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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 No. 36-07694

Subcase No. 36-02551

RANGEN'S REPLY BRIEF IN  
SUPPORT OF MOTION TO SET  
ASIDE PARTIAL DECREES

COMES NOW Rangen, Inc. ("Rangen"), by and through its attorneys, Fritz X. Haemmerle, of Haemmerle Law, P.L.L.C., Justin May of May, Browning and May, P.L.L.C., and Robyn M. Brody of Brody Law Office, PLLC, and hereby files this Reply Brief in Support of its Motion to Set Aside Partial Decrees in Subcase Numbers 36-07694 and 36-02551.

## **I. STANDARD OF REVIEW**

In reviewing this Motion, the standard of review setting aside a judgment as cited in Rangen's Opening Brief is worth reviewing:

Rangen has filed its Motion to Set Aside Partial Decrees under Rule 60(b)(5) and (6). Under Rule 60(b)(5), the moving party must show: (1) the judgment is prospective in nature; and (2) it is no longer equitable to enforce the judgment as written. *Rudd v. Rudd*, 105 Idaho 112, 118, 666 P.2d 639, 645 (1983).

To grant a motion for relief under Rule 60(b)(6), there must be a showing of "unique and compelling circumstances." *Miller v. Haller*, 129 Idaho 345, 349, 924 P.2d 607, 611 (1996). In addition, the moving party must allege detailed facts, which if established, would constitute a meritorious position. *See, e.g., McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (1993). The meritorious position requirement is founded on the notion that "it would be an idle exercise for a court to set aside a default judgment if there is in fact no justiciable controversy." *McFarland*, 123 Idaho at 934, 854 P.2d at 277 (citations omitted).

Courts have characterized Rule 60(b)(6) as "a grand reservoir of equitable power to do justice in a particular case." *See e.g., Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 579 (10<sup>th</sup> Cir. 1996). The rule "seek[s] to strike a delicate balance between countervailing impulses: the desire to preserve the finality of judgments and the 'incessant command of the court's conscience that justice be done in light of all the facts.'" *Cessna Fin. Corp. v. Bielenberg Masonry Contracting, Inc.*, 715 F.2d 1442, 1444 (10th Cir. 1983) (quoting *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 401 (5th Cir. 1981); *see also Gordon v. Gordon*, 118 Idaho 804, 806, 800 P.2d 1018, 1020 (1990) (stating "motions under Rule 60(b) involve a nice balance between the interest in finality and the desire to achieve justice"). The decision to grant or deny a Rule 60(b) motion rests in the sound discretion of the trial court. *Pullin v. City of Kimberly*, 100 Idaho 34, 36, 592 P.3d 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).

*Memorandum in Support of Rangen, Inc.'s Motion to Set Aside Partial Decrees*, p. 11-12.

## II. ARGUMENT

- A. **The State takes a hypocritical view of Rangen's Motion To Set Aside given its position with respect to its very own motion to set aside its partial decrees in SRBA subcase nos. 21-00014, 21-00015, 21-02153, 21-02159, 21-04006, 21-04007, 21-04008 and 21-07151 ("Sand Creek Cases").**

In 2007, the SRBA Court entered Partial Decrees for the Sand Creek Cases, which were claims made by the Idaho Department of Fish and Game (IDFG). In 2013, the State moved to set aside the Sand Creek Subcases pursuant to I.R.C.P. 60(b)(6), which allows judgments to be set aside for "any reason justifying relief from the operation of the judgment." The State argued that there were "unique and compelling circumstances" requiring relief.

The "unique and compelling" circumstances argued by the State in setting aside the Sand Creek Subcases are nearly identical to Rangen's case. In the Sand Creek Cases, the State argued that the Subcases should be set aside because the water rights were decreed differently in the SRBA than they were in a prior decree. The State argued:

Unique and compelling circumstances warrant setting aside [the Sand Creek Partial Decrees] because there was no basis for the rights to be decreed inconsistently with the prior *Arcadia Reservoir Irrigation and Canal Co. v. Rosenborough* ("Arcadia Reservoir Decree"). . . . When water rights 21-00014 and 21-00015 were recommended and partially decreed, however, the quantity element of the rights were changed [from the Arcadia Decree]. It is settled law in Idaho that a prior decree is conclusive "as to those persons party to the proceedings." I.C. § 42-1404(6). . . . Consequently, the partial decree should be consistent with the former decree or, alternatively, a determination by the Court should be made as to why the two are not consistent.

*Aff. of Justin May, Exh. 21 (Supplemental Memorandum of Authority in Support of Motion to Set Aside Partial Decrees, pps. 5 & 6) (Sand Creek Subcases).*

Of course, it took a long period of time for the State to file its Motion to Set Aside. In fact, it was nearly six (6) years. As to a long time period, the State commented:

“Admittedly, it has taken considerable time for IDFG to seek to set aside the Partial Decrees. Nevertheless, the Court reasonably can and should find that IDFG acted in good faith and exercised due diligence in the prosecution and protection of these water rights and grant the relief requested.” *Id.*, *Supplemental Memorandum* at p.9. Even though it took time, the State believed it was critical for the Sand Creek rights to be decreed in the SRBA just as they were decreed in the Arcadia Reservoir Decree.

Rangen’s position in this case is no different than the State’s in the Sand Creek Subcases. In this case, Rangen’s prior permits and licenses for water rights 36-07694 and 36-02551 undoubtedly included water from the talus slope. A prior license is a real property right, and is no different than a prior decree. In fact, Judge Wood previously held that license is “conclusive evidence as to the extent of a water right.” Judge Wood wrote as follows:

Like a prior decree, any attempt to redefine a license would be “tantamount” to altering a real property right. . . The SRBA cannot serve as a second opportunity for IDWR to reconsider a license which it has full opportunity to condition when the license was issued.

Subcase No. 36-2708 (“Facility Volume Cases”).

Some of the parties in this case have accused Rangen of not being diligent in reviewing the recommendations for the water rights when the water rights were decreed. However, this argument fails to acknowledge that the Department itself read the partial decrees at issue in this case to allow Rangen’s diversion and use of the water from the Talus Slope. Rangen acknowledges as the State did in the Sand Creek cases that recommendations were issued; that there were no objections to the recommendations; that decrees were then entered.

In the Sand Creek cases, the State responded by stating that “[a]s noted by IDWR, the errors in these water rights are significant and will made [sic] administration of the rights

extremely difficult.” *Aff. of Justin May*, Exh. 21 (*Supplemental Memorandum of Authority in Support of Motion to Set Aside Partial Decrees*, pps. 8 & 9) (Sand Creek Subcases). The State’s argument concluded: “[the decrees] contain errors that are contrary to Idaho law, do not reflect the use of water within the Sand Creek Wildlife Management Area, and which will make it impossible to properly administer the water rights in the future.” *Id.*, *Supplemental Memorandum*, p. 10.

Rangen’s present motion should be considered in the same manner as the State’s motion. Rangen has every interest in seeing that its water rights are consistent with their prior licenses just as the State was interested in insuring that the Sand Creek water rights were decreed in the SRBA just as they were decreed in the prior Arcadia Decree.

**B. The Issuance of the Final Unified Decree does not change applicable standards under Rule 60(b).**

The Unified Final Decree in the SRBA is no more, or less, a “final judgment” than the partial decrees that Rangen seeks to set aside. The final judgments that Rangen seeks to set aside are the partial decrees, not the Unified Final Decree, which simply incorporates the partial decrees. Although denoted “partial” decrees, Rangen acknowledges that the partial decrees are judgments, which have been final for several years. Pursuant to Administrative Order 1 (AO1), “[p]artial Decrees are final judgments and cannot be modified by an administrative proceeding except as provided in I.C. § 42-222.” AO1, Section 14.d. Consequently, the standard to be applied in this case is found in Rule 60(b) of the Idaho Rules of Civil Procedure.

**C. Collateral Attack.**

A Motion under I.R.C.P. 60(b) is not a “collateral attack” on a final judgment. Rule 60(b) was designed to provide parties with a remedy from final judgments in appropriate

circumstances while at the same time recognizing the necessity of finality for judgments. The rule itself, and the standards under which it may be invoked, prevent the opening of “Pandora’s Box” with which the State now seems so concerned. The Court has an obligation to look at each case on its own merits to decide if there are sufficient and legal grounds for setting aside a judgment.

**D. The Decrees are prospective judgments – I.R.C.P. 60(b)(5)(6).**

The State argues that the decrees are not “prospective judgment.” The Decrees entered in the SRBA are most decidedly “prospective” judgments. The SRBA was commenced to enable the State to properly administer the water resources of the Snake River Basin. The Commencement Order for the SRBA stated: “Effective management in the public interest of the waters of the Snake River basin requires that a comprehensive determination of the nature, extent and priority of the rights of users of surface water and ground water be determined.” See, I.C. § 42-1406A.

The SRBA was not commenced to simply give water users a certificate of title. Rather, the purpose was to determine the water rights so that the State had a basis to manage those interests going into the future. To the extent that the decrees were issued for future administrative purposes, the decrees are most decidedly prospective in nature.

Once again, the “prospective” nature of a water right decree has already been recognized by this Court in the *Weston-Spillett Order*. In that case, because the decrees did not accurately reflect the “actual and historic use of water,” the Court granted relief, finding that the decrees should no longer have any “prospective application.” The Court stated:

The Westons and the Spilletts also showed meritorious defenses to set aside the Partial Decrees. Simply put, as all the parties agreed, the Partial Decrees do not accurately reflect the actual historical use of water from the South Fork of Rock Creek. The Partial Decrees leave the amounts of water historically

used in two ditches 15 inches short. Under these circumstances, the Westons and the Spilletts have shown “it is no longer equitable that the Partial Decrees should have prospective application.”

