 4) and the facts supporting the defense must be detailed. See *McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (1993); *Hearst Corp. v. Keller*, 100 Idaho 10, 592 P.2d 66 (1979); *Thomas v. Stevens*, 78 Idaho 266, 300 P.2d 811 (1956). The detailed factual requirement is more than the mere general notice requirement that would ordinarily be sufficient if pled prior to default. *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981). The standards for setting aside a default judgment take into account the preference for having a case decided on its merits. *Order On Permissive Review Granting Motion To Set Aside Partial Decrees And Order Of Recommitment To Special Master*, SRBA subcase no.79-02063 *et al*, p.6 (June 10, 2010). In making the determination, the Court must take into consideration that judgments by default are not favored and that the general rule in doubtful cases is to grant relief from the default in order to reach a judgment on the merits and that procedural rules other than those which are jurisdictional should be applied to promote disposition on the merits *Reeves* at 272, 629 P.2d at 668. This is a factual determination and is discretionary with the Court. *Johnson* at 732, 662 P.2d at 1176. Rule 60(b) also requires that a motion to set aside be made within a reasonable time and, for Rule 60(b)(1), (2) and (3), not more than six months after the judgment, order, or decree.

Because the April 25, 2012 Judgment was entered more than 6 months ago, only the fourth, fifth

and sixth justifications are applicable. In this case, and as will be explained below, Moedl believes I.R.C.P. 60(b)(4) and (6) provide him avenues to obtain relief from the April 25, 2012 Judgment.

A. Reasonable Time and Meritorious Defense.

For Moedl to obtain relief under I.R.C.P. 60(b)(4) he "must bring a motion for relief within a reasonable time. Where judgment is entered without the party's knowledge, what constitutes reasonable time is judged from the time that the party learned of the judgment." *McGrew* at 559, 82 P.3d at 841. Here, Moedl meets the timeliness requirement. Moedl was only recently notified that his water rights could be invalid and should be investigated. See Motion To File Late Claim. Within a few days of understanding that the water rights were invalid, Moedl contacted IDWR personnel to elicit their help to prepare late claims based upon prior unclaimed decreed, licensed or permitted rights and then immediately contacted counsel to represent him in this matter. Moedl has expended considerable time and money to prepare this matter to be heard in a short period of time. Rather than rely on standard docket sheet procedure, he elected to have this matter heard on an expedited basis, by providing service to the expedited service list, as well as providing actual notice to all water users on the impacted Creeks and drainage. See Motion to File Late Claim. By taking action within days after learning of the invalidity of the water rights, he has brought this motion "within a reasonable time" and should be granted relief.

Lastly, in order to satisfy any claim for relief under I.R.C.P. 60(b), Moedl must also allege facts, which if established, would constitute a meritorious defense. See *McFarland*, 123

Idaho 931, 854 P.2d 274; *HearstCorp.*, 100 Idaho 10, 592 P.2d 66; *Thomas v. Stevens*, 78 Idaho 266, 300 P.2d 811. Because the meritorious defense standard is applicable to Moedl's assertion that I.R.C.P. 60(b)(4) and (6) apply, Moedl will address the meritorious defense standard below in Section III.C, following discussion of I.R.C.P. 60(b)(6).

**B. Unique and Compelling Circumstances Support Moedl's Request
for Relief, I.R.C.P. 60(b)(6).**

Under Rule 60(b)(6), a court may relieve a party from a final judgment, order, or proceeding for "any...reason justifying relief from the operation of the judgment." I.R.C.P. 60(b)(6). Although the court is vested with broad discretion in determining whether to grant or deny a Rule60(b)(6) motion, its discretion is limited and the motion may be granted only on a showing of "unique and compelling circumstances" justifying relief. *Miller v. Haller*, 129 Idaho 345, 349, 924 P.2d 607, 611 (1996). Whether a Rule60(b) motion is supported by unique and compelling circumstances is a determination that must be made on a case-by-case basis. *Order Denying Motion to File Late Notice of Claim*, SRBA subcase no. 21-13176, p.3 (January 9, 2014). As recently noted by this Court, "appellate courts of this state have infrequently granted relief under Rule60(b)(6)." *Id.* A review of the facts in this case reveal circumstances particular to Moedl that are both unique and compelling. The Lands to which claimed water rights are appurtenant has been in family ownership since it was purchased by Moedl's Grandfather in 1946. See Motion To File Late Claim. Each of the said claims were claimed and received a decree, license or permit. Every year since said decree, license or permit, and to the extent that

water has been available for diversion, water has been delivered to the property for beneficial use. See Motion to File Late Claim.

