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DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General
DARRELL G. EARLY
Deputy Attorney General
Chief, Natural Resources Division
MICHAEL C. ORR (ISB # 6720)
Deputy Attorney General
Natural Resources Division
700 West State Street
Joe R. Williams Building
2nd Floor
P.O. Box 83720
Boise, ID 83720-0010
(208) 334-2400

Attorneys for the State of Idaho

**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. 63-303, 63-3613, 63-3614 & 63-3618
)

) **STATE OF IDAHO'S REPLY BRIEF RE:**
) **CITY OF MOUNTAIN HOME'S RESPONSE**
) **TO MOTION TO ALTER OR AMEND PARTIAL**
) **DECREES FOR WATER RIGHT NOS. 63-303,**
) **63-3613, 63-3614, and 63-3618**
)
)

INTRODUCTION

The State of Idaho ("State"), by and through its attorneys of record, and pursuant to SRBA Administrative Order 1, the Idaho Rules of Civil Procedure, and this Court's *Notice Vacating and Resetting Hearing* (Apr. 5, 2019), hereby submits this reply in support of the State's *Motion to Alter or Amend Partial Decrees for Water Rights Nos. 63-303, 63-3613, 63-3614, and 63-3618*, filed on February 19, 2019 ("*Motion to Alter or Amend*"). The City of

Mountain Home (“City”) filed a *Motion to Participate* in subcase nos. 63-303, 63-3613, 63-3614, and 63-3618 on April 15, 2019, which included, as attached “Exhibits,” a motion for dismissal of the State’s *Motion to Alter or Amend*, and a brief in support of the motion for dismissal. *Motion to Participate* at 2 & Exhibits 1-2.¹ In this reply brief, the State only addresses the City’s arguments regarding the State’s *Motion to Alter or Amend*.² The City’s arguments lack merit and should be rejected.

ARGUMENT

The City opposes the *Motion to Alter or Amend* on grounds that water rights 63-303, 63-3613, 63-3614, and 63-3618 “have been decreed. The amendments for these water rights include administrative provisions that were not included in the decrees.” *Motion to Participate*, Exhibit 2 (“City’s Exhibit 2”) at 3. The City further asserts that “this Court has lost jurisdiction to address these water rights,” because “[o]nce Decreed, the only way for the SRBA Court to address a decreed right in under I.R.C.P. 60(a) or 60(b),” and “no motions” are pending before this Court under these rules. *Id.* at 6. Thus, the City goes on to argue, the *Motion to Alter or Amend* “constitutes a collateral attack on the decree[s]” under the Idaho Supreme Court’s decision in *In re Rangen*, 159 Idaho 798, 367 P.3d 193 (2016), and this Court’s *Memorandum Decision and Order on Challenge* in the “Late Claims” subcases (Sep. 1, 2016). *Id.* at 7.

¹ Should this Court grant the City’s *Motion* and allow the City to file the motion to dismiss, the State reserves the right to file a brief directly responding to the motion to dismiss.

² The City’s *Motion to Participate* was also filed in subcase nos. 63-33732, 63-33733, 63-33734, 63-33737, 63-33738, 63-33734A, and 63-33734B. The State is filing a separate reply brief that addresses to the *Motion to Participate*’s arguments pertaining to those subcases. The State also is filing a separate brief replying to the responses to the State’s *Motion to Alter or Amend Partial Decrees for Water Rights Nos. 63-303, 63-3613, 63-3614, and 63-3618* that were filed by the cities of Boise, Pocatello, and the “Coalition of Cities.” The State is also filing a separate reply brief to address the motions to participate in the “Late Claims” filed by the City of Boise, and a motion to strike the SF-1 “Objections” the City of Mountain Home filed in subcase nos. 63-33734A and 63-33734B.

The State does not dispute that the *Motion to Alter or Amend* requests this Court to modify the existing partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618 to include two remarks that are not currently in the partial decrees. To the contrary, that is the very purpose of the *Motion to Alter or Amend*, and this purpose is explicitly stated therein.

The City is simply incorrect, however, in arguing this Court lacks jurisdiction because “no motions [are] before the Court” under Rule 60(b). *Id.* at 6. The *Motion to Alter or Amend* expressly requests relief under Rule 60(b)(6). *Motion to Alter or Amend* at 1, 2, 5. The City does not dispute that this Court has jurisdiction to consider a Rule 60(b) motion to amend an existing partial decree. *City’s Exhibit 2* at 6. The Idaho Supreme Court has held that the decision of whether to grant Rule 60(b) relief is committed to this Court’s sound discretion. *In re SRBA Case No. 39576, Subcase No. 37-00864*, 164 Idaho 241, 248, 429 P.3d 129, 136 (2018). This Court has jurisdiction to take up the State’s *Motion to Alter or Amend*.

