

JERRY RIGBY, (ISB No. 2470)
RIGBY, ANDRUS & RIGBY LAW, PLLC
25 North Second East
P.O. Box 250
Rexburg, Idaho 83440
Telephone: (208) 356-3633
Facsimile: (208) 356-0768
jrigby@rex-law.com

Attorney for North Fork Reservoir Company

**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 No. 39576

SUBCASE NOS. 21-2154, 21-2161, and 21-12946

**MEMORANDUM IN SUPPORT
OF MOTION TO SET ASIDE
PARTIAL DECREES**

COMES NOW, North Fork Reservoir Company, by and through its attorney of record, Jerry R. Rigby of Rigby, Andrus & Rigby Law, PLLC, and submits this Memorandum in support of the Motion to Set Aside Partial Decrees for the above-captioned water rights pursuant to Idaho Rule of Civil Procedure 60(b)(6) ("Rule 60(b)(6)").

I.

STATEMENT OF FACTS

On March 5, 2013, this Court issued partial decrees for the above-captioned subcases. The partial decrees are for storage water rights for Henrys Lake, which is operated by North Fork Reservoir Company. Subsequently, an issue arose in the Snake River Basin Adjudication regarding the "fill" and/or "refill" of the storage water rights for on-stream reservoirs in Basins

01, 21, and 25. North Fork Reservoir Company, through its attorney of record, has participated in this issue and filed a motion to file late notice of claim in subcase no. 21-13193, which this Court granted on November 19, 2014.

Certain parties have entered into a stipulation resolving the “fill” and/or “refill” issue for the storage water rights for on-stream reservoirs in Basins 01, 21, and 25. A copy of the stipulation is attached as Attachment A to the *Affidavit of Jerry Rigby In Support of Motion to Set Aside Partial Decree*.

As described in paragraph 7 of the stipulation, signatories to the stipulation agree that, as a term of settlement, the partial decrees in the above-captioned subcases should be set aside pursuant to Rule 60(b)(6) for the sole purpose of amending the combined use condition on the face of the partial decrees to include water right number 21-13193.

II.

STANDARD OF REVIEW

Rule 60(b)(6) authorizes modification of a judgment for “any other reason justifying relief from the operation of the judgment.” I.R.C.P. 60(b)(6). A trial court's dismissal of a Rule 60(b)(6) motion for relief is reviewed for abuse of discretion. *Berg v. Kendall*, 147 Idaho 571, 578, 212 P.3d 1001, 1008 (2009) “[A]lthough the court is vested with broad discretion in determining whether to grant or deny a Rule 60(b)[(6)] motion, its discretion is limited and 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) (quoting *Matter of Estate of Bagley*, 117 Idaho 1091, 1093, 793 P.2d 1263, 1265 (Ct. App. 1990)).

III.

ARGUMENT

Unique and compelling circumstances justify granting the Motion to Set Aside Partial Decree for the above-captioned water rights. Water right number 21-13193 was included as a pending subcase on the attachment to this Court's August 26, 2014, *Order Regarding Subcases Pending Upon Entry of Final Unified Decree*. As described above, signatories to the stipulation resolving the "fill" and/or "refill" issue for the storage water rights for on-stream reservoirs in Basins 01, 21, and 25 agree that, as a term of settlement, the partial decrees for the above-captioned subcases should be set aside in order to amend the combined use condition on the face of those partial decrees to include water right number 21-13193. For consistency and to avoid confusion in administration, it is necessary for the combined use condition on the face of the partial decrees for the above-captioned water rights to include water right number 21-13193

IV.

CONCLUSION

For the foregoing reasons, the North Fork Reservoir Company requests that this Court grant its Motion to Set Aside Partial Decrees.

DATED this 30th day of January 2014⁵.

RIGBY, ANDRUS & RIGBY LAW, PLLC


Jerry Rigby
Attorney for North Fork Reservoir Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of Feb. 2015, I caused a true and correct copy of the foregoing document to be filed with the Court and served on the following parties by the indicated methods:

Original to:

SRBA District Court
253 3rd Ave. North
P.O. Box 2707
Twin Falls, ID 83303-2707
Facsimile: (208) 736-2121

☒ (x) U.S. Mail, Postage Prepaid
☐ () Hand Delivery
☐ () Facsimile
☐ () E-mail

United States Department of Justice
Environment and Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

