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	)	**Subcase No. See Exhibit A (A.L. Cattle)**
Case No. 39576	)	**ORDER ON MOTION FOR RECONSIDERATION; I.R.C.P. 59(e)**

Motion for Reconsideration: DENIED.

Appearances:

Mr. Norm Semanko, Esq., Boise, Idaho, for A.L. Cattle, Inc.

Mr. Larry Brown, Esq., Boise, Idaho, for United States Department of Justice, for United States Department of Interior, Bureau of Land Management.

I.
PROCEDURAL BACKGROUND

On June 30, 2000, A.L. Cattle, Inc. ("A.L. Cattle"), filed a *Motion to File Late Objections and Set Aside Partial Decrees* ("*Motion*") to 110 stockwater right claims filed and/or decreed in the name of the United States Department of the Interior, Bureau of Land Management for use on federal grazing allotments. The *Motion* sought to set aside partial decrees previously issued for those water right claims that had been partially decreed and to file late objections to the same claims. The *Motion* also sought to file late objections to those pending claims that had not been partially decreed.

On January 31, 2001, this Court issued an order denying A.L. Cattle's *Motion* with respect to setting aside the partial decrees. The motions for late objections to the claims that were not partially decreed were referred to Special Master Cushman. *See*

Order on Motion to Set Aside Partial Decrees and File Late Objections, Order of Reference to Special Master Cushman,* Subcase nos. 65-07267 *et seq*.** (January 31, 2001)(hereinafter "January 31, 2001, Order***").

On February 14, 2001, A.L. Cattle filed a *Motion for Reconsideration of Order on Motion to Set Aside Partial Decrees and File late Objections* ("*Motion for Reconsideration*") now before the Court, followed with a *Memorandum in Support*. On April 12, 2001, the United States filed a *Memorandum in Opposition* to the *Motion for Reconsideration*. On May 31, 2001, A.L. Cattle filed a *Reply Memorandum*. A.L. Cattle also filed an Amended Exhibit A removing some of the subcases from the *Motion*. Oral argument on the *Motion for Reconsideration* was held on June 4, 2001.

II.
MATTER DEEMED FULLY SUBMITTED FOR DECISION

Oral argument occurred in this matter on June 4, 2001. The parties did not request additional briefing, and the Court does not require any additional briefing on this matter. Therefore, this matter is deemed fully submitted for decision the next business day, or June 5, 2001.

III.
ISSUES RAISED FOR RECONSIDERATION BY THE COURT

The issues raised for reconsideration can be summarized as follows:

1. That the Court failed to address A.L. Cattle's argument that the partial decrees should be set aside as void pursuant to I.R.C.P. 60(b)(4) because of the "insufficient and misleading notice" provided to A.L. Cattle resulting from the bifurcated process for reporting stockwater claims;

2. That the Court incorrectly found that A.L.Cattle's *Motion* was untimely as to 12 subcases because the motion was filed more than six months after the claims were decreed and the six-month time limit does not apply to void judgments under 60(b)(4);

3. That the Court improperly found that some of A.L. Cattle's objections were without merit as applied to 10 licensed or decreed water rights held by the United States by failing to take into account that a water right may be lost to non-use after it has been

licensed or decreed. A.L. Cattle alleged in its original *Motion* that "[t]he United States has not beneficially used the stockwater" and;

4. That the ***January 31, 2001, Order*** was issued without the benefit of oral argument.

IV.
DISCUSSION

A. THE PARTIAL DECREES ARE NOT VOID PURSUANT TO I.R.C.P. 60(b)(4)

A.L. Cattle first argues that the Court failed to address the argument that the partial decrees issued to the United States are void pursuant to I.R.C.P. 60(b)(4). This Court disagrees.