Further, a motion to alter or amend under Rule 60(b) is not a “collateral attack” within the meaning of the Idaho Supreme Court’s decision in *In re Rangen*, or this Court’s *Memorandum Decision and Order on Challenge* in the “Late Claims.” The relevant holdings in those decisions did not address Rule 60(b) motions, but rather arguments that partial decrees included, or had to be interpreted as including, elements or administrative provisions that did not appear on the faces of the partial decrees. Those decisions are distinguishable, and do not mean that the State’s *Motion to Alter or Amend* under Rule 60(b)(6) constitutes a “collateral attack” on the existing partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

The State’s *Motion to Alter or amend* should therefore be granted because, for the reasons discussed therein, there are “unique and compelling circumstances” for granting relief under Rule 60(b) (6). *In re SRBA Case No. 39576, Subcase No. 37-00864*, 164 Idaho at 252, 429

P.3d at140. The City's *Motion to Participate* and attached "Exhibits" do not dispute this. The City's arguments are limited to the procedural and jurisdictional points discussed above, and do not challenge the substantive basis of the *Motion to Alter or Amend*.³

CONCLUSION

For the reason discussed herein, the State respectfully requests that this Court grant the *Motion to Alter or Amend* the existing partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

Respectfully submitted this 30th day of April, 2019.

LAWRENCE G. WASDEN
Attorney General

DARRELL G. EARLY
Deputy Attorney General
Chief, Natural Resources Division


MICHAEL C. ORR
Deputy Attorney General
Natural Resources Division

³ The State understands this Court's *Notice Vacating and Resetting Hearing* and Section 6(of *SRBA Administrative Order 1* as precluding the City from filing any further briefing in support of its opposition to the State's *Motion to Alter or Amend*, despite the fact that the City's opposition was framed as the opening brief in support of a proposed motion to dismiss, *City's Exhibit 2*, rather than as the "response" authorized by this Court's *Notice Vacating and Resetting Hearing*.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April 2019, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

- ☐ U.S. Mail, Postage Prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile
- ☐ E-Mail:

2. Copies to the following:

DAVID W. GEHLERT
ENVIRONMENT & NAT'L RESOURCES
US DEPARTMENT OF JUSTICE
999 18TH ST.
SOUTH TERRACE STE. 370
DENVER, CO 80294

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile
- ☐ E-Mail:

ALBERT P. BARKER
BARKER ROSHOLT
1010 W. JEFFERSON ST. STE. 102
PO BOX 2139
BOISE, ID 83701-2139

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile
- ☐ E-Mail:

CHRISTOPHER H. MEYER
MICHAEL P. LAWRENCE
GIVENS PURSLEY
601 W. BANNOCK ST.
PO BOX 2720
BOISE, ID 83701

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile
- ☐ E-Mail:

DANIEL V. STEENSON
S. BRYCE FARRIS
ANDREW J. WALDERA
SAWTOOTH LAW OFFICES PLLC
1101 W. RIVER ST. STE. 110
PO BOX 7985
BOISE, ID 83707

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile
- ☐ E-Mail:

USDI BUREAU OF RECLAMATION
US DEPT. OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
550 W. FORT ST. MSC 033
BOISE, ID 83724

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile
- ☐ E-Mail:

DIRECTOR OF IDWR
STATEHOUSE MAIL
PO BOX 83720
BOISE, ID 83720-0098

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile
- ☐ E-Mail:

CANDICE McHUGH
CHRIS BROMLEY
McHUGH BROMLEY, PLLC
380 S. 4TH ST., STE. 103
BOISE, ID 83702

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile
- ☐ E-Mail:

SCOTT L. CAMPBELL
CAMPBELL LAW CHTD.
PO BOX 170538
BOISE, ID 83717

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile
- ☐ E-Mail:

MATTHEW J. McGEE
SPINK BUTLER, LLP
PO BOX 639
BOISE, ID 83701

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile
- ☐ E-Mail:

FRITZ HAEMMERLE
HAEMMERLE LAW, PLLC
PO BOX 1800
HAILEY, ID 83333

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile
- ☐ E-Mail:

SARAH A. KLAHN
SOMACH SIMMONS & DUNN
2701 LAWRENCE, #113
DENVER, CO 80205

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile
- ☐ E-Mail:



MICHAEL C. ORR
Deputy Attorney General