☒ (x) U.S. Mail, Postage Prepaid
☐ () Hand Delivery
☐ () Facsimile
☐ () E-mail

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

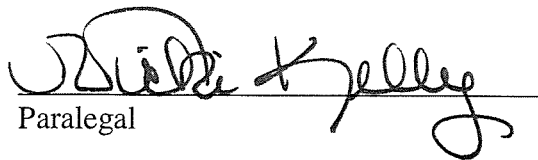
☒ (x) U.S. Mail, Postage Prepaid
☐ () Hand Delivery
☐ () Facsimile
☐ () E-mail

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

☐ () U.S. Mail, Postage Prepaid
☒ (x) Hand Delivery
☐ () Facsimile
☐ () E-mail

Jerry Rigby
Rigby Andrus & Rigby Law, PLLC
25 North Second East
P.O. Box 250
Rexburg, ID 83440

☒ (x) U.S. Mail, Postage Prepaid
☐ () Hand Delivery
☐ () Facsimile
☐ () E-mail


Paralegal

1/15/2015

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 21-12946
 NAME AND ADDRESS: NORTH FORK RESERVOIR CO
 C/O RAY W RIGBY SEC
 PO BOX 250
 REXBURG ID 83440

RECEIVED

FEB 02 2015

DEPARTMENT OF
WATER RESOURCES

SOURCE: HENRYS LAKE

TRIBUTARY: HENRYS FORK

QUANTITY: 79,350.00 AFY

Total reservoir capacity is 90,000 acre feet when filled to elevation 6476.9 and measured at the upstream face of the dam.

The rights listed below are limited to a total combined annual diversion volume of 79,350 af. Combined Right Nos.: 21-110, 21-111, 21-112, 21-2154, and 21-12946.

The rights listed below are limited to a total combined annual diversion volume of 94,000 AF. Combined Right Nos.: 21-2154, 21-2161, 21-12946 and 21-13193.

PRIORITY DATE: 05/15/1917

POINT OF

DIVERSION: T15N R43E S26 SWNW Lot 6 Within FREMONT County

PURPOSE AND

PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION STORAGE	01/01 12/31	79,350.00 AFY
IRRIGATION FROM STORAGE	04/01 10/31	79,350.00 AFY

PLACE OF USE:

41098 ACRES TOTAL

Place of use for irrigation from storage is within the area served by North Fork Reservoir Company which includes Egin Bench Canals Inc., Salem Union Canal Co., and Consolidated Farmers Canal Co., located within Madison and Fremont Counties, Idaho.

Place of use for storage is Henrys Lake, provided, however, that water under this right may be temporarily held in the unoccupied space of any of the reservoirs upstream of Milner Dam, located at township 10S, range 21E, sections 28 and 29, when determined by the Water District 01 Watermaster (as supervised by the Director of the Department of Water Resources), the Water District 01 advisory committee, and the United States Bureau of Reclamation that such temporary storage will maximize the storage of water upstream of Milner Dam.

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

The rights listed below are limited to the irrigation of a combined total of 41,098 acres in a single irrigation season. Combined Right Nos.: 21-110, 21-111, 21-112, 21-2154, 21-2161, 21-12946, 21-12897, 21-12908, 21-12910, 21-12912, 21-12921, 21-12922, 21-12928, 21-12934, 21-12961, 21-12962, 21-12909, 21-12923, 21-12924, 21-13193, 22-428, 22-13342, 22-13343, 22-13344, 22-13347, 22-13349.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for

SETTLEMENT DOCUMENT SUBJECT TO I.R.E. 408

the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Point of diversion is Henrys Lake Dam.

This right is a split from former right 21-160.

1/15/2015

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RECEIVED

FEB 02 2015

DEPARTMENT OF
WATER RESOURCES

RIGHT NUMBER: 21-2154

NAME AND ADDRESS: NORTH FORK RESERVOIR CO
C/O RAY W RIGBY SEC
PO BOX 250
REXBURG ID 83440

SOURCE: TYGEE CREEK

TRIBUTARY: HENRYS FORK

Point of injection into and point of redirection from Henrys Fork.

QUANTITY: 30.000 CFS
4,000.00 AFY

Total reservoir capacity is 90,000 acre feet when filled to elevation 6476.9 and measured at the upstream face of the dam.

The rights listed below are limited to a total combined annual diversion volume of 79,350 AF. Combined Right Nos.: 21-110, 21-111, 21-112, 21-2154, and 21-12946.

The rights listed below are limited to a total combined annual diversion volume of 94,000 AF. Combined Right Nos.: 21-2154, 21-2161, 21-12946 and 21-13193.