Preliminarily, however, A.L. Cattle did not argue in either its *Motion* or supporting briefing as to why a particular partial decree should be void. Rather, the basis for the *Motion* was that the bifurcated reporting process between the small domestic and stockwater claims and the irrigation and other claims reasonably resulted in confusion sufficient to support a mistake of fact or excusable neglect standard pursuant to I.R.C.P. 60(b)(1). A.L. Cattle did not allege or argue that the established notice procedure within the SRBA is unconstitutional or that the United States otherwise failed to follow the established procedures.[1] The first time I.R.C.P. 60(b)(4) is mentioned in conjunction with A.L. Cattle's *Motion* is in its reply relative to the timeliness of its *Motion*. A.L. Cattle did not argue the merits as to why a particular partial decree should be voided.

Although the Court did not <u>expressly</u> address A.L. Cattle's arguments specifically in the context of I.R.C.P. 60(b)(4), the Court necessarily addressed and evaluated the sufficiency of the notice received by A.L. Cattle in the context of A.L. Cattle's arguments asserted under I.R.C.P. 60(b)(1), "mistake of fact" and "excusable neglect." In order to rule on the reasonableness of A.L. Cattle's conduct in failing to file timely objections prior to the objection deadline and/or entry of the partial decrees, the Court necessarily first reviewed the notice received by A.L. Cattle and evaluated the reasonableness of A.L. Cattle's conduct in light of that notice. Furthermore, because A.L. Cattle clarified that it

[1] Counsel for A.L. Cattle represented that A.L. Cattle was not challenging the constitutionality of the SRBA notice process.

was not challenging the constitutionality of the SRBA notice procedure, the argument that the United States' partial decrees should be voided pursuant to I.R.C.P. 60(b)(4) is essentially the same argument made by A.L. Cattle in support of the "excusable neglect" or "mistake of fact" standard.[2] In other words, an infirmity or ambiguity in the notice received would have supported setting aside the partial decrees based on mistake of fact or excusable neglect. After a thorough review of the record in these subcases, the Court did not find a problem with the notice received by A.L. Cattle.[3] In looking at the notice received and A.L. Cattle's conduct in light of that notice, the Court denied A.L. Cattle's *Motion*.

A couple of factors were significant to the Court's decision. First, there were no specific facts pled or proven to support the basis for the confusion allegedly created by the bifurcation process. A.L. Cattle timely filed its other small domestic and stockwater claims that were not located on grazing allotments. This is probative of the fact that A.L. Cattle was aware of the filing requirements for small domestic and stockwater claims. There is nothing alleged that would explain why A.L. Cattle believed that domestic and stockwater rights located on grazing allotments would be reported in a manner differently than any other water right claim.[4]

Second, because A.L. Cattle filed claims for some of its other small domestic and stockwater rights, A.L. Cattle received copies of the director's report for those claims together with actual notice that the director's report had been filed for all of the small domestic and stockwater claims located in the reporting area. This notice included

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[2] In these particular subcases the only difference between asserting the argument under I.R.C.P. 60(b)(1) and I.R.C.P. 60(b)(4) is the time limit within which the motion to set aside can be filed. I.R.C.P. 60(b)(1) provides for a six-month time period and I.R.C.P. 60(b)(4) provides for a "reasonable time" standard.

[3] The Court recently upheld the constitutionality of the SRBA notice procedure in several subcases involving similar circumstances. ***Memorandum Decision and Order on Motion to Set Aside Partial Decrees***, **Subcases 55-02373 *et al*.** (LU Ranching Co.)(May 1, 2001)(currently on appeal to the Idaho Supreme Court).

[4] In the Court's view, the filing of a single consolidated claim for an entire grazing allotment containing multiple different sources demonstrates a working knowledge of the claims and reporting process. IDWR has a specific form for filing a small domestic and stockwater claim. Presumably, A.L. Cattle used this form to file its claims not located on grazing allotments. With respect to those allottees that have filed such consolidated claims, the avoidance of the use of the standard small domestic and stockwater claims form, particularly when multiple independent sources are involved, demonstrates a calculated attempt to avoid the standard claims process in order to avoid paying multiple filing fees, not the result of confusion associated with SRBA procedure.

instructions for obtaining and reviewing the entire director's report and specifically stated that the director's report included claims made by the United States. Consequently, the Court could find no irregularity in the notice.

B. THE RESPONSIBILITY FOR ANY ALLEGED CONFUSION RESTS WITH A.L. CATTLE, NOT IDWR'S REPORTING PROCEDURE.

A.L. Cattle, in the *Motion for Reconsideration* suggests that the Court failed to "grasp" the nature of its argument or the confusion caused by the bifurcated reporting process. A.L Cattle summarizes the issue in its briefing as:

> The problem with the bifurcation process is in the nature of the claims filed and the different reporting schedules that are used for stockwater claims in federal grazing allotments. While the United States' claims are diminimus claims, the claims filed by private claimants[5] often are not diminimus. In a single grazing allotment, the United States may file a hundred diminimus claims, while the private party in the allotment files much fewer claims, but for greater quantities of water. By definition, the larger claims filed by the private parties cannot be included in the diminimus report with the United States' claims. The private parties have chosen not to defer diminimus claims, as suggested by the Court. Rather, they have or will, file larger claims which will be included in the later "irrigation and other" director's report for each basin. As a result, while private claimants are waiting to have their claims reported, the United States' claims are already going through the process toward a default decree.

Reply to Memorandum in Opposition to Motion to File Late Objections and Set Aside Partial Decrees; Amendment to Exhibit A at 2 (footnote added). At oral argument counsel also referred to the so-called "*de minimus-de maximus*" distinction as being the basis for the confusion.[6] The Court is fully aware of the issue. However, A.L. Cattle's argument fails to provide the complete picture.

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[5] It is unclear why A.L. Cattle refers generally to "private claimants" rather than focusing on the specific conduct of A.L. Cattle. One of the concerns of the Court is that A.L. Cattle is trying to obfuscate the issue by arguing in the hypothetical or relying on what may have happened to other allottees as a result of confusion caused by the bifurcated reporting process. For purposes of the *Motion* the Court wants to know the basis for A.L. Cattle's confusion.

[6] The Court is familiar with the issue, as the same has been discussed generally and informally at IDWR's monthly informational meetings, which the SRBA Court and staff attend.

As previously explained in the ***January 31, 2001, Order***, in 1997, in furtherance of the recommendations set forth by the Interim Legislative Committee on the SRBA, IDWR implemented a policy of bifurcating the issuance of the director's report whereby director's report for small domestic and stockwater claims were issued in advance of the director's report for the irrigation and other rights.

A small domestic and stockwater, or "*de minimus,*" claim is defined as a claim which does not exceed .02 cfs or 13,000 gallons- per-day. I.C. §§ 42-111 and 42-1401A(5). A fee is required for filing each individual claim. I.C. § 42-1414. In the case of a grazing allotment, which typically contains multiple water sources, in order to claim up to the 13,000 gallons-per-day limit per source, a claimant ordinarily would be required to file a claim for each water source within the allotment. Apparently, in an effort to avoid the payment of multiple filing fees, some grazing allottees filed a single consolidated claim for an entire grazing allotment irrespective of whether or not the claims were derived from different sources. A consolidated claim made in this fashion, however, may exceed the 13,000 gallon-per-day limit and thus not qualify as a *de minimus* claim.[7] This type of consolidated claim has been given the moniker "*de maximus*" claim.

The United States also filed claims on those same grazing allotments. However, the United States typically filed *de minimus* claims on the individual water sources within an allotment. Because the United States filed its claims as *de minimus* claims, they were correctly reported in the small domestic and stockwater director's report. However, because some allottees did not file their claims as *de minimus* claims they would not be reported in the small domestic and stockwater director's report and would be reported in the later irrigation and other director's report. The two different ways in which the claims were filed led to the alleged confusion among some allottees regarding which director's report contained the United States' claims (i.e. the small domestic and stockwater director's report or the irrigation and other director's report). Apparently, the allottees who filed their stockwater claims as a single consolidated claim and understood

[7] By way of further explanation, the entire claim may represent a cumulative total of more than the 13,000 gallon-per-day limit but actually consist of multiple different independent sources that are individually less than the 13,000-gallon- per-day limit and would qualify as *de minimus* claims if filed independently. *See infra* p. 7.

