

RECEIVED

MAR 02 2020

DEPARTMENT OF
WATER RESOURCES

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

FEB 28 2020

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. (see attached list)
)
) ORDER GRANTING MOTION TO
) ALTER OR AMEND PARTIAL
) DECREES
)
) ORDER OF AMENDED PARTIAL
) DECREE

I.

BACKGROUND

1. On August 17, 2016, *Partial Decrees* were entered in the Snake River Basin Adjudication ("SRBA") for water rights 01-219, 01-2064, 01-2068, 01-4055, 01-10042, 01-10043, 01-10044, 01-10045, 01-10620, 01-10621A, 01-10621B, 01-10622, 01-10623, 21-2156, 21-4155, 21-13193, 21-13194, 21-10560, 21-13161, 25-7004, 25-14413A, and 25-14413B. *Amended Partial Decrees* were entered for the same rights on March 29, 2017.¹

2. *Partial Decrees* were entered on March 5, 2013, for water rights 21-2154, 21-2161, and 21-12946. *Amended Partial Decrees* were entered for water rights 21-2154 and 21-12946 on August 17, 2016. An *Amended Partial Decree* was entered for water right 21-2161 on March 29, 2017.²

3. All of the above-captioned water rights, with the exception of water rights 21-2154, 21-2161, 21-12946, and 21-13193, are storage water rights held by the United States Bureau of Reclamation. While the rights are decreed in the name of the United States, title to the use of the water is held by the consumers or users of the water. *United States v. Pioneer Irr.*

¹ *Amended Partial Decrees* were entered pursuant to Idaho Rule of Civil Procedure 60(a) for the limited purpose of correcting various clerical errors contained in the *Partial Decrees*.

² *Amended Partial Decrees* were entered for these three rights pursuant to Idaho Rule of Civil Procedure 60(a) for the limited purpose of correcting various clerical errors contained in the *Partial Decrees*.

Dist., 144 Idaho 106, 115, 157 P.3d 600, 609 (2007). The water rights are associated with the following lakes and reservoirs in the Upper Snake River Basin:

Lake Walcott	Water Right 01-219 Water Right 01-10622
American Falls Reservoir	Water Right 01-2064 Water Right 01-10042 Water Right 01-10620
Palisades Reservoir	Water Right 01-2068 Water Right 01-10043 Water Right 01-10621A Water Right 01-10621B
Jackson Lake	Water Right 01-4055 Water Right 01-10044 Water Right 01-10045 Water Right 01-10623
Island Park Reservoir	Water Right 21-2156 Water Right 21-10560 Water Right 21-13161
Grassy Lake	Water Right 21-4155 Water Right 21-13194
Ririe Reservoir	Water Right 25-7004 Water Right 25-14413A Water Right 25-14413B

4. Water rights 21-2154, 21-2161, 21-12946, and 21-13193 are storage water rights held by North Fork Reservoir Co. and are associated with Henrys Lake.

5. On October 30, 2019, a *Joint Motion to Modify Partial Decrees* was filed by the Surface Water Coalition³, the Upper Valley Storage Holders⁴, the Coalition of Cities⁵, Aberdeen-

³ The term "Surface Water Coalition" refers collectively to the A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

⁴ The term "Upper Valley Storage Holders" refers collectively to Fremont Madison Irrigation District, Idaho Irrigation District, North Fork Reservoir Company, and New Sweden Irrigation District.

⁵ The term "Coalition of Cities" refers collectively to the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell.

Springfield Canal Company, Palisades Water Users, Inc., the City of Idaho Falls, the Shoshone-Bannock Tribes, and the City of Pocatello.

6. The *Joint Motion* seeks to modify the *Partial Decrees* for all the above-captioned water rights to add the following remark to the other provisions element:

September 15th shall begin the annual period for water right accounting in the Upper Snake River Basin upstream of Milner Dam. The September 15th beginning date for this annual period is known as the “reset date” for reservoir volumes. The “reset date” allows previously satisfied reservoir water right volumes to begin filling again for the next annual storage volume period. The annual storage volume period will extend from September 15th to the following September 14th. Consistent with Section 8.3 of the 1990 Fort Hall Indian Water Rights Agreement, nothing in this provision is intended to impact the rights described and administered pursuant to that Section.

Joint Motion, p.4.

