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	)	**Subcases 41-8C (Taysom),**
	)	**41-8D (Weston) and**
Case No. 39576	)	**41-8F (7UD Ranches)**
	)	
	)	**SPECIAL MASTER REPORT**
	)	**AND RECOMMENDATION**

FINDINGS OF FACT

Partial Decrees

Water rights 41-8C, 41-8D and 41-8F were partially decreed by the SRBA Court on July 28, 2000, when no one objected to the Director's recommendations. The ***Partial Decrees*** were later amended *nunc pro tunc* on March 12, 2001, to add language about the *Houtz* box, a non-standard measuring device required in the 1903 *Houtz Arbitration*.[1] The three water rights were for surface diversions from the South Fork of Rock Creek through the Adshead Ditch from April 1 to October 31, each with a priority date of October 1, 1879, based on a decree (the *Houtz Arbitration*):[2]

41-8C – Kelvin and Suzanne Taysom – .367 cfs to irrigate 47.6 acres;

41-8D – R. Scott and Herbert Weston – .533 cfs to irrigate 26 acres; and

41-8F – 7UD Ranches – 1.41 cfs to irrigate 112 acres.

[1] For complete discussions of the *Houtz Arbitration*, see the December 10, 2004 *Supplemental Director's Report*, at 3-4, and the June 16, 2004 ***Special Master Report and Recommendation***, subcases 41-00042 and 41-00047, at 2-3, and attachment. The *Houtz* box has been used to measure flows in the Rockland Valley for over 100 years, but an inch of water measured through the box is approximately 15-30% less than a normal miner's inch (.02 cfs). *Supplemental Director's Report*, at 4.

[2] "Rock Creek water rights are administered according to the award of arbitration [*Houtz Arbitration*], and it has been treated as a water right decree insofar as based upon it IDWR created a water district which annually elects a watermaster to distribute water to the Rock Creek users." *Supplemental Director's Report*, at 3.

Motion to Set Aside Partial Decrees

On June 14, 2004, J. Juan Spillett filed a *Motion to Set Aside Partial Decrees* under I.R.C.P. 60(b) in subcases 41-8C (Kelvin and Suzanne Taysom), 41-8D (R. Scott and Herbert Weston), 41-8E (Robert R. and James V. Spillett) [3] and 41-8F (7UD Ranches/Gene and Richard Nelson). The *Motion* alleged that setting aside the ***Partial Decrees*** would be "in the best interests of justice and in the interests of the proper administration of the water rights so established." *Motion*, at 3. Mr. Spillett noted that five water rights split from 41-8 (B, C, D, E and F) are delivered through the Adshead Ditch and have been historically rotated "on a 12-day rotation schedule with each water user diverting the entire decreed flow for his proportionate share of the time." *Motion*, at 2. Mr. Spillett alleged that the four water rights decreed so far (C, D, E and F) have resulted in an over-appropriation "leaving Juan Spillett [41-8B] without enough water to satisfy the amount he is entitled by historical use." *Motion*, at 2.[4]

Order of Reference with Special Instructions

The matter was referred to the Special Master on July 9, 2004, with special instructions:

> It is not the intent of the Court to have all of the ***Partial Decrees*** issued for the source of the subject rights pursuant to the *Houtz Arbitration* set aside and the entire matter opened to be re-litigated unless there is an express acknowledgement from IDWR in [an I.R.E.] 706 Report or Supplemental Director's Report to the Special Master that errors were made in allocating water for the source of the subject rights. . . . If IDWR determines that errors were not made in allocating the source, then the Special Master should decline to re-open the matter in accordance with the applicable I.R.C.P. 60(b) standards [emphasis added].

Presiding Judge John M. Melanson's July 9, 2004 ***Order of Reference to Special Master Terrence Dolan with Special Instructions***, at 2-3.

Hearing

A hearing on the *Motion Set Aside Partial Decrees* was held in Rockland, Idaho, on September 9, 2004. Brian J. Coffey appeared for J. Juan Spillett; Scott J. Smith appeared for

[3] The ***Partial Decree*** for water right 41-8E (Robert R. and James V. Spillett) was set aside on July 3, 2002. See former-Presiding Judge Roger Burdick's ***Order Setting Aside Partial Decrees, and Order Requesting Director's Report***, subcases 41-13A, 41-8E, 41-13C and 41-10230. The remainder of this ***Report and Recommendation*** will address the *Motion to Set Aside Partial Decrees* only in the context of water rights 41-8C, 41-8D and 41-8F.