Since the Court entered its Order Granting State of Idaho's Motion for Order of Interim Administration of Water Rights in Basin 21, which authorized distribution of water rights in accordance with the Basin 21 Director's Reports and the Partial Decrees that supersede the Director's Reports in IDWR Basin 21, priority delivery and administration of Moedl's water rights have occurred. See Motion to File Late Claim. With interim administration in Basin 21, and because the water rights had not been claimed, let alone recommended, Moedl should not have received delivery of these water rights. If Moedl had been notified even six years after interim administration that he was diverting water without having filed claims, he could have easily moved the Court for leave to file late claims in accordance with standard SRBA procedure, without having to set aside the April 25, 2012 Judgment. During the 2012 and 2013 irrigation seasons, which occurred after entry of the Court's April 25, 2012 Judgment disallowing Moedl's unclaimed water rights, Moedl took delivery of water. See Motion to File Late Claim. Had Moedl been told during the 2012 irrigation season that he was illegally diverting water, he could have filed an I.R.C.P. 60(b)(1) to set aside the April 25, 2012 Judgment on the basis of mistake and pursued these late claims. See Order Granting Motion to File Late Notice of Claim, SRBA subcase no.37-7293 (October 16, 2013) (allowing claimant—who was notified by the watermaster during the 2013 irrigation season that she was diverting water illegally because her prior license had not been claimed during the SRBA—to set aside the Court's 2013 order closing

Basin 37 only as it related to unclaimed water right no. 37-7293).

Based on the above, Moedl's present unique and compelling circumstances that warrant relief from operation of the April 25, 2012 Judgment for the limited scope as to its effect on the claimed water rights. See *Order Setting Aside Disallowal of Unclaimed Water Rights; Order Granting Motions to File Late Notice of Claim; Order for Expedited Late Claim Director's Report and Setting Forth Procedures and Deadlines for Expedited Process SRBA* subcase nos. 65-2324 *et al.* (May 21, 2014); *Order Setting Aside Disallowal of Unclaimed Water Rights; Order Granting Motions to File Late Notice of Claim; Order for Expedited Late Claim Director's Report and Setting Forth Procedures and Deadlines for Expedited Process, SRBA* subcase nos. 74-361 *et al.* (May 21, 2014).

C. Meritorious Defense

Moedl meets the meritorious defense standard associated with I.R.C.P. 60(b) because the life tenant for the premises did not file the claims even though he was instructed to do so and even though he had been paid monies by Moedl to do so, Furthermore, the water use has historically been administered, and granting this Motion to Set Aside will not result in prejudice to water users on any of the impacted Creeks or reservoir, which are tributaries to the North Fork of the Snake River. As set forth in the Motion to File Late Claims, Moedl holds valid decreed, licensed and permitted water rights from the relevant creeks with priority dates set forth in the late claims filed herein. Each were claimed and decreed in the Rexburg Decree or have been otherwise licensed or permitted. Since at least the said decree, licenses or permits, Moedl and his

predecessors-in-interest, when water has been available, have diverted the water rights. See Motion to File Late Claim. Even though Moedl's unclaimed water rights were disallowed by the April 25, 2012 Judgment, they were still delivered water during the 2012 and 2013 irrigation seasons. See Motion to File Late Claim. Other than adding stock water as a purpose of use to the claimed water rights, the late claims filed by Moedl contemporaneously in these subcases claim water as the rights were originally decreed, licensed or permitted, with the sole exception being that certain portions of the originally decreed rights have already been claimed and partially decreed in the SRBA. Therefore, Moedl has not made any competing claim. Furthermore, because Moedl's claims are for only those originally decreed, licensed or permitted rights NOT claimed and partially decreed in the SRBA, there will be no prejudice to other water users who are accustomed to Moedl receiving water, and have been administered as such without objection or protest. Finally, little investigation will be required of IDWR because not only are the claimed rights as they were originally decreed, licensed or permitted and delivered since that time, IDWR personnel in the Idaho Falls office have spent the time investigating these rights and have actually helped Moedl prepare the claims themselves. In order to ensure no prejudice or surprise, Moedl has given all water right holders on the impacted creeks actual notice of these proceedings. See Motion to File Late Claims.