*Aff. of Justin May, Exh. 20 Special Master Report and Recommendation on Motions to Set Aside Partial Decrees (“Weston-Spillet Order”), p.7.*

As previously mentioned, the idea of getting decrees “right” for purpose of future administration was also advanced by the State in the Sand Creek Cases. As a basis of its relief, the State argued before the Court that it was important to set aside the decrees so that the water could be effectively administered into the future. The State argued:

The aggregate errors in all eight Partial Decrees will make it extremely difficult for IDFG to fulfill its duty to properly manage the Sand Creek Wildlife Management area for the benefit of the public and they could jeopardize IDFG’s continued use of the water should these water rights need to be administered in the future. . . **the errors in these water rights are significant and will made [sic] administration of the rights extremely difficult.”**

*Aff. of Justin May, Exh. 21 (Supplemental Memorandum of Authority in Support of Motion to Set Aside Partial Decrees, p. 8) (Sand Creek Subcases). (Emphasis added).*

Outside of relief under Rule 60(b)(5), it should be remembered that Rangen is also seeking to set aside under Rule 60(b)(6). Again, Rule 60(b)(6) serves as serves as “a grand reservoir of equitable power to do justice in a particular case.” *See e.g., Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 579 (10<sup>th</sup> Cir. 1996). The rule “seek[s] to strike a delicate balance between countervailing impulses: the desire to preserve the finality of judgments and the ‘incessant command of the court’s conscience that justice be done in light of all the facts.’”

Under the balancing test of Subsection 6, the court must weigh the interest of finality versus the need that justice be done in light of the facts. Here, Rangen has been using the talus slope for 50 years since 1962. Rangen has been using the water both before and after the rights were decreed in 1997 with the full knowledge and blessing of IDWR. Despite the

fact that Rangen has been using the water, and after 50 years, IDWR does an about-face and advises Rangen it is not entitled to use the talus slope water. Had Rangen not filed its water call, IDWR would still be administering Rangen's water as if it was permitted and licensed to use the talus slope.

Again, these particular decrees were entered for the purpose of assisting the State in the management of the water rights. After Rangen's rights were decreed, the State managed the rights consistently with the prior licenses issued for the same rights for nearly twenty (20) years. It would not be equitable for the State to now be allowed to manage the rights any differently than they have since the rights were licensed in 1962 and managed both before and after the rights were decreed in 1997. The court should grant relief from any future prospective application of the decrees because, otherwise, the Court would be sanctioning the State's complete about-face in regards to how the State has managed the rights for the last fifty (50) years.

**E. The Motion was filed within a reasonable time.**

In this case, the State is critical of Rangen filing its Motion only months after it had exhausted some of its remedies in correcting the new interpretation of its decrees. Somehow the State forgets that it took nearly six (6) years for it to seek to set aside the partial decrees in the Sand Creek Cases.

In Rangen's case, Rangen had no idea its rights were any different that the use which had been sanctioned by the State for fifty (50) years. After Rangen learned that its use was something different and it was not entitled to use the talus slope, it proceeded with an appeal of that decision. After the appeal was denied, Rangen filed this Motion is a very reasonable time period.

Otherwise, Rangen stands on its prior briefing on the issue of timeliness of filing.

**F. Granting the Motion would not prejudice other water right holders.**

Rangen has been diverting and using water from the talus slope for over fifty (50) years. No parties would be prejudiced from setting aside the partial decrees in order to allow Rangen to correct its decrees to accurately reflect its historical use of water and the intent of the decrees. The only prejudice would occur to Rangen if this Motion is denied.

**G. The State's Request for Attorney's Fees**

The State's request for attorney's fees is not well taken, particularly given the State's Motion to Set Aside in nearly identical circumstances, and given how the State administered Rangen's water right for the last seventeen years after the rights were decreed in 1997.

The State seeks attorney's fees under Idaho Code Section 42-121. There is no Section 42-121. To the extent that the State seeks fees under Idaho Code Section 12-121, that provision does not address cases in which the State is a party, and Section 12-121 only allows fees if the court is left with an abiding conviction that the action was brought, pursued or defended unreasonably and frivolously, unreasonably and without foundation. *See e.g., Bott v. Idaho State Bldg. Auth.*, 122 Idaho 471, 835 P.2d 1282 (1992). There is no such showing in this case, and the request for fees should be denied.

**III. CONCLUSION**

For all these reasons, Rangen respectfully requests that the Court set aside its partial decrees.

DATED this 16 day of April, 2015.

  
FRITZ X. HAEMMERLE  
Attorney for Rangen, Inc.

## CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 16 day of April, 2015 he caused a true and correct copy of the foregoing document to be served upon the following by the method indicated:

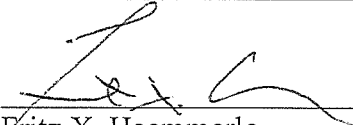
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