7. Additionally, the *Joint Motion* seeks to modify the *Partial Decree* for water right number 01-219 to add the following remark to the quantity element: “The rate of diversion to storage shall be limited to 2,500 cfs from September 15th through and including October 15th.”
Id.

8. A *Response* in opposition to the *Joint Motion* was filed by the State of Idaho. A *Response* in support of the *Joint Motion* was filed by the United States. Various parties subsequently filed *Replies* in support of the *Joint Motion*. A hearing on the *Joint Motion* was held before the Court on February 7, 2020.

II.

ANALYSIS

A. History.

This matter involves storage water rights associated with federal reservoirs in the Upper Snake River Basin.⁶ Issues surrounding the administration of such rights, including issues of “fill” and “refill,” were some of the more complex and challenging issues raised in the SRBA. See *Order Granting Motion to Alter or Amend Partial Decrees*, SRBA subcase nos. 63-303 et

⁶ All the above-captioned water rights, with the exception of water rights 21-2154, 21-2161, 21-12946, and 21-13193, are associated with federal reservoirs. The four excepted rights are associated with Henrys Lake, which is a private reservoir.

al., pp.4-5 (July 19, 2019). Broadly stated, the issue of fill/refill addressed how water is to be distributed to storage water rights for federal reservoirs in light of the federal government's operation of dams for flood control purposes.

What will be referred to herein as the "reset issue" relates to the issue of fill/refill. Pursuant to the *Partial Decrees* issued by this Court, the Director distributes natural flow to reservoir storage water rights in priority. When a storage right is satisfied, natural flow can no longer be distributed to that right until the annual volume of water authorized thereunder has been reset to zero, thereby commencing the next annual period of distribution. The reset issue thus asks the following question: When does a previously satisfied storage water right reset to zero for purposes of administration?

The reset issue in Upper Snake River Basin has been on the Court's radar for some time. In 2015, parties filed a global stipulation in the SRBA resolving the fill/refill dispute in Basin 01. At the time, the parties acknowledged the existence of the reset issue but did not place the issue before the Court. In 2016, the Court entered *Partial Decrees* for the water rights consistent with the parties' stipulation. The *Partial Decrees* contain a year-round period of use. They do not, however, contain any remarks concerning when the annual volume of water authorized under the rights is reset to zero. The parties subsequently informed the Court of their desire to attempt to negotiate a resolution of the reset issue short of court involvement. To facilitate the parties' ambition, the Court agreed to issue an *Order for Mediation* in February 2017. The honorable John Melanson was appointed as mediator. Judge Melanson conducted a mediation session in April 2017. The parties did not reach a settlement. However, Judge Melanson acknowledged "there is still a realistic possibility of a settlement whether by further mediation or perhaps among the parties without further mediation."

Thereafter, the Surface Water Coalition attempted to place the reset issue before the Court via the filing of a *Motion to Decree General Provision*. The *Motion* sought to have the Court decree a general provision regarding reset in the SRBA. The Court sua sponte dismissed the *Motion* without prejudice on the grounds it lacked jurisdiction to hear the *Motion*. *Order Sua Sponte Dismissing Motion Without Prejudice*, SRBA subcase nos. 01-219, et al., (May 18, 2017). Given that final and appealable judgments had been entered, the Court held the *Motion* was not filed pursuant to any authority that would allow it to reopen the SRBA and/or the subject subcases.

Meanwhile, in August 2017, the Director initiated a contested case proceeding on the reset issue. The proceeding was started in response to a letter from the Milner Irrigation District. Water right 01-219 is a storage water right associated with Lake Walcott. The District's letter challenged the legality of the Director's anticipated use of a date of September 15 to reset water right 01-219 in 2017. The District contended the Director's use of such a reset date could interfere with its junior water right (i.e., water right 01-17) and would be contrary to the *Partial Decree* issued for water right 01-219. The threshold issue before the Director is when does a previously satisfied reservoir storage water right reset to zero for purposes of administration?⁷ At this time, the Director has not rendered a decision on the issue.

In April 2019, the parties to the administrative proceeding entered into a stipulated settlement. The settlement resolves the reset issue via an agreement that all the above-captioned water rights shall have a reset date of September 15. The settlement anticipates the parties thereto presenting the *Joint Motion* to this Court. It identifies the form of the remarks the movants presently seek to include in the *Partial Decree* via the *Joint Motion*. The settlement also anticipates the parties thereto moving the Director for an order staying the contested case proceeding pending a decision by the Court on the *Joint Motion*. The Director has so stayed the contested case.