While there will be no prejudice to other water users, the prejudice to Moedl and the 5 Limited Liability Companies to which title has been transferred by Moedl will be profound and devastating to their ranches. Moedl will be denied water that his family has historically irrigated

with since 1946, and will be left with no ability to irrigate the Lands, greatly reducing the Land's value and making them unable to operate or lease the Lands. By setting aside the April 25, 2012 Judgment only as to its effect on water right nos. 21-97D, 21-96C, 21-94C, 21-2062 and 21-2038, Moedl will be provided with the just result that other water right holders and his neighbors have received from the SRBA: namely, decrees for valid water rights that are beneficially used. Granting Moedl the ability to claim these water rights is in keeping with State Policy to provide claimants a full and fair opportunity to receive notice, be heard, use and appropriate water for beneficial purposes, and provides a fair and equitable result to all of the water users on the relevant creeks by maintaining the status quo.

IV. EQUITABLE RELIEF

If neither I.R.C.P. 60(b)(4) or (6) provide relief, Moedl prays upon this Court, sitting in equity, to relieve him from the April 25, 2012 Judgment as to the disallowance of the claimed water rights. Idaho courts are allowed to provide equitable relief if the conduct has been "inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy at issue." *Sword v. Sweet*, 140 Idaho 242, 251, 92 P.3d 492, 501 (2004). "[H]e who comes in to equity must come with clean hands." *Gilbert v. Nampa School Dist. No. 131*, 104 Idaho 137, 145, 657 P.2d 1, 9 (1983). As stated above, Moedl was unaware that the claimed water rights were in jeopardy.

Had Moedl known that claims had not been filed as he had understood were done by the life tenant, or had any idea that the claimed water rights were not secure, he would have fixed the

problem. Moedl's water rights will be forfeited if the April 25, 2012 Judgment is not set aside.

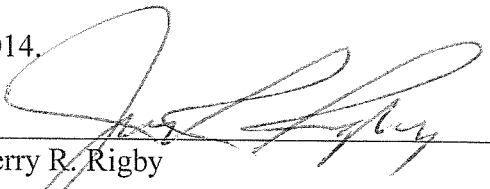
"The courts abhor forfeiture and where no public policy is favored thereby, equity leans against declaring a forfeiture." *Special Master Report*, SRBA subcase no. 45-167A, p.8 (March 20, 2007) (emphasis added) citing *Hurst v. Idaho Iowa Lateral & Res. Co.*, 42 Idaho 436, 246 P.23 (1926) and *Idaho Farms Co. v. North Side Canal Co.*, 24 F. Supp. 189 (D. Idaho 1938). Given that Idaho courts do not favor forfeiture of water rights and that no public interest is served by forfeiture of Moedl's water rights, equity compels against declaring a forfeiture in these unique circumstances. In light of the facts, Moedl comes with clean hands and prays upon this Court for sympathy.

V. CONCLUSION

Counsel for Moedl is acutely aware of the Court's desire to sign the Final Unified Decree and complete the SRBA. Therefore, Moedl has gone to extraordinary length and expense to provide notice to all waterusers on the impacted creeks, to provide notice to those on the SRBA expedited service list, have even worked directly with IDWR to investigate and put their late claims together. The late claims filed herewith mirror the decrees, licenses and permits with the exception that no conflicts with those previously claimed and partially decreed have been made. Moedl's goal is simply to have the previously decreed, licensed and permitted water rights that have been continuously used and accounted for validated by the SRBA. By these unique and compelling circumstances, Moedl meets the requirements of I.R.C.P. 60(b). Moedl has presented a meritorious defense and by bringing this action when he did, has pursued his cause of action

within a reasonable amount of time. Moedl also comes in equity, with clean hands, seeking just relief from for forfeiture of his water rights. As such, Moedl respectfully requests the Court set aside its April 25, 2012 Judgment only as to water right, 21-97D, 21-96C, 21-94C, 21-2062 and 21-2038. Furthermore, Moedl respectfully requests he be allowed to pursue the late claims and obtain valid SRBA partial decrees that reflect their historic water use as contained in Moedl's present late claims. Because Moedl is pursuing the water use in Basin 21 as they were decreed, licensed or permitted, and have been administered every year since then, no prejudice will result to any water users.

Respectfully submitted this 14th day of July, 2014.


Jerry R. Rigby

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of July, 2014, I caused the foregoing document to be filed with the Court and true and correct copies served on the following parties by the methods indicated:

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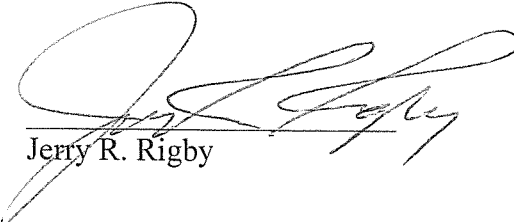
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