that that their claims would be reported in the irrigation and other director's report also assumed that the claims filed by the United States on the same grazing allotment would also be contained in the same later report. As a result these allottees apparently failed to review the small domestic and stockwater director's report for the federal claims in order to file timely objections. Ultimately, many of the United States' claims proceeded to partial decree.[8]

Despite the alleged confusion resulting from the bifurcated reporting of the above-described *de minimus* and "*de maximus*" claims, the Court does not find the same to be legal basis for setting aside the partial decrees, in general or as applied to the particular facts and circumstances of these subcases. In general the argument presupposes that the grazing allottee was reasonable in believing that the claim on a grazing allotment could be legitimately filed as a "*de maximus*" claim. The Court questions the reasonableness of this belief. However, the argument has several problems.

The distinction between the two reporting periods was based on the purpose of use (domestic and stockwater) and quantity (greater than or less than 13,000 gallons-per-day) and had nothing to do with whether or not a particular claim was located on a grazing allotment. State-law based claims on grazing allotments are treated the same as any other claim. Therefore a stockwater claim not exceeding 13,000 gallons-per-day would be reported in a different director's report than a claim exceeding the 13,000 gallons-per-day limit irrespective of whether or not the two claims were located on the same grazing allotment. Thus, for purposes of reporting, the fact that a particular claim is located on a grazing allotment is irrelevant.

Previously, the Court (Judge Wood), based on "general" informal representations made at the monthly informational meetings, had concerns that personnel from IDWR had allegedly instructed some grazing allottees that all claims on the grazing allotments would be treated differently and reported at the same time in the later irrigation and other director's report, irrespective of whether the claims were for quantities less than 13,000 gallons-per-day. Ultimately, this has turned out not to be the situation. Judge Wood, in

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[8] Contrary to the allegations made by A.L. Cattle, not all the United States' claims were entered by default. Rather, the state of Idaho objected to the claimed priority date. Ultimately, the objections were resolved via a stipulation to a 1934 priority date.

anticipation of the existence of a number of similarly situated claimants that were potentially prejudiced by erroneous information allegedly provided by IDWR, scheduled a series of status conferences directed at notifying and joining all similarly situated parties in an effort to consolidate and address the issue at one time and ultimately fashion an appropriate "global" remedy if necessary. ***See Notice of Informational Meeting and Status Conference Re: Issues Involved in Stockwater Claims on Federal Public Land*** (Aug. 30, 2000). To date, however, not one party, including A.L. Cattle, has alleged in any pleading or affidavit, or offered testimony regarding the anticipated concern that IDWR provided incorrect or misleading information relative to the reporting of claims on grazing allotments. Therefore any due process concerns the Court previously may have had regarding such misinformation have since been allayed. As such, the grazing allotment distinction is a "red-herring."

Apparently however, some allottees automatically assumed that because their "*de maximus*" claim for the grazing allotment would be reported in the irrigation and other director's report, that the United States' individual *de minimus* claims on the same sources would also be reported in the same director's report. Absent a misrepresentation from IDWR, its unclear to the Court how A.L. Cattle or any other grazing allottee assumed that the United States' claims would be reported in the irrigation and other director's report. As a general matter, because a tract of land comprising a grazing allotment can contain multiple different independent water sources, *de minimus* as well as those exceeding the 13,000 gallon-per-day limit, it is entirely unreasonable to assume that all claims on a grazing allotment would be filed and reported in the same manner.[9] A.L. Cattle even acknowledges in its briefing that a grazing allotment can contain both types of claims: "While the United States' claims are *de minimus* claims, the claims filed by

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[9] For example, a grazing allotment can contain streams and waterholes that are from completely unrelated sources. The waterhole could be claimed as a *de minimus* claim whereas the claim on the stream may exceed the 13,000 gallon-per-day limit. Some waterholes cannot even provide more than a *de minimus* amount. The Court also acknowledges that a grazing allotment may only contain one source that could be claimed either as multiple small claims or legitimately as a single large claim. This later scenario lends more credence to the argument that because a claim can be filed in two different ways that it was overlooked in the director's report. As applied to A.L. Cattle's argument, however, A.L. Cattle did not even look for the United States' claims in the director's report. Furthermore, there are no facts in the record regarding the nature of the water sources on the grazing allotments at issue. Thus the Court has no basis from which to evaluate the reasonableness of the alleged mistake.