B. Rule 60(b).

The *Joint Motion* is filed pursuant to Idaho Rule of Civil Procedure 60(b)(6) and the stipulated settlement entered into by the parties to the administrative proceeding. Under Rule 60(b)(6), a court may relieve a party from a final judgment for "any ... reason that justifies relief." Rule 60(b)(6) "presents a discretionary decision for the trial court." *In Re SRBA Case No. 39576 Subcase No. 37-00864*, 164 Idaho 241, 429 P.3d 129 (2018). Although the court is vested with broad discretion, "its discretion is limited and may be granted only on a showing of unique and compelling circumstances justifying relief." *Id.*

⁷ This is a summation of the threshold legal issue, which the Director identified in full as follows:

[W]hether the plain language of the "period of use" element of the storage water right partial decrees for federal onstream reservoirs in Water District 01 that specifies "1/1 to 12/31" as the time period for "irrigation storage" requires that the reset date for those rights be January 1.

Order Re: Statements of Issues and Responses, p.3 (January 3, 2018).

ORDER GRANTING MOTION TO ALTER OR AMEND;
ORDER OF AMENDED PARTIAL DECREE

i. Reasonable time.

A Rule 60(b) motion must be made within a reasonable time. I.R.C.P. 60(c)(1). On August 26, 2014, the Court entered the *Final Unified Decree* in the SRBA. The *Final Unified Decree* completed the SRBA proceeding. Notwithstanding, the Court retained jurisdiction over a small group of subcases pending unresolved at that time. *Order Regarding Subcases Pending Upon Entry of Final Unified Decree*, SRBA subcase nos. 01-219, et al. (Aug. 6, 2014). The above-captioned subcases, with limited exception, were within that group. *Id.* Final judgments in the form of *Partial Decrees* were entered in the above-captioned subcases on August 17, 2016. Thus, August 17, 2016, is the date from which the Court evaluates timeliness.

In evaluating the circumstances of this case, the Court finds the *Joint Motion* to have been filed within a reasonable time. The *Joint Motion* was filed more than three years following the entry of the *Partial Decrees*. However, this is not a situation where the parties sat on their rights during that period. To the contrary, the parties informed the Court of the reset issue at the time the *Partial Decrees* were entered. Although they did not place the issue before the Court at that time, the parties kept the Court apprised of steps they were taking to resolve the matter. These steps included the parties' participation in a series of settlement negotiations as well as their participation in court-ordered mediation. The actions of the parties were ultimately successful, resulting in a stipulated settlement that is unopposed by any water user in the basin. Had the parties sat on their rights following entry of the *Partial Decrees*, the Court would be less inclined to find the filing of the *Joint Motion* to be reasonable at this stage. However, such is not the case. The record establishes that the parties worked actively and diligently to pursue settlement while keeping the Court apprised of their efforts. This factor weighs in favor of a finding of reasonable time.

Other factors weighing in favor of a finding of reasonable time include: (1) the number of parties involved, which is considerable; (2) the complexity of the reset issue; and (3) the fact that the *Joint Motion* is comprehensive of all storage water rights associated with federal reservoirs in the Upper Snake River Basin. Given the foregoing, the Court in an exercise of its discretion finds the *Joint Motion* to have been filed within a reasonable time following entry of the *Partial Decrees*.

ii. Unique and compelling circumstances.

The Court in an exercise of its discretion finds unique and compelling circumstances justifying relief under Rule 60(b)(6) in this case. Several factors inform the Court's decision. The number of parties involved, the complexity of the reset issue, and the number of water rights involved all differentiate this matter from a typical SRBA subcase. More importantly, it is of considerable consequence to the Court that the *Joint Motion* does not seek a wholesale reopening of the above-captioned subcases. Nor does it seek to reopen the subcases for purposes of litigating or relitigating any legal issues. Rather, the *Joint Motion* seeks limited and narrow amendments to the *Partial Decrees* issued for these water rights. The proposed amendments are presented via stipulation and are not opposed by any water user in the basin. As a result, the proposed amendments will not prejudice other water users and will not require further litigation before the Court.

