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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

MAY - 4 2015

By _____

Clerk

Deputy Clerk

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.: 36-2551 and 36-7694

)

) ORDER DENYING MOTION TO SET ASIDE
) PARTIAL DECREES

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I.

BACKGROUND

Prior to the Snake River Basin Adjudication ("SRBA"), Rangen, Inc. ("Rangen") held water right license numbers 30654 and 36-7694. License 30654 authorized Rangen to divert 50 cfs from "underground springs, a tributary to Billingsley Creek" for fish cultural and domestic use under a priority date of July 31, 1962. License 36-7694 authorized Rangen to divert 26 cfs from "springs tributary to Billingsley Creek" for fish propagation under a priority date of April 12, 1977. The point of diversion under both licenses was identified as the following forty acre tract located in Gooding County, Idaho: T7S R14E S32 SWNW.

Rangen timely filed *Notices of Claim* for water right numbers 36-2551 and 36-7694 in the SRBA. The bases for the claims were prior license numbers 30654 and 36-7694 respectively. In its *Notices*, Rangen claimed the following source: "Curran Tunnel Trib. to: Billingsley Creek." With respect to point of diversion, Rangen claimed the forty acre tract identified above. On November 2, 1992, the Director issued his *Director's Report, Part I, Reporting Area 3 (Basin 36)*, which included recommendations for the claims. A review of the recommendations shows that they diverged from the claims in two material respects. First, the Director recommended the

source of the claims as “Martin-Curren Tunnel,” as opposed to the claimed source of “Curran Tunnel.” Second, the Director recommended the point of diversion as the following ten-acre tract located in Gooding County, Idaho: “T07S R14E S32 SESWNW,” as opposed to the larger forty-acre tract claimed by Rangen. No objections were filed to the Director’s recommendations. In December of 1997, the Court entered *Partial Decrees* for the claims consistent with the unopposed recommendations. Rangen did not appeal from the issuance of either *Partial Decree*.

On January 16, 2015, Rangen filed the instant *Motion to Set Aside Partial Decree* pursuant to Idaho Rules of Civil Procedure 60(b)(5) and 60(b)(6). The *Motion* requests that this Court set aside the *Partial Decrees* and modify them to (1) identify the source as “Martin-Curren Tunnel, Curran Springs, flows from a concrete box, as well as from various seeps, rivulets, and springs originating and located on the talus slope, or other springs or seeps which are the headwaters of Billingsley Creek,” and (2) add the following point of diversion: “Township 7S, Range 14E, SW1/4SW1/4NW1/4 Sec. 32.” Responses in opposition were filed by the State of Idaho, the Idaho Ground Water Appropriators, Inc. (“IGWA”), and the City of Pocatello. A hearing on the *Motion* was held before this Court on April 21, 2015. 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 April 22, 2015.

II. ANALYSIS

More than seventeen years after its *Partial Decrees* were entered, Rangen asks this Court to set aside those *Decrees* on the grounds they do not accurately reflect its historic use. To reopen these subcases at this time would result in great prejudice to other parties that have acted in reliance upon the plain language of those *Decrees*. It would also seriously disrupt the finality of process intended by the Court’s entry of the *Partial Decrees*, as well as its entry of the *Final Unified Decree*. Under Idaho law, it is within the discretion of the district court to grant or deny a motion made under Rule 60(b). *Golub v. Kirk-Scott, Ltd.*, 157 Idaho 966, 970, 342 P.3d 893, 897 (2015). For the reasons set forth herein, the Court in an exercise of its discretion declines to set aside the *Partial Decrees*.

A. The *Motion* is untimely and offends the principle of finality.

Rule 60(b) allows a party to seek relief from a final judgment. Such relief is generally disfavored because it disrupts the finality of judgments. In an effort to balance the important principle of finality of judgments with interests of justice, a threshold requirement of the rule is that a motion for relief be made within a reasonable time after judgment is entered. I.R.C.P. 60(b); *Gordon v. Gordon*, 118 Idaho 804, 806, 800 P.2d 1018, 1020 (1990). The *Motion* at issue here fails this threshold requirement.

Rangen's *Motion* was filed more than seventeen years after the subject *Partial Decrees* were entered and certified as final judgments. Rangen also waited until after this Court's entry of the *SRBA Final Unified Decree* to file. This Court fails to find reason for the substantial delay. Rangen's position is that the late filing is justified because it was not until January 2014 that the Department issued an order informing it that its source under the *Decrees* was limited to water discharging from the Martin-Current Tunnel, and that its point of diversion was limited to the ten-acre tract identified in its *Decrees*.¹ This argument is hollow. In the final order to which Rangen refers, the Director simply reiterates to Rangen that the language of its *Partial Decrees* is unambiguous, and means what it plainly states.² It is not fairly stated that the Director's recitation of the unambiguous terms of the *Decrees* is what first put Rangen on notice of the issues it now raises. To the contrary, if Rangen believed the *Partial Decrees* did not accurately reflect its historic use of water, it was put on notice of the issue long prior, when its claims were litigated and finally adjudicated in the SRBA.

A review of the SRBA process in these subcases establishes that Rangen knew or should have known of the issues it now raises as early as 1992. That is when the Director issued his recommendations for the claims. Certainly Rangen was put on notice when its *Partial Decrees* were issued in 1997. The language of the recommendations and resulting *Partial Decrees* was

¹ The final order to which Rangen refers is the Director's *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* issued in IDWR Docket No. 2011-004 on January 29, 2014.

² In its *Memorandum Decision and Order* entered in Twin Falls County Case No. CV-2014-1338 on October 24, 2014, this Court held that the language of the subject *Partial Decrees* as it pertains to the source and point of diversion elements is plain and unambiguous, thereby affirming the Director. A copy that *Memorandum Decision and Order* is attached as Exhibit 1 to the *Affidavit in Support of Rangen, Inc.'s Motion to Set Aside Partial Decrees* dated January 16, 2015.

not shrouded in mystery. It plainly identified the authorized source as the Martin-Curren Tunnel, and the point of diversion as a specific ten-acre tract. If Rangen believed it historically diverted water from additional sources and/or points of diversion, it had a duty to timely object to the recommendations and present evidence to rebut the same. I.C. § 42-1411(5). Whether it be by mistake, inadvertence or neglect, or by conscious decision, it did not. Rangen also declined to timely appeal from the entry of either *Partial Decree*. Instead, Rangen waited seventeen years to file the instant Rule 60(b) motion. This is unreasonable under the circumstances. The source and point of diversion authorized under the *Decrees* was ascertainable from a simple reading of their plain language in 1997. If Rangen believed that additional sources or points of diversion were necessary, there was no reason to wait until 2015 to raise that issue. The unambiguous language of the *Partial Decrees* has not changed. It is the same now as it was in 1997.

Allowing such a considerable amount of time to elapse offends the principle of finality of judgments. The Idaho Supreme Court has stated that “[i]t is difficult to overstate the importance of finality of judgments.” *Rhoades v. State*, 149 Idaho 130, 138, 233 P.3d 61, 69 (2010). In this matter, Rangen asks this Court to disrupt the finality not only of these two SRBA subcases, but also the finality of a bevy of administrative and judicial proceedings undertaken by the Department and this Court outside the confines of the SRBA. Those proceedings relate to a delivery call filed by Rangen in 2011, alleging that it is short water under the two water rights at issue here due to junior ground water use. The Court will not list all of the administrative and judicial proceedings that have resulted from the 2011 call, but notes only that they are numerous.³ The Director has entered final orders in the form of curtailment orders, as well as final orders approving and rejecting mitigation plans, applications for transfer and applications for permit. This Court has issued final judgments in judicial review proceedings taken from some of these final orders, and has several more petitions for judicial review pending before it.⁴ If Rangen were now to set aside its *Partial Decrees* to add additional sources and points of diversion, these final orders and judgments would be disrupted and subject to reevaluation.

³ A listing of many of the administrative and judicial proceedings are set forth in IGWA’s *Response* in opposition to Rangen’s *Motion* dated March 12, 2015, on pages 4-6.

⁴ See e.g., *Judgment* in Twin Falls County Consolidated Case Nos. CV-2014-1338 and 2014-179 dated October 24 2014; *Judgment* in Twin Falls County Case No. CV-2014-2446 dated December 3, 2014; *Judgment* in Twin Falls County Case No. CV-2014-2935 dated November 19, 2014.

An example makes the point. In his 2014 curtailment order,⁵ the Director determined that 14.4 cfs would accrue to the entire spring complex forming the headwaters of Billingsley Creek as a result of curtailment. The Director recognized that only 63% of this water, or 9.1 cfs, was legally available to Rangen under its *Decrees*, since only that percentage emanates from the Martin-Curren Tunnel itself. The remaining 37% was found to emanate from other sources and points of diversion within the spring complex not authorized under Rangen's rights. Instead of a mitigation requirement of 14.4 cfs, the Director required affected juniors to mitigate 9.1 cfs based on the plain language of the *Decrees*. The juniors subsequently proposed and had approved mitigation plans for this amount. The Director's curtailment order, and his orders approving the proposed mitigation plans, would be undone and subject to reevaluation if Rangen is permitted to set aside its *Decrees* to add additional sources and points of diversion within the spring complex.

Rangen attempts to explain the delay by insisting that prior to the Director's 2014 interpretation, it had continued to divert water from the additional sources and points of diversion it now seeks to add to its *Decrees* and no one, including Department employees, challenged it or told it to stop. This excuse is unavailing. This Court has already addressed Rangen's argument in much the same respect on pages 19-21 of its *Memorandum Decision and Order* issued on October 24, 2014, in Twin Falls County Case No. CV-2014-1338.⁶ Rather than repeat it, the Court adopts that analysis by express reference. If someone thought Rangen's water use was inconsistent with its *Decrees*, it is true that person could have raised the issue prior to Rangen's 2011 call. However, no one did. That does not change the fact that Rangen could ascertain its authorized source and point of diversion from a simple reading of its *Decrees*. If it thought additional sources or points of diversion were necessary based on its historic use, it could and should have moved to set aside the *Decrees* long prior to 2015.

All other arguments aside, even if as argued by Rangen that it wasn't until January 2014 that it was notified of the issues it now raises, Rangen still waited a year to file its *Motion*. Six months of that one-year period was after the entry of *SRBA Final Unified Decree*. Indeed, this

⁵ The term "2014 curtailment order" refers to the Director's *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* issued in IDWR Docket No. 2011-004 on January 29, 2014.

⁶ A copy that *Memorandum Decision and Order* is attached as Exhibit 1 to the *Affidavit in Support of Rangen, Inc.'s Motion to Set Aside Partial Decrees* dated January 16, 2015.

is after this Court previously issued a decision in October of 2013 in response to Rangen's attempt to file a late claim in the SRBA to divert water from the source and point of diversion at issue here, instructing Rangen in that the appropriate course of action was to move to set aside the *Partial Decrees*.⁷ Rangen's *Motion* is untimely on that basis alone.

For these reasons, the Court finds that Rangen's *Motion* must be denied on the grounds that it is untimely and offends the principle of finality of judgments. However, even if the *Motion* were timely, the Court finds that the *Motion* should be denied for the reasons set forth below.

B. The *Motion* results in great prejudice to other parties.

In order for a Rule 60(b) motion to be successful, good cause must be established. *Watson v. Navistar Intern. Transp. Corp.*, 121 Idaho 643, 650-651, 827 P.2d 656, 663-664 (1992). One of the requirements of good cause is the showing of a lack of prejudice to other parties. In this matter, the Court finds that Rangen has failed to establish a lack of prejudice to other parties resulting from its *Motion*.

Were Rangen to set aside its *Decrees* at this late date, great prejudice would result to other parties to the SRBA. Basin 36 was one of the earliest basins to be reported on by the Director, with the *Director's Report* for claims being filed on November 2, 1992. The vast majority of the timely filed claims in the basin were adjudicated, and resulting *Partial Decrees* issued, in the 1990s. The basin has long been a completed basin, meaning that all claims filed in the basin have been fully adjudicated, and the Court has entered the *SRBA Final Unified Decree*. As a result, water users throughout the Snake River Basin are, and certainly have been, justified in relying upon the basin being completed, and upon the facially plain language of the *Partial Decrees* issued in that basin.