[4] The "Notice of Award" filed on June 6, 1903, in the *Houtz Arbitration* granted water right 41-8 a diversion rate of 160 inches but did not clearly describe the place of use nor the number of acres involved. *Supplemental Director's Report*, at 3.

7UD Ranches (Gene and Richard Nelson); Kelvin Taysom appeared *pro se*; R. Scott and Ben Weston appeared *pro se*; James V. and Mooney Spillett appeared *pro se*; Nicholas B. Spencer appeared for IDWR, along with Steve C. Clelland and Vicki Kelly; and James Robinson (Watermaster) appeared *pro se*.

At the hearing, counsel for the 7UD Ranches (41-8F) said it would agree to have its ***Partial Decree*** set aside, but only if changes are limited to amounts (cfs) – no changes in the rotation schedule.[5] Counsel for J. Juan Spillett (41-8B) argued there should be no such limitation, although he does not intend to address rotation. Kelvin Taysom (41-8C) does not oppose setting aside the ***Partial Decrees*** but not if "pre-conditioned" by the terms in Mr. Spencer's September 23, 2003 letter.[6]

The parties agreed with the following: 1) the Special Master should consider as part of the record a letter dated September 23, 2003, from IDWR Deputy Attorney General Nicholas B. Spencer to Gene Nelson and Kelvin Taysom; and 2) an I.R.E. 706 report from IDWR concerning the respective claims to water from the Adshead Ditch may be helpful, along with additional informal settlement conferences.

I.R.E. 706 Report (Supplemental Director's Report)

The Special Master entered an ***Order for I.R.E. 706 Report*** on September 22, 2004, "concerning the respective claims to water from the Adshead Ditch, with particular mention of whether 'errors were made in allocating water for the source of the subject rights'." In response to that ***Order***, IDWR filed its *Supplemental Director's Report Regarding Subcase Nos. 41-8C, 41-8D and 41-8F* on December 13, 2004. The *Supplemental Director's Report* is particularly comprehensive in its summary of the history of the claims and settlement efforts since IDWR

[5] Generally, " a rotation plan imposed by court decree upon a group of water users must be equitable to them all with full regard for their rights as against each other; and such a plan, whether imposed by the court or entered into by common agreement of the parties, must not infringe the rights of others on the stream who are not parties to the plan." Wells A. Hutchinson, *Water Rights Laws in the Nineteen Western States*, vol. I, 616 (1971). Also see *Helphery v. Perrault*, 12 Idaho 451, 86 P. 417 (1906); *State v. Twin Falls Canal Co.*, 21 Idaho 410, 121 P. 1039 (1911); *Muir v. Allison*, 33 Idaho 146, 191 P. 206 (1920); and *Beecher v. Cassia Creek Irr. Co.*, 66 Idaho 1, 154 P.2d 507 (1944).

[6] It was learned later that Mr. Spencer's letter included an informational table with clerical errors. On that table, Kelvin and Suzanne Taysom's claim, 41-8C, was listed as 10 inches when it should have been 20 inches. *Supplemental Director's Report*, at 13.

filed its *Director's Reports for Irrigation and Other, Reporting Area 7, IDWR Basin 41* on November 2, 1999.

The *Supplemental Director's Report* explained the basis of IDWR's recommendations for the three claims at issue. IDWR stated that its senior water resource agent, Steve Clelland, investigated all water right claims in Basin 41 (Rock Creek Valley) and based his recommendations on "the best information available to him at the time: what he understood to be the watermaster's current delivery schedule." *Supplemental Director's Report*, at 7-8. The result was that Mr. Clelland's recommendations for the five water rights out of the Adshead Ditch were based on billed quantities[7] while all other rights in the valley were based on historic quantities. To add confusion, of the five claims diverted through the Adshead Ditch, only one (41-8C) was claimed based on historic quantities while two (41-8D and 41-8F) were claimed based on billed quantities.[8]

IDWR wrote that between 1965 and 1993, the "historic" quantities for the Adshead Ditch listed by a previous watermaster were changed for some unexplained reason. It is unclear whether the quantities actually delivered were changed in accordance with the "billing" numbers. Since the watermaster turns a constant flow of 160 inches down the Adshead Ditch, IDWR can only guess that the numbers *might* have been changed because of changes in the length of turns on the rotation. In any event, IDWR concluded:

> For this reason, IDWR does not know whether its quantity recommendations are in error or not. It does not know what the true quantities of these rights in fact are. All it can say at this point is that the previous watermaster changed the "historic" numbers for the Adshead Ditch, and these changed numbers made their way into the records relied upon by the agent recommending the rights [emphasis added].