private claimants are <u>often</u> not *de minimus*." ***Memorandum in Support of Motion for Reconsideration of Order on Motion to Set Aside Partial Decrees and File Late Objections*** at 2 (emphasis added). Thus, knowing full well that grazing allotments can contain *de minimus* stockwater claims as well as larger claims, absent a representation from IDWR regarding a modified reporting schedule, at a minimum A.L. Cattle or any other grazing allottee should have reviewed the small domestic and stockwater director's report for the existence of *de minimus* claims. There is simply no reasonable basis for the belief that all the claims would be reported in the same director's report.

The more specific problem, and what A.L. Cattle fails to fully address, is that the source of the alleged confusion results from the way in which some of the allottees filed their claims, or believed that they could file their claims on the grazing allotments, and not from the reporting schedule. As indicated, it has been represented to the Court that some unidentified allottees filed consolidated or "*de maximus*" claims for the entire described grazing allotment irrespective of the number of independent water sources contained therein.[10] Neither A.L. Cattle, nor any other allottee, has explained to the Court how they arrived at the belief that the claims could be filed in this manner or whether IDWR was contacted regarding the filing of claims in this manner. A.L. Cattle has yet to explain the basis for this belief or explain with specificity the complete nature of its belief regarding how claims could be filed.[11] Instead, A.L. Cattle attempts to generalize and obfuscate the issue by simply alleging confusion over and attacking the bifurcated reporting process. Simply put, A.L. Cattle has avoided supplying the Court with any details as to how it was confused.

A.L. Cattle either believed that the stockwater claims could be filed separately as *de minimus* claims or alternatively in one consolidated mass for an entire allotment (i.e.

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[10] By statute, a water right claim must include "the source of water." I.C. § 42-1409(1)(b). A description of the source of water is then included in the director's report for the water right claim. I.C. § 42-1411(2)(b). Ultimately, the source of the water is an element of a water right that becomes part of the partial decree in the SRBA. For purposes of administering water rights appropriated from common sources, it is important to describe the "source" element with some degree of particularity.

[11] The record is bereft of facts regarding the number of different water sources on the grazing allotments where the claims at issue are located. As such, the Court cannot evaluate the basis for A.L. Cattle's confusion. The Court is therefore really being asked to evaluate the matter in the hypothetical or in generalities as opposed to the particular facts giving rise to A.L. Cattle's alleged confusion.

that the claimant could elect how to file its claims); that the claims on the grazing allotments should have been filed as consolidated claims; or A.L. Cattle knew the correct procedure for filing the claims but was attempting to "bend the rules" to avoid filing multiple claims and paying multiple filing fees.

If A.L. Cattle believed that the claims could be filed as either *de minimus* or as consolidated ("*de maximus*") then implicit in this belief is the tacit acknowledgment that there was more than one way to file its claims on the grazing allotments. If A.L. Cattle understood that there was more than one way to file its claims it was unreasonable to automatically assume that the United States or any other competing claimant would elect to file their claims in entirely the same manner. Thus it was unreasonable to assume that the United States' claims would be reported in the irrigation and other director's reports.

As to the possible belief that claims for stockwater on grazing allotments could or should be filed as one single consolidated claim that would ultimately be reported in the irrigation and other director's report, this is equally unreasonable, particularly in A.L. Cattle's case. A.L. Cattle has not yet even filed its stockwater claims, *de minimus* or otherwise, for water sources located on its grazing allotments. *Affidavit of Agnes L. Brailsford* at ¶ 5. If the stockwater claims on the grazing allotment were intended to be filed as a single consolidated claim exceeding the 13,000 gallon-per day limit, then the time for filing such claims expired back in 1990.[12] In accordance with the Order of Commencement for the SRBA, IDWR set the deadlines for filing claims in Basin 65 and depending on the particular county within Basin 65, the latest deadline being 1990.[13] *See* ***Commencement Order, Case No. 39576*** (Nov. 19, 1987)(requiring claimants to file notice of claim within the time limits set forth in notice prepared by IDWR).