The reliance placed by water users on the plain language of the *Decrees* at issue here is particularly compelling. As stated above, these two water rights are the subject of a call initiated by Rangen in 2011. To avoid curtailment, affected junior ground water users have been required to mitigate their injury to the rights. Their mitigation obligations commenced in 2014 and will continue into the future. Substantial investments and expenditures to the tune of millions of

⁷ The *Order* referred to is this Court's *Order Denying Motion to File Late Claim* entered in SRBA Subcase No. 36-16977 on October 2, 2013. A copy of that *Order* is attached as Exhibit 1 to the *Affidavit of Michael C. Orr* dated March 9, 2015.

dollars have been undertaken by these users to formulate and implement mitigation plans based on the plain language of the *Partial Decrees* as they now exist. Permitting Rangen to set aside those *Decrees* and alter their elements would work to greatly prejudice these water users. If Rangen were successful, the mitigation obligations of affected juniors may increase to their prejudice. And, the mitigation investments and expenditures already undertaken may prove inadequate, or require modification, to the prejudice of those users. Additionally, Rangen and affected juniors have already undergone substantial litigation at both the administrative and judicial level in relation to the delivery call. That litigation would be undone to the prejudice of the parties if the elements of Rangen's *Partial Decrees* were to be changed as a result of its *Motion*. For these reasons, the Court finds that Rangen has failed to establish the lack of prejudice to other parties resulting from its instant *Motion*.

C. The *Motion* does not meet the requirements of Rule 60(b)(5) or (6).

Under Rule 60(b)(5), a court may relieve a party from a final judgment party if "it is no longer equitable that the judgment should have prospective application." To rely on Rule 60(b)(5), a movant must show two things: (1) that the judgment is prospective in nature; and (2) that it is no longer equitable to enforce the judgment as written. *Meyers v. Hansen*, 148 Idaho 283, 289, 221 P.3d 81, 87 (2009). Regardless of whether these requirements are met, relief cannot be granted under Rangen's Rule 60(b)(5) request because it is untimely and prejudicial to other parties. That said, the Court fails to see how the *Decrees* have become inequitable as written. Rangen argues that it is no longer equitable to enforce them based on the Director's 2014 interpretation of the *Decrees*. This is not a material change in circumstance. The Director merely interpreted the language of the *Decrees* to be plain and unambiguous. Therefore, the language and legal effect of the *Decrees* is the same now as when the *Decrees* were issued.

Under Rule 60(b)(6), a court may relieve a party from a final judgment for "any ... reason justifying relief from the operation of the judgment." 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). It is undisputed that Rangen did not object to the Director's recommendations for the above-captioned claims. If, as Rangen asserts, the plain language of the Director's recommendations was inconsistent with its historic use, then its failure to file a timely objection was due to mistake, inadvertence or neglect on its part.

While such mistake, inadvertence or neglect could arguably be grounds for relief under Rule 60(b)(1), Rangen did not timely make a Rule 60(b)(1) motion. It 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)”).

D. The SRBA subcases cited by Rangen are inapposite to this proceeding.

In support of its *Motion*, Rangen cites several SRBA subcases where this Court has granted motions to set aside partial decrees. These cases are inapposite to the facts and circumstances present here. Most significantly, the subcases cited by Rangen involve motions to set aside that were unopposed. And, many of those motions were granted in resolution of litigation pending in other subcases. Additionally, no findings of prejudice or unreasonable delay were made in those instances. As can be imagined, this Court has entertained a fair number of Rule 60(b) motions throughout the pendency of the SRBA. Some have been granted, and some denied. However, each case turns on its own set of facts and circumstances. Unlike in the subcases cited by Rangen, the facts and circumstances present here establish an unreasonable delay in the filing of the instant *Motion*, resulting prejudice to other parties, and the failure to meet the requirements of Rule 60(b)(5) or (6).

E. Attorney fees.

The State of Idaho and IGWA seek an award of attorney fees in matter. The State makes its request pursuant to Idaho Code § 12-121. IGWA’s request is made pursuant to Idaho Code § 12-121 and Idaho Rule of Civil Procedure 11(a)(1). The Court does not find that Rangen has acted frivolously or without a reasonable basis in law or fact in filing its *Motion*. Although the Court has denied the *Motion*, and in so doing has rejected Rangen’s arguments, the Court finds that Rangen presented the Court with legitimate issues for it to consider and address. Therefore, the Court in an exercise of its discretion does not find an award of attorney fees to be warranted.

III.
ORDER

Therefore, IT IS ORDERED that Rangen's *Motion to Set Aside Partial Decrees* is **hereby denied**.

Dated May 4, 2015



ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION TO SET ASIDE PARTIAL DECREES was mailed on May 04, 2015, with sufficient first-class postage to the following:

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A handwritten signature in cursive script, appearing to read "Julie Murphy", is written over a horizontal line.