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

JAN 27 2026

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In re CSRBA	Subcase Nos. 95-18274
Case No. 49576	**KOOTENAI PROPERTIES, INC.'s REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Claimant and Objector, KOOTENAI PROPERTIES, INC. ("KPI"), by and through undersigned counsel of record and pursuant to Idaho Rule of Civil Procedure 56 hereby submits this reply in support of its motion for summary judgment seeking the Special Master's recommended disallowance of water right claim 95-18274 as a matter of law. This reply responds to the *Irrigators' Memorandum in Response to Kootenai Properties, LLC Motion for Summary Judgment* ("*Irr. Resp.*") filed by Idaho Forest Group LLC et al. ("Irrigators") on January 20, 2026.

For the reasons set forth below, and previously identified by KPI in support of its motion, the Special Master should grant its motion for summary judgment.

INTRODUCTION

Shakespeare wrote the play *Much Ado About Nothing* following two love stories, a feigned death, and ultimately two weddings. The characters venture through plots of infidelity, mistaken identity, and in the end the fuss was all for naught. This subcase, for better or worse, has taken on Shakespeare's motif and the Special Master should recognize the present state of the parties' positions. The Co-Claimants filed a motion for late claim, IDWR issued its recommendation, objections were filed, and now KPI and the Irrigators agree that water right claim 95-18274 should not be decreed.[1] KPI's motion can be granted on those facts alone.

In response to KPI's motion the Irrigators now venture down a novel path in hopes the Special Master will issue an "advisory" opinion interpreting the prior partial decrees and their future administration. No such opinion is necessary as it has nothing to do with the elements of 95-18274. Moreover, this is exactly the type of judicial meandering the Presiding Judge and Supreme Court have previously prohibited and therefore should be rejected outright. *See Black Canyon Irr. Dist. v. State of Idaho*, 163 Idaho 144, 156-67, 408 P.3d 899 (2018) ("This analysis signifies error, as the existing rights were not at issue").

The Special Master should grant KPI's motion, and except to the extent an enlargement water right for seepage, evaporation, and losses is recognized, recommend 95-18274 be decreed as disallowed.

[1] Excepting an "enlargement" water right for 99 acre-feet to cover seepage, evaporation, and losses in the reservoir.

ARGUMENT

I. Certain Alleged Statements of Facts in the Irrigators' Response Should be Rejected as not Supported by Admissible Evidence.

Idaho Rule of Civil Procedure 56 requires a party asserting a fact to have admissible evidence in support it. I.R.C.P. 56(c). In their response, the Irrigators offer several "conclusory" statements of fact that are not supported by admissible evidence in the record.

First, the Irrigators characterize their version of the history of Chilco Reservoir without any supporting information. *See Irr. Resp.* at 4-5. The Irrigators describe the fact the original water right was eventually split but infer that the effect of those sales created individual storage rights "without regard to the physical storage capacity of the reservoir." *Id.* at 6. The Irrigators have no admissible evidence to support these assertions. The Irrigators offer no witness or first hand testimony regarding the split of the original water right and what was considered by those involved at the time. Next, the Irrigators further allege "there was no actual measurement of the reservoir capacity until 2022." *Id.* The fact Mr. Fobes performed a capacity measurement in 2022 doesn't establish that "no actual measurement" was ever performed prior to that date.

In addition, the Irrigators allege that "each storage right was decreed based on the claimed amount without consideration of whether the total decreed amount of the rights of 560.3 acres exceeded the actual storage capacity of the reservoir." *Irr. Resp.* at 7. What was or was not "considered" for purposes of the prior storage water right claims and decrees is not at issue in this subcase, and the Irrigators have no admissible evidence to support that allegation. Moreover, it is not accurate to state that "[o]nly after the Partial Decrees were entered was it learned that the actual storage capacity of the reservoir is approximately 396 acre-feet." *Id.* Although that may apply to Mr. Fobes' knowledge, that does not establish a universal fact as to all parties, persons, or IDWR. Further, the Irrigators allege "no measuring devices" existed prior

to the entry of the partial decrees and that this "was likely because prior to the decree of KPI's in-reservoir rights all the stored water was used for irrigation." *Irr