PRIORITY DATE: 05/15/1917

POINT OF

DIVERSION: T15N R43E S24 SENW Within FREMONT County
T15N R43E S26 NWNW Lot 4 Injection Within FREMONT County
T15N R43E S26 SWNW Lot 6 Rediversion Within FREMONT CountyPURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
DIVERSION TO STORAGE	01/01 12/31	30.000 CFS
IRRIGATION STORAGE	01/01 12/31	4,000.00 AFY
IRRIGATION FROM STORAGE	04/01 10/31	4,000.00 AFY

PLACE OF USE:

41098 ACRES TOTAL

Place of use for irrigation from storage is within the area served by North Fork Reservoir Company which includes Egin Bench Canals Inc., Salem Union Canal Co., and Consolidated Farmers Canal Co., located within Madison and Fremont Counties, Idaho.

Place of use for storage is Henrys Lake, provided, however, that water under this right may be temporarily held in the unoccupied space of any of the reservoirs upstream of Milner Dam, located at township 10S, range 21E, sections 28 and 29, when determined by the Water District 01 Watermaster (as supervised by the Director of the Department of Water Resources), the Water District 01 advisory committee, and the United States Bureau of Reclamation that such temporary storage will maximize the storage of water upstream of Milner Dam.

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

The rights listed below are limited to the irrigation of a combined total of

SETTLEMENT DOCUMENT SUBJECT TO I.R.E. 408

41,098 acres in a single irrigation season. Combined Right Nos.: 21-110, 21-111, 21-112, 21-2154, 21-2161, 21-12946, 21-12897, 21-12908, 21-12910, 21-12912, 21-12921, 21-12922, 21-12928, 21-12934, 21-12961, 21-12962, 21-12909, 21-12923, 21-12924, 21-13193, 22-428, 22-13342, 22-13343, 22-13344, 22-13347, 22-13349.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

Source is also known as Dry Creek.

This right is a split from former right 21-160.

Point of redirection is Henrys Lake Dam.

1/15/2015

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RECEIVED

FEB 02 2015

DEPARTMENT OF
WATER RESOURCES

RIGHT NUMBER: 21-2161

NAME AND ADDRESS: NORTH FORK RESERVOIR CO
C/O RAY W RIGBY SEC
PO BOX 250
REXBURG ID 83440

SOURCE: HENRYS LAKE

TRIBUTARY: HENRYS FORK

QUANTITY: 10,650.00 AFY

Total reservoir capacity is 90,000 acre feet when filled to elevation 6476.9 and measured at the upstream face of the dam.

The rights listed below are limited to a total combined annual diversion volume of 94,000 AF. Combined Right Nos.: 21-2154, 21-2161, 21-12946 and 21-13193.

PRIORITY DATE: 07/29/1965

POINT OF
DIVERSION: T15N R43E S26 SWNW Lot 6 Within FREMONT CountyPURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION STORAGE	01/01 12/31	10,650.00 AFY
IRRIGATION FROM STORAGE	04/01 10/31	10,650.00 AFY

PLACE OF USE:

41098 ACRES TOTAL

Place of use for irrigation from storage is within the area served by North Fork Reservoir Company which includes Egin Bench Canals Inc., Salem Union Canal Co., and Consolidated Farmers Canal Co., located within Madison and Fremont Counties, Idaho.

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

Place of use for storage is Henrys Lake, provided, however, that water under this right may be temporarily held in the unoccupied space of any of the reservoirs upstream of Milner Dam, located at township 10S, range 21E, sections 28 and 29, when determined by the Water District 01 Watermaster (as supervised by the Director of the Department of Water Resources), the Water District 01 advisory committee, and the United States Bureau of Reclamation that such temporary storage will maximize the storage of water upstream of Milner Dam.

The rights listed below are limited to the irrigation of a combined total of 41,098 acres in a single irrigation season. Combined Right Nos.: 21-110, 21-111, 21-112, 21-2154, 21-2161, 21-12946, 21-12897, 21-12908, 21-12910, 21-12912, 21-12921, 21-12922, 21-12928, 21-12934, 21-12961, 21-12962, 21-12909, 21-12923, 21-12924, 21-13193, 22-428, 22-13342, 22-13343, 22-13344, 22-13347, 22-13349.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no

SETTLEMENT DOCUMENT SUBJECT TO I.R.E. 408

later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Point of diversion is Henrys Lake Dam.