Supplemental Director's Report, at 15.

Responses to Supplemental Director's Report

The 7UD Ranches (41-8F) filed its *Response to Supplemental Director's Report* on January 20, 2005. J. Juan Spillett (41-8B) filed his *Response* on January 21, 2005, and attached his statement entitled: "Reply to: 'Supplemental Director's Report Regarding Subcase Nos. 41-

[7] "Billed quantities" were derived solely from "the amount of money the individual water users on the Adshead Ditch were to be billed by the watermaster for delivery of their rights." *Supplemental Director's Report*, at 7.

[8] Water right 41-8B was claimed for 10" more than the historic quantity and 41-8E was claimed on neither the historic nor the billed quantity. *Supplemental Director's Report*, at 9-10.

8C, 41-D and 41-F' (dated December 13, 2004)." None of the other parties filed responses. No one contested the facts stated in the *Supplemental Director's Report*.

7UD Ranches argued that J. Juan Spillett's *Motion to Set Aside Partial Decrees* must be denied because: 1) the *Motion* was not timely filed under I.R.C.P. 60(b); 2) there is no evidence of any mistake, inadvertence, surprise or excusable neglect; 3) the *Motion* failed to show a meritorious defense; and 4) Mr. Spillett had a full opportunity to object to the ***Partial Decrees*** before they were issued and chose not to do so.

In his *Response*, J. Juan Spillett pointed out:

> If the partial decrees at issue herein are not corrected and [J. Juan] Spillett were to be awarded the correct quantity of water based on the empirical historic data for his right, the Department would be faced with the physical impossibility of delivering water that did not exist. The District Court has referred to this situation as the creation of "sunshine water."

J. Juan Spillett's *Response*, at 2.

CONCLUSIONS OF LAW

AO-1 and I.R.C.P. 60(b)

SRBA Administrative Order 1, Rules of Procedure (***AO-1***) states in relevant part: "Parties seeking to modify a partial decree shall comply with I.R.C.P. 60(a) or 60(b)." ***AO-1***, 14, d, at 22. J. Juan Spillett filed his *Motion to Set Aside Partial Decrees* and alleged that granting to others more water than they are entitled to is a "mistake, inadvertence, surprise or excusable neglect and therefore the Partial Decrees discussed herein should be set aside to correct this mistake." *Motion to Set Aside*, at 3. He also alleged that "a motion to set aside the partial judgments and decrees is in the best interests of justice and in the interests of the proper administration of the water rights so established." *Id*.

Under Rule 60(b), a party seeking to set aside a final judgment by default must show:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or *it is no longer equitable that the judgment should have prospective application*; or (6) any other reason justifying relief from operation of the judgment [emphasis added].

Motions alleging mistake, inadvertence, surprise, excusable neglect, newly discovered

evidence, fraud or any other reason justifying relief from operation of the judgment must be filed not more than 6 months after the judgment was entered. There is no similar time limit when a court finds "it is no longer equitable that the judgment should have prospective application."

Standards for Review

A motion to set aside a default judgment presents the trial court with a factual determination. *Reeves* v. *Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981). In determining whether to set aside a default judgment, a standard of liberality must be applied rather than one of strictness and the party moving to vacate default judgment must be given the benefit of any genuine doubt. *Johnson* v. *Pioneer Title Co. of Ada County*, 104 Idaho 727, 662 P.2d 1171 (App. 1983). A motion to set aside a default judgment is addressed to the sound discretion of the trial court whose discretion will not be reversed in the absence of abuse of that discretion; however, it would be an abuse of discretion for the trial court to grant such a motion without an adequate legal basis for doing so. *Newbold* v. *Arvidson*, 105 Idaho 663, 672 P.2d 231 (1983).

