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DEPARTMENT OF
WATER RESOURCES

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**DISTRICT COURT OF THE STATE OF IDAHO
FIFTH JUDICIAL DISTRICT
TWIN FALLS COUNTY**

In Re SRBA
Case No. 39576

Subcase No. 36-7694
Subcase No. 36-2551

**IGWA'S NOTICE OF
SUPPLEMENTAL AUTHORITY**

As further supplemental authority in support of *IGWA's Response to Rangen's Motion To Set Aside Partial Decrees*, Idaho Ground Water Appropriators, Inc. (IGWA) respectfully submits the attached *Order Denying Motion for Relief from Judgment and Motion to File a Notice of Claim* issued in SRBA subcase no. 47-17615 on Jan 31, 2014.

In that case, the claimant sought relief from this Court's *Order Establishing Deadline for Late Claims Filings* in Basin 47 because she was mistaken as to "her belief that she only needed to file a claim for her 'spring rights' and not for her McMullen Creek right."¹ This Court denied the

¹ *Order Denying Motion for Relief from Judgment and Motion to File a Notice of Claim*, SRBA Subcase No. 47-17615 (Jan 31, 2014) at 3.

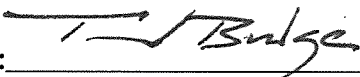
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Motion, explaining that IRCP 60(b)(6) cannot be used to circumvent the 6-month limitation that applies to IRCP 60(b)(1), (2), and (3):

While [] mistake, inadvertence and neglect on the part of Kinsey could arguably be grounds for relief under 60(b)(1), Kinsey did not timely make a Rule 60(b)(1) motion. She cannot now disguise the same argument as a Rule 60(b)(6) motion under Idaho law. *See e.g., Leasefirst v. Burns*, 131 Idaho 158, 163, 953 P.2d 598, 603 (1998) (holding “a ground for relief asserted, falling fairly under 60(b)(1), cannot be granted under 60(b)(6)”); *Pullin v. City of Kimberly*, 100 Idaho 34, 37, 592 P.2d 849, 852 (1979) (holding, “it is well settled that 60(b)(1) and 60 (b)(6) are mutually exclusive, such that a ground for relief asserted, falling fairly under 60(b)(1), cannot be granted under 60 (b)(6)”).²

RESPECTFULLY SUBMITTED this 17th day of March, 2015.

RACINE OLSON NYE BUDGE & BAILEY, CHARTERED

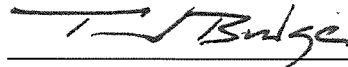
By: 

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² *Id.*

CERTIFICATE OF SERVICE

I certify that on this 17th day of March, 2015, the foregoing document was served on the following persons in the manner indicated.

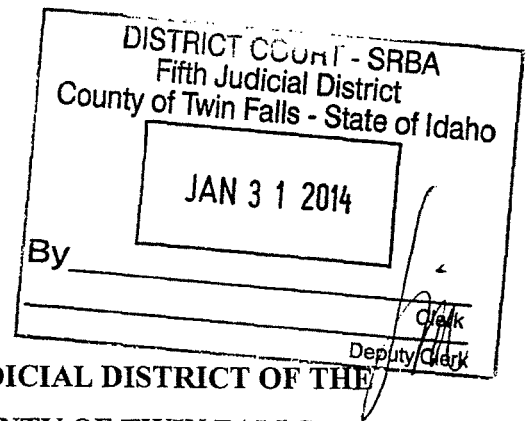


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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA) Subcase No. 47-17615
Case No. 39576)
ORDER DENYING MOTION FOR
RELIEF FROM JUDGMENT AND
MOTION TO FILE LATE NOTICE OF
CLAIM
_____)

I.

PROCEDURAL BACKGROUND

1. On October 12, 2012, this Court entered its *Order Establishing Deadline for Late Claim Filings* in basin 47 (“*Deadline Order*”).¹ It directed that except for *de minimis* domestic and stockwater uses and late claims required to resolve litigation pending in the SRBA, the last date to file a *Motion to File Late Claim* in basin 47 “shall be January 31, 2013.”

2. The Court subsequently entered an *Order Closing Claims Taking* in basin 47, closing the basin to the filing of late claims in accordance with the *Deadline Order* (“*Closure Order*”).²

3. On October 28, 2013, Wilmoth Kinsey (“Kinsey”) filed a *Motion to File Late Notice of Claim* in the above-captioned matter. The claim asserts the right to divert 7.5 cfs from McMullen Creek, tributary to Rock Creek, for the irrigation of 234 acres. The claim is based on beneficial use, and seeks a priority date of March 15, 1917.

¹ *Order Establishing Deadline for Late Claim Filings in Basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47, and 63*, SRBA main case no. 39576, SRBA subcase no. 00-92099 (Oct. 12, 2012).

² *Order Closing Claims Taking Basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47, and 63, and Disallowal of Unclaimed Water Rights*, SRBA main case no. 39576, SRBA subcase no. 00-92099 (Feb. 13, 2013).

4. On that same date, Kinsey filed a *Motion for Relief from Judgment*, asking this Court to set aside its *Closure Order* to allow for the filing of the late notice of claim.

5. A hearing on the *Motions* was held on January 21, 2014. The parties did not request additional briefing, nor does the Court require any. The matter is therefore deemed fully submitted the following business day, or January 22, 2014.

II. ANALYSIS

Recognizing that the taking of claims in basin 47 must at some point come to an end, this Court closed the basin to the filing of late claims as of January 31, 2013. *See infra*, *Deadline Order* and *Closure Order*. The only exceptions are: (1) late claims for deferrable *de minimis* domestic and stockwater uses; and (2) late claims required to resolve litigation pending in the SRBA at the time of basin closure. *Id.* Kinsey's *Motion to File Late Notice of Claim* was filed on October 28, 2013, and does not fall into one of the two recognized exceptions to the *Deadline* and *Closure Orders*.³

The record reflects that the Kinsey had more than ample opportunity to file the instant late claim in the SRBA. The *Director's Report* for irrigation claims timely filed in basin 47 was issued on February 2, 2007. Therefore, Kinsey had from February 2, 2007 until January 31, 2013 to file a late claim for the beneficial use at issue here had she so desired. Kinsey also had ample notice of the requirement to file her claims in the SRBA. The *Deadline Order* found that the claimants in basin 47 "received extensive first-round and second-round *Notice of Filing Requirements* in the SRBA." *Deadline Order*, p.3; I.C. § 42-1408. In addition, the *Deadline Order* itself was issued and served by standard docket procedure as an additional courtesy to the parties, and gave notice that January 31, 2013 would be the last date on which to file late claims in basin 47. Therefore, the Court finds that had Kinsey wished to file the instant beneficial use

³ The *Deadline* and *Closure Orders* provided a claims taking deadline of January 31, 2013 "except for *de minimis* domestic and stockwater uses and late claims required to resolve pending litigation on the date of this *Order* in the SRBA." *Deadline Order*, p.4; *Closure Order*, p.3. The term "pending litigation" was further defined to mean "an active, related subcase(s) pending at the time of the basin closure deadline wherein an additional late claim(s) is required to resolve the related water right(s)." *Id.*

claim in the SRBA she certainly had the notice and opportunity to do so before this Court closed the basin to late claims.

Kinsey acknowledges the plain language of the *Deadline* and *Closure Orders*, but asserts in her *Motion for Relief from Judgment* that she should be relieved from those *Orders*. Given that well over six months have passed since the *Deadline* and *Closure Orders* were entered, Kinsey relies upon Idaho Rule of Civil Procedure 60(b)(6).

A. Rule 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.” Although 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 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). The Idaho Supreme Court has noted that “[t]he appellate courts of this state have infrequently granted relief under Rule 60(b)(6).” *Berg v. Kendall*, 147 Idaho 571, 578, 212 P.3d 1001, 1008 (2009).

In this case, Kinsey argues that it was only recently discovered that a SRBA filing was never made for this water right. And, that the reason no claim was filed was because she was mistaken as to the scope of the SRBA and the need for filings, asserting her belief that she only needed to file claims for her “spring rights” and not for her McMullen Creek right. While such mistake, inadvertence and neglect on the part of Kinsey could arguably be grounds for relief under 60(b)(1), Kinsey did not timely make a Rule 60(b)(1) motion. She cannot now disguise the same argument as a Rule 60(b)(6) motion under Idaho law. See e.g., *Leasefirst v. Burns*, 131 Idaho 158, 163, 953 P.2d 598, 603 (1998) (holding “a ground for relief asserted, falling fairly under 60(b)(1), cannot be granted under 60(b)(6)”); *Pullin v. City of Kimberly*, 100 Idaho 34, 37, 592 P.2d 849, 852 (1979) (holding, “it is well settled that 60(b)(1) and 60(b)(6) are mutually exclusive, such that a ground for relief asserted, falling fairly under 60(b)(1), cannot be granted under 60(b)(6)”).