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[12] This fact makes A.L. Cattle's allegations of confusion even more attenuated, because A.L. Cattle appears to be relying the confusion that may have been caused by the manner in which some other unidentified allottee filed its stockwater claims. Simply put, A.L. Cattle argument relies on the assertion that while it was awaiting its claims to be reported, the United States' claims on the same grazing allotments had been reported and were proceeding to partial decree. The problem with this argument is that A.L. Cattle had failed to even file its claims. Therefore the Court has difficulty in specifically ascertaining how A.L. Cattle was confused by the claims filing process and ultimately the reporting process, when it had not even filed its claims.

[13] Boise County: 5/19/1989; Gem County: 2/14/1990; Washington County: 10/19/1989; Valley County: 11/23/1988; Payette County: 4/18/1990.

In the ***January 31, 2001, Order***, the Court focused on the combination of the deferment procedure for small domestic and stockwater claims together with the bifurcation of the reporting as the basis for A.L. Cattle's confusion. A.L. Cattle now argues that the Court's focus on the deferment of the claims was in error because A.L. Cattle had no intention of deferring its stockwater claims. This argument makes absolutely no sense. If A.L. Cattle intended to file its claims as a single consolidated ("*de maximus*") claim exceeding 13,000 gallons-per-day, then the time for filing its claim has long since elapsed. As far as IDWR, or any other party to the SRBA would be concerned, A.L. Cattle had no competing claims on the grazing allotments. The only way the argument makes any sense is if A.L. Cattle was intending to defer its stockwater claims so that the same would be considered timely. At this juncture leave of Court is required to file late claims exceeding 13,000 gallons-per-day.[14] A.L. Cattle's argument is essentially that it was confused over how the United States' claims would be reported because although A.L. Cattle had yet to file stockwater claims on its grazing allotments, had such claims been filed they would have been filed differently than those of the United States.[15] In sum, A.L. Cattle relies on the different ways within which it asserts that a claim can be filed as the basis for its confusion and A.L. Cattle has yet to file its claims; claims that should have been filed in back in 1990.

More importantly however, the filing (or in A.L. Cattle's case, the belief) that claims from multiple different independent sources can be filed in a single consolidated claim clearly runs contrary to even a reasonable interpretation of the standard claims

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[14] Because the time for filing claims has expired a claimant seeking to file a late claim must seek leave of Court. *Administrative Order 1*§ 4.d.(2). As the Court addressed in the ***January 31, 2001, Order***, *de minimus* claims for domestic and stockwater could be deferred and still be considered timely. However, as the Court cautioned, the order allowing parties to defer their claims did not absolve parties from filing timely objections to claims of others that were not being deferred and that may ultimately impact the water right being deferred. However, A.L. Cattle now states that the deferment process was not the basis for its confusion because it never intended to defer its claims.

[15] A.L. Cattle makes the statement in its briefing "because A.L. Cattle was not required to file its competing claims prior to the reporting of the United States' claims, A.L. Cattle had no reason to believe that the United States' competing claims had been reported early." ***Reply to Memorandum in Opposition to Motion to File Late Objections and Set Aside partial Decrees; Amendment to Exhibit A*** at 2. This averment is inconsistent with A.L. Cattle's position that it did not intend to defer its stockwater claims. If A.L. Cattle was not intending to file its stockwater claims as *de minimus* claims and then defer filing, the claims should have been previously filed back in 1989 or 1990.

filing procedure.[16] A.L. Cattle filed multiple separate *de minimus* domestic and stockwater claims associated with its private deeded ground. This demonstrates that A.L. Cattle had some familiarity with the claims filing process. Filing claims or intending to file claims in a "*de maximus*" fashion, in this Court's view not only demonstrates conscious attempt to circumvent standard filing procedure (perhaps in an effort to avoid the payment of multiple filing fees), but also demonstrates a good understanding of the claims filing process. However, absent authorization from IDWR, parties filing in this manner either had to acknowledge or at least should have reasonably understood that they were deviating from standard filing procedure.

With respect to the claims at issue, the United States followed established SRBA procedures for filing its claims. The United States' claims were also reported in accordance with established procedure. Any deviation from standard procedures and erroneous assumptions resulting therefrom came as a result of the manner in which some grazing allottees have filed their claims,[17] not as a result of an infirmity in the SRBA notice procedure, IDWR's reporting procedure or some bad-faith conduct on behalf of the United States. At a minimum if there was uncertainty over the reporting of the claims in light of the novel manner in which they were claimed, the onus should have been on the allottee to resolve any uncertainties as to how the claims would be reported.

A.L. Cattle argues that it makes more sense to have all the competing claims on grazing allotments at issue at the same time in one proceeding. While this Court generally agrees with this proposition, it does not agree that this should be a basis for setting aside already issued partial decrees. The dynamic of the SRBA makes it such that the Court would be in a position of continuously setting aside partial decrees on that basis. Because small domestic and stockwater claimants can elect to defer their claims into the future (or parties can eventually seek leave to file late claims)[18], any partially decreed claims that were alleged to be competing would have to be revisited when the

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[16] *Supra* fn 10.

[17] Because these so-called "*de maximus*" claims have yet to be reported by the director, it is undetermined whether this novel manner of claiming a water right will be successful.

[18] *See* ***Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses*** (Jan. 17, 1989); and ***SRBA Administration Order No. 10, Order Governing Procedures in the SRBA for Domestic and Stock Water Uses*** (March 22, 1995).

small domestic and stockwater claimant finally elected to file a claim or the late claim was filed. This compromises the finality of the partial decree and ultimately the progression of the SRBA. Furthermore, as the Court (Judge Wood) previously ruled with respect to competing claimants failing to object to the competing claims of others: "[C]ompeting claimants to a property right in Idaho are required to demonstrate their ownership of the property right on the strength of their own title, and not on the weakness of their competitor's title." *See* ***Memorandum Decision and Order on Challenge***, subcases 36-00003A, *et al*. (Nov.23, 1999)("***03 Rights-New Int'l Decree***") at 35-36.

Lastly, A.L. Cattle is not precluded from filing its own claims even though partial decrees have been issued to the United States. ***03 Rights-New Int'l Decree*** at 35-36 (holding that competing claimants do not waive their right to file a claim by failing to object to a competing claim.) Although if such claims exceed 13,000 gallons-per-day, leave of Court will be required to file such claims.

C. TIMELINESS OF MOTION

A.L. Cattle asserts that the Court erred in finding that its *Motion* was untimely with respect to certain of the partial decrees. Specifically, that the six-month time limit imposed by I.R.C.P. 60(b)(1) does not apply to I.R.C.P. 60(b)(4) where the judgment is void. As previously indicated, A.L. Cattle did not challenge the constitutionality of the SRBA notice process or allege that the notice process was not properly followed by the United States. A.L. Cattle did not argue any basis for voiding the judgment other than the confusion allegedly caused over the bifurcated reporting process. However, if A.L. Cattle concedes that the notice process is not unconstitutional and that the process was followed in these particular subcases, any evidence of confusion is only probative as to the reasonableness of mistake of fact or excusable neglect under I.R.C.P. 60(b)(1). Hence in the Court's view A.L. Cattle is attempting to characterize an I.R.C.P. 60(b)(1) issue as an I.R.C.P. 60(b)(4) issue. The Court does not find any of the partial decrees at issue to be void. In any event, the Court addressed the timeliness of A.L. Cattle's *Motion* in the alternative as to any particular partial decree and was not the sole basis for the Court's denial.

D. FAILURE OF COURT TO TAKE INTO ACCOUNT FORFEITURE AS A "MERITORIOUS DEFENSE"

A.L. Cattle next asserts that the Court failed to consider forfeiture as satisfying the meritorious defense standard as to the partial decrees that were based on previously licensed rights. As to these rights the Court determined that A.L. Cattle did not satisfy the "excusable neglect" or "mistake of fact" standard that is the first prong of an I.R.C.P. 60(b)(1), analysis thus even if A.L. Cattle had pled a meritorious defense the result would have been the same. However, in addressing the merits of A.L. Cattle's argument, this Court previously set forth the "meritorious defense" standard as follows:

> In addition to satisfying one of the criteria set forth in I.R.C.P. 60(b), the movant must also allege facts, which if established, would constitute a meritorious defense. The legal standard of what must be shown to satisfy the meritorious defense requirement has been discussed several times by the Idaho Appellate Courts. The meritorious defense standard requires that a movant:
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> 1) allege facts,
> 2) which if established,
> 3) would constitute a defense to the action, and
> 4) the facts supporting the defense must be detailed.
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> The detailed factual requirement also goes beyond the mere general notice requirement that would ordinarily be sufficient if pled prior to default. The policy behind pleading a meritorious defense is founded on the doctrine that 'it would be an idle exercise for a court to set aside a default judgment if there is in fact no justifiable controversy.'

(***January 31, 2001, Order*** at 5-6)(internal citations omitted).

In the June 30, 2000, *Motion* A.L. Cattle did not argue or allege forfeiture. A.L. Cattle alleged that: "[t]he United States has not beneficially used the stockwater." In this Court's opinion A.L. Cattle did not satisfy the requisite pleading requirements. First, its not the role of the Court to formulate viable legal theories and evaluate those theories based on the facts plead. The statement that the United States did not beneficially use the water right offers little more than a conclusion. A.L. Cattle pled that: "A.L. Cattle owns and runs several grazing allotments in Basin 65. These cattle are owned by private parties, not the United States, and the stockwater is, and has been, beneficially used by private parties,

not the United States." *Affidavit of Agnes S. Brailsford* at ¶ 4. This Court has already held that the United States can establish a water right through the agency relationship with the grazing allottee, which must be established on fact specific case-by-case basis. *See* ***Order Denying Challenges and Adopting Special Master's Reports and Recommendations*** (Joyce Livestock) (Subcases 57-04028B, 57-10587B, 57-10588B, 57-10770B, and 72-15929C) (Sept. 30, 1998)**;** ***Memorandum Decision and Order on Challenge, Order Denying Motion to File Amicus Curiae Brief; and Order of Recommitment to Special Master Cushman*** (LU Ranching) (Subcases 55-10288A & B *et seq*.) (April 25, 2000). Thus without more factual specificity or argument as to forfeiture, the fact that the United States does not own cattle does not necessarily defeat a water right.

Finally, in the Court's ***January 31, 2001, Order***, the Court's findings regarding the "meritorious defense" standard as to the previously licensed rights were also made in the alternative. The Court found that A.L Cattle had not first satisfied the "excusable neglect" or "mistake of fact" standard.

E. FAILURE OF COURT TO ALLOW ORAL ARGUMENT

As a result of the transition in SRBA Presiding Judges, apparently there was a misunderstanding as to the procedural posture of the case. A.L. Cattle previously represented to the Court (Judge Wood) that an evidentiary hearing on its *Motion* unnecessary and it and intended to rely on its affidavits. The *Motion* had also been fully briefed. This Court issued its opinion without oral argument as is permitted by I.R.C.P. 7(b)(3). However, because of the assertion that A.L. Cattle did not intend to waive oral argument and believed that it would be entitled to the same, this Court overruled the objection raised by the United States and permitted A.L. Cattle to argue the merits of its original *Motion* as well as the merits of its *Motion for Reconsideration*. Therefore, this issue is now moot.

V.
CONCLUSION

For the reasons set forth above A.L. Cattle's *Motion for Reconsideration* is DENIED.

IT IS SO ORDERED.

DATED: JULY 27, 2001

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

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ROGER S. BURDICK
Presiding Judge of the
Snake River Basin Adjudication