With respect to the proposed reset remark, the Court finds the same necessary for the efficient administration of the rights. There is an open question as to the proper reset date for these water rights. Efficient administration of the rights requires a resolution of that question. Amending the *Partial Decrees* to include the proposed reset remark will resolve the reset issue and result in efficient administration of the rights. The Court notes it recently granted a similar request to modify certain *Partial Decrees* associated with federal reservoirs in Basin 63 to add a reset remark. *Order Granting Motion to Alter or Amend Partial Decrees*, SRBA subcase nos. 63-303, et al. (July 19, 2019). The reset remark proposed here will resolve the reset issue in the Upper Snake River Basin in a similar manner to the Basin 63 resolution. With respect to the proposed amendment to the quantity element of water right 01-219, the Court finds the same to be a limitation on the right, not an expansion. As a result, it will not prejudice any other water rights in the basin.

The only party to oppose the *Joint Motion* is the State of Idaho. However, it must be recognized that the State does not oppose the substantive elements of the *Joint Motion*. It does not oppose the proposal to reset the above-captioned water rights on September 15. Nor does it oppose the proposal to limit diversions under water right 01-219 to 2,500 cfs during the period from September 15 to October 15. Rather, the State opposes the joint movants' request to reopen the SRBA and *Partial Decrees* to achieve these ends. In this respect, the State's opposition concerns principles of finality in a general water rights adjudication.

The Court shares the State's concerns regarding finality. The Court has closely scrutinized every Rule 60 motion that has come before it in the SRBA post entry of the *Final Unified Decree*. In doing so, the Court takes seriously the Idaho Supreme Court's admonition that the 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). However, the Court finds that the factors weighing in favor of a finding of unique and compelling circumstances here present distinguishable safeguards that will protect against an opening of the floodgates. For instance, were the joint movants seeking to reopen the subcases for purposes of further litigation, the Court would be less inclined to exercise its discretion to grant their request. Likewise, were the *Joint Motion* opposed by water users in the basin, the Court would be less inclined to exercise its discretion to grant the joint movants' request. It is a combination of all the factors present here, when viewed cumulatively, that convince the Court unique and compelling circumstances exist in this case. Given the foregoing, the Court in an exercise of its discretion finds unique and compelling circumstances justifying relief under Rule 60(b)(6).

iii. Venue.

The State of Idaho also raises concerns with venue. The State characterizes the relief requested in the *Joint Motion* as an improper end run around the administrative proceeding presently before the Department. It contends if the Court grants the relief requested it would effectively undermine the authority statutorily granted to the Director to administer water rights. The Court does not view the *Joint Motion* in the same light as the State, although it understands and appreciates the gist of its concerns.

Subtle distinctions may be made between the issue presented to the Director in the administrative proceeding and the issue presently before the Court in the SRBA. The issue before the Court is one of decree modification. The ability to reopen a decree for purposes of modification rests with this Court. Under Rule 60, the Court has the authority and the discretion to entertain a request for relief from a judgment. The Court is further vested with the authority to modify a decree to include remarks necessary for administration of the right by the Director, such as those at issue here. I.C. §§42-1411(2)(j) & 42-1412(6). Therefore, this Court has jurisdiction over, and is an appropriate venue for, a request to modify a decree.

By contrast, the issue before the Department is one of decree interpretation for purposes of administration. Once a water right is decreed, the Director is vested with the authority to administer water under the right and to resolve disputes over administration. I.C. § 42-602; *Musser v. Higginson*, 125 Idaho 392, 395, 871 P.2d 809, 812 (1994). Resolution of such disputes may require the Director to interpret a partial decree. That is the situation presently before the Director, as resolution of the administrative dispute before him would likely require an interpretation of the period of use element of the subject *Partial Decrees*. Were the Director to render his decision on that issue, Idaho Code § 42-1401D would prohibit this Court from exercising jurisdiction to review it in the context of the SRBA.⁸ However, that is not the case here. The Director has not yet rendered his decision. Moreover, the issue before the Court is not one of judicial review of the Director's interpretation of a *Partial Decree*, but rather one of decree modification. The Court thus finds that Idaho Code § 42-1401D does not place any jurisdictional limitations on the Court in this proceeding.

Therefore, the Court disagrees with the State's contention that this Court is an improper venue to hear the *Joint Motion*. That said, the Court understands the concerns that a standard of practice could develop where parties to an administrative dispute before the Director routinely come before this Court to modify a partial decree to add administrative remarks to resolve that dispute. However, the Court believes that the strictures of Rule 60(b), as discussed above in the Court's analysis of the timeliness and unique and compelling circumstances requirements, place appropriate limitations on the Court's discretion to grant such relief.

⁸ Instead, judicial review would be governed by the provision of the Idaho Administrative Procedure Act.

III.
ORDER

Therefore, IT IS ORDERED that the *Joint Motion to Modify Partial Decrees* is hereby granted.

IT IS FURTHER ORDERED that the above-captioned water rights be amended as set forth in the attached *Amended Partial Decrees*. The previously issued *Partial Decrees* are superseded thereby.

DATED: February 28, 2020



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

ATTACHMENT A

Subcase Nos:

01-00219
01-02064
01-02068
01-04055
01-10042
01-10043
01-10044
01-10045
01-10620
01-10621A
01-10621B
01-10622
01-10623
21-02154
21-02156
21-02161
21-04155
21-10560
21-12946
21-13161
21-13193
21-13194
25-07004
25-14413A
25-14413B

CERTIFICATE OF MAILING

I hereby certify that on this 28th of February, 2020, a true and correct copy of the
ORDER GRANTING MOTION TO ALTER OR AMEND PARTIAL DECREES and
ORDER OF AMENDED PARTIAL DECREES was mailed, with sufficient first-class postage
to the following:

RANDALL C BUDGE
RACINE OLSON
PO BOX 1391
POCATELLO ID 83204-1391

MICHAEL P LAWRENCE
GIVENS PURSELY LLP
PO BOX 2720
BOISE ID 83701-2720

ALBERT BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139

TRAVIS THOMPSON
BARKER ROSHOLT & SIMPSON
163 2nd AVE WEST
PO BOX 63
TWIN FALLS ID 83303-0063

CANDICE MCHUGH
MCHUGH BROMLEY
380 S 4TH ST STE 103
BOISE ID 83702

KENT W FLETCHER
FLETCHER LAW OFFICE
PO BOX 248
BURLEY, ID 83318

ROBERT L HARRIS
PO BOX 50130
IDAHO FALLS ID 83405-0130

SARAH A KLAHN
SOMACH SIMMONS & DUNN
2033 11TH ST STE 5
BOULDER CO 80302

KIRK BYBEE
PO BOX 4169
POCATELLO ID 83201

WILLIAM F BACON
SHOSHONE-BANNOCK TRIBES
TRIBAL COUNSEL OFFICE
PO BOX 306
FORT HALL ID 83203-0306

EDMUND C GOODMAN
HOBBS STRAUS DEAN & WALKER LLP
516 SE MORRISON ST STE 1200
PORTLAND OR 97214

NORMAN M SEMANKO
PARSONS BEHLE & LATIMER
800 W MAIN ST STE 1300
BOISE ID 83702

JERRY R RIGBY
PO BOX 250
REXBURG ID 83440-0250

CHARLES F MCDEVITT
PO BOX 1543
BOISE ID 83701-1543

CRAIG HOBDEY
PO BOX 176
GOODING ID 83330-0176

SARAH W HIGER
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

ANDREW WALDERA
PO BOX 7985
BOISE ID 83707

CHRISTOPHER H MEYER
MICHAEL P LAWRENCE
PO BOX 2720

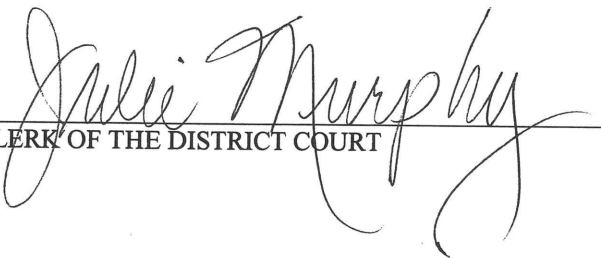
BOISE ID 83701-2720

CHIEF NATURAL RESOURCES DIV
OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO
PO BOX 83720
BOISE ID 83720-0010

ENVIRONMENT & NATURAL RESOURCES
550 W FORT ST MSC 033
BOISE ID 83724

US DEPARTMENT OF JUSTICE
U S BUREAU OF RECLAMATION
REGIONAL DIRECTOR PN CODE-1300
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

IDAHO DEPARTMENT OF WATER RESOURCES
PO BOX 83720
BOISE ID 83720-0098


CLERK OF THE DISTRICT COURT