Therefore, the Court in an exercise of its discretion finds that Kinsey has failed to set forth grounds justifying relief from this Court’s *Deadline* and *Closure Orders* under Rule

60(b)(6). It follows that those *Orders* preclude her from filing a late claim for the above-captioned water right. Given the plain language of the *Deadline* and *Closure Orders*, and the fact that the record shows that Kinsey had both ample notice of the requirements to file her claims in the SRBA and ample opportunity to file a late claim in the SRBA, this Court in an exercise of its discretion denies the *Motion to File Late Notice of Claim*.

B. Even if this Court were to set aside the *Closure Order* the late claim would not meet the criteria of Rule 55(c).

Pursuant to *SRBA Administrative Order 1, Rules of Procedure*, § 4d(2)(d), motions to file a late notice of claim are reviewed under the criteria set forth in Idaho Rule of Civil Procedure 55(c). Rule 55(c) provides that the entry of a default can be set aside for good cause shown. The primary considerations in determining good cause are: (1) whether the default was willful; (2) whether a meritorious defense has been presented; and (3) whether setting aside the default would prejudice the opponent. *McFarland v. Curtis*, 123 Idaho 931, 936, 854 P.2d 274, 279 (Ct. App. 1993). For the reasons set forth below, the Court finds that Kinsey has failed to establish a lack of prejudice to other parties resulting from the *Motion to File Late Notice of Claim*.

The Court has previously noted that when undertaking a Rule 55(c) good cause analysis, “prejudice to other parties is the factor on which the court places significant emphasis.” *Order Denying Motion to File Late Notice of Claim*, SRBA subcase no. 27-12216, p.6 (March 29, 2011). In this case, basin 47 has been closed to the type of late claim Kinsey seeks to file via Court order. Additionally, basin 47 is a substantially completed basin, meaning that almost all claims that were timely filed in the basin have been fully adjudicated. Allowing the instant late claim to come in at this point in time, in contravention of the *Deadline* and *Closure Orders*, would seriously disrupt the finality of process intended by those *Orders* to the prejudice of other parties.

III.

CONCLUSION

The process for adjudicating a late claim is a lengthy process even if the claim is ultimately uncontested. A motion to file a late claim must comply with docket sheet notice procedure. If granted, the Department must investigate the claim and file a director’s report and

provide a period of time for objections and responses. If the Department's recommendation is contested the process can take much longer.

As part of the SRBA winding down process, the Court acknowledged that it would not be able to accept late claims into perpetuity, otherwise a final unified decree would never be entered and the SRBA would never reach completion. Taking into account the inherent length of time required to process a late claim, the Court made the determination to close basins to the filing of further late claims. The process contemplated that the Department would at some point need to file a final late claims director's report for all remaining late claims. As part of the process, the Department notified the Court when it would be tentatively filing remaining late claims director's reports, with the final director's report being filed sometime in December 2013. The basin closure orders were made pursuant to docket sheet notice and set deadlines for filing late claims. The deadlines provided parties to the adjudication sufficient time to file claims and have their claims investigated and included in one of the remaining director's reports. The final late claims director's report was filed December 31, 2013.

In the past, the Court placed primary emphasis on prejudice to other parties in determining whether to grant leave to file a late claim or set aside a partial decree. Absent a finding of prejudice such motions were typically granted. However, in order to give proper effect to the purpose of the closure orders and to ensure uniformity and fairness in their application, the Court must, for the reasons set forth above, deny the *to File Late Notice of Claim*.

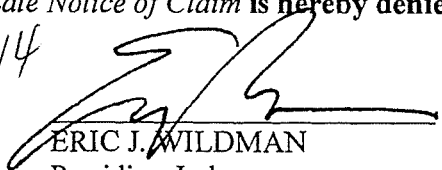
IV.

ORDER

THEREFORE, BASED ON THE FOREGOING, THE FOLLOWING ARE ORDERED:

1. Kinsey's *Motion for Relief from Judgment* is **hereby denied**.
2. Kinsey's *Motion to File Late Notice of Claim* is **hereby denied**.

DATED: January 31, 2014


ERIC J. WILDMAN

Presiding Judge
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED: January 31, 2014


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication