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DEPARTMENT OF  
WATER RESOURCES

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

OCT 23 2024

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 No. 67-362**

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)

) **ORDER DENYING MOTION TO FILE**

) **LATE NOTICE OF CLAIM**

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**I.**

**PROCEDURAL BACKGROUND**

1. On January 2, 1990, Thomas and Janice Hill filed a water right claim in the Snake River Basin Adjudication ("SRBA") for the above-captioned water right. The claim was a surface water claim for the diversion of 1.08 cfs from Mill Creek for the irrigation of 125 acres within Adams County, Idaho.

2. A Director's Report for water right claims filed in basin 67 was filed by the Idaho Department of Water Resources ("Department") on December 22, 2006. The Director's Report included a recommendation for this claim. It recommended the claim be decreed in the name of Thomas and Janice Hill. The deadline for filing objections to the recommendation was August 22, 2007. No objections were filed. A hearing on uncontested claims in basin 67, including the claim for the above-captioned water right, was heard on September 16, 2008. No one appeared at that hearing to object to the Court's entry of a Partial Decree for this water right claim as recommended.

3. On October 20, 2008, the Court entered a Partial Decree for the claim in the names of Thomas and Janice Hill. The Partial Decree authorizes the diversion of 1.08 cfs from Mill Creek for the irrigation of 120.5 acres in Adams County. The Partial Decree was issued on

the basis that the recommendation for the claim was uncontested. The Partial Decree was accompanied by a Rule 54(b) Certificate, certifying it as a final judgment from which appeal may be sought. No appeal of the Partial Decree was sought by any party.

4. On January 31, 2012, the Court entered an Order establishing a deadline for the filing of late claims in basin 67 of March 30, 2012.<sup>1</sup> The Court will refer to this Order as the “Deadline Order.”

5. The Court subsequently entered an Order closing basin 67 to the filing of late claims in accordance with the Deadline Order.<sup>2</sup> The Court will refer to this Order as the “Closure Order.”

6. On August 26, 2014, the Court entered the SRBA Final Unified Decree completing the adjudication.

7. On July 19, 2024, Jeffrey Hunter (hereinafter, “Movant”) filed a Motion to File Late Notice of Claim. The Movant owns land that neighbors the land to which water right 67-362 was decreed. His Motion asserts ownership of water right 67-362. Essentially, the Movant asks the Court to undo the Partial Decree entered in the SRBA and decree the water right in his name (instead of the Hills) and as appurtenant to his land (instead of the Hills’ land). A hearing on the Motion was held on October 15, 2024.

## II. ANALYSIS

Recognizing that the taking of claims in basin 67 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.* The Movant’s Motion was filed on July 19, 2024, and does not fall into one of the two recognized exceptions. Notwithstanding, the Movant asserts he should be permitted to file the instant late claim. This Court disagrees.

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<sup>1</sup> *Order Establishing Deadline for Late Claim Filings in Basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79*, SRBA main case no. 39576, SRBA subcase no. 00-92099 (Jan. 31, 2012)

<sup>2</sup> *Order Closing Claims Taking Basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79, and Disallowal of Unclaimed Water Rights*, SRBA main case no. 39576, SRBA subcase no. 00-92099 (April 25, 2012).

**A. The Court's Closure Order, Partial Decree and Final Unified Decree preclude the filing of the instant late claim.**

To file the instant Motion to File Late Notice of Claim at this late date the Movant must successfully set aside the Court's Closure Order, Partial Decree, and Final Unified Decree. The Movant has not formally moved the Court for relief from these documents.<sup>3</sup> He also does not cite any legal authority by which these documents may be set aside. However, the Court will treat his argument as a motion to set aside the pertinent documents under Idaho Rule of Civil Procedure 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 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).

The Movant had ample opportunity to file the instant late claim in the SRBA. The Director's Report for irrigation claims timely filed in basin 67 was issued on December 22, 2006. Therefore, the Movant had from December 22, 2006, until January 31, 2013, to file a late claim for the use at issue.<sup>4</sup> The Deadline Order found that the claimants in basin 67 "received extensive first-round and second-round Notice of Filing Requirements in the SRBA."<sup>5</sup> Deadline Order, p.2; 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 67. Therefore, the Court finds that had the Movant wished to file the instant claim in the SRBA he certainly had the opportunity to do so before this Court closed the basin to late claims.

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<sup>3</sup> At this stage in the SRBA proceeding, a Motion to File Late Notice of Claim is generally accompanied by a Rule 60 motion. Here, the Movant has not filed a Rule 60 motion.

<sup>4</sup> At the hearing, the Movant expressly stated he acquired the subject property in 2005 or 2006.

<sup>5</sup> First round service occurred in basin 67 on February 25, 1988. Aff. of Service of Commencement Notice – Adams County, SRBA main case no. 39576 (August 19, 1988).



Movant was aware of the alleged controversy surrounding the water right since at least 2009, when he sent a letter to the Department, together with accompanying deeds, raising his concerns. The Department's response letter explained why the water right was recommended in full to Janice and Thomas Hill.<sup>6</sup> Movant sent another letter to the Department in 2018, raising the same concerns and the Department again responded.<sup>7</sup> Despite these concerns, the Movant waited over 15 years to file the instant motion. In the meantime, the land and the appurtenant subject water right are under new ownership. Any reopening of the matter to new proceedings would be unduly prejudicial to the current owners of the water right.

Given the foregoing, the Court finds the Movant has failed to set forth grounds justifying relief from the Court's Closure Order, Partial Decree, and Final Unified Decree. Allowing the instant late claim to come in now would seriously disrupt the finality of process intended by those documents. It follows that the Closure Order, Partial Decree, and Final Unified Decree preclude the Movant from filing a late claim for the above-captioned water right. Given the plain language of those documents, and the fact that the record shows that the Movant had ample notice of the requirements to file 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. The Motion to File Late Notice of Claim is an impermissible collateral attack on the Partial Decree.**

It is important to note that the Movant has not moved to set aside the Partial Decree for water right 67-362. Generally, "final judgments, whether right or wrong, are not subject to collateral attack." *Cuevas v. Barraza*, 152 Idaho 890, 894, 277 P.3d 337, 341 (2012). If the Movant believed he had an ownership interest in water right 67-362, he was required to timely assert that ownership in the SRBA. I.C. §§ 42-1409(4) & 42-1409(6). He did not. If the Movant disagreed with the Department's recommendation that the water right should be decreed to Thomas and Janice Hill, he was required to file an objection to that effect with the SRBA District Court. I.C. § 42-1412(1). He did not. If the Movant believed the Court erred in

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<sup>6</sup> A copy of the June 16, 2009, letter was included with the motion. The letter explained that the recommendation for the water right was based on a prior decree and the legal description for the place of use did not include any portion of Movant's property.

<sup>7</sup> A copy of the November 19, 2018, letter was included with the motion.



decreeing the water right in the name of Thomas and Janice Hill, he was required to timely file a notice of appeal. I.A.R. 14. He did not. Had the Movant taken any of these actions, his competing claim of ownership to water right 67-362 would have been properly asserted and adjudicated within the context of the SRBA.<sup>8</sup> I.C. §§ 42-1409(4) & 42-1409(6).

Rather, the Movant sat on his rights for over 15 years until he filed the instant Motion. By that time the water right had been decreed to Thomas and Janice Hill since 2008. His attempt to now file a Motion to File Late Notice of Claim for that same water right without moving to set aside the Partial Decree constitutes an impermissible collateral attack on the Partial Decree. *See e.g., Cuevas v. Barraza*, 152 Idaho 890, 894, 277 P.3d 337, 341 (2012) (stating generally, that “final judgments, whether right or wrong, are not subject to collateral attack”). It follows that the Movant’s Motion to File Late Notice of Claim must be denied.

### III.

#### ORDER

Therefore, IT IS ORDERED that the Motion to File Late Notice of Claim is hereby denied.

DATED: 10/23/24.

  
ERIC J. WILDMAN  
Presiding Judge  
Snake River Basin Adjudication

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<sup>8</sup> The water right at issue here went through the SRBA uncontested. It must be noted however that in a general adjudication wherein water users are required to come forward and assert their claims, uncontested claims “are still . . . decided on the merits.” *Order on Motion to Set Aside Partial Decrees and File Late Objections*, SRBA Subcase No. 65-19812, *et al.*, p.8 (January 31, 2001).

**CERTIFICATE OF MAILING**

I certify that a true and correct copy of the ORDER DENYING MOTION TO FILE LATE NOTICE OF CLAIM was mailed on October 23, 2024, with sufficient first-class postage to the following:

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