In addition to requiring a party to state a reason justifying relief from operation of the judgment, Idaho courts require more. First, a party must show that he or she has acted in good faith and exercised due diligence in the prosecution and protection of his or her rights, such as an ordinarily prudent person would exercise under similar conditions. *Council Improvement Co.* v. *Draper*, 16 Idaho 541, 102 P. 7 (1909) and *Kovachy* v. *DeLeusomme*, 122 Idaho 973, 842 P.2d 309 (App. 1992).

Second, a party must show a meritorious defense to set aside a default:

> Mere mistake, inadvertence, surprise or excusable neglect without disclosure of meritorious defense or meritorious defense without disclosure of mistake, inadvertence, surprise or excusable neglect will not suffice . . . . The facts constituting the defense, whether disclosed by answer, affidavit or both, must also be detailed and must be sufficient, when established, to constitute a defense to the action on the merits. The conclusion of the party or his attorney . . . is not sufficient. Whether the pleaded facts are sufficient to constitute a defense is also one for the trial court.

Thomas v. *Stevens*, 78 Idaho 266, 271, 300 P.2d 811, 813 (1956).

The policy of requiring a showing of a meritorious defense is founded on the doctrine that it would be an idle exercise for a court to set aside a default if, in fact, there is no justiciable controversy. *Reeves* v. *Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981). A party who seeks to set aside a default has the burden of supplying detailed facts of the proposed defense. *Smith*

Electric, Inc. v. *Crandlemire*, 100 Idaho 172, 595 P.2d 321 (1979).

Prior Ruling

As noted earlier, the ***Partial Decree*** for water right 41-8E (Robert R. and James V. Spillett) was set aside on July 3, 2002, along with ***Partial Decrees*** in subcases 41-13A, 41-13C and 41-10230, based on I.R.C.P. 60(b) because "it is no longer equitable that the judgment should have prospective application." See April 29, 2002 ***Special Master Report and Recommendation on Motions to Set Aside Partial Decrees***, at 4-5. The Special Master recommended the ***Partial Decrees*** be set aside "to assure that claims to water rights acquired under state law are accurately reported . . . [and to] enable the Court to help restore the integrity of water rights administration in the Rockland area." ***Special Master Report***, at 8. In those subcases, the fact that the motion to set aside the ***Partial Decrees*** was filed more than six months after entry of the judgments was not controlling. Likewise, it was not necessary to demonstrate mistake, inadvertence, surprise or excusable neglect. The key finding was that it was no longer *equitable* that the ***Partial Decrees*** have prospective application. By setting aside the ***Partial Decrees***, the Court opened the way for IDWR to accurately report those water rights. See I.C. § 42-1401B.

The same reasoning applies in the three subcases now before the Court. Even though J. Juan Spillett filed his *Motion to Set Aside Partial Decrees* nearly four years after water rights 41-8C, 41-8D and 41-8F were partially decreed, or just over three years from when the ***Partial Decrees*** were amended, there is ample evidence that that it is no longer equitable that they have prospective application. As Mr. Spillett argued, if the amounts of water already awarded are not set aside and adjusted to their accurate historical amounts, the Adshead Ditch will be over appropriated or some water users will suffer unfair losses.

IDWR's *Supplemental Director's Report* stated that through no particular fault, it does not know if the quantities it initially recommended for Adshead Ditch water rights, whether now partially decreed or not, are accurate. The Special Master considers the *Report* "an express acknowledgement from IDWR . . . that errors were made in allocating water for the source of the subject rights." ***Order of Reference***, at 2-3. Hence, J. Juan Spillett's *Motion to Set Aside Partial Decrees* may be considered in accordance with the applicable I.R.C.P. 60(b) standards.

By any reasonable standards, J. Juan Spillett has: 1) stated a sound reason justifying relief from operation of the ***Partial Decrees***; 2) shown that he acted in good faith; 3) exercised due diligence in the prosecution and protection of his rights; and 4) disclosed a meritorious position. The compelling solution, then, is for the Court to set aside the ***Partial Decrees*** and allow IDWR to review all five water rights in the Adshead Ditch together so that the Court does not deprive any water users of their lawful appropriations or create "sunshine water."

RECOMMENDATION

THEREFORE, IT IS RECOMMENDED that:

1. J. Juan Spillett's *Motion to Set Aside Partial Decrees* be **granted**, and
2. The ***Partial Decrees*** in subcases 41-8C, 41-8D and 41-8F be **set aside**.

DATED May 2, 2005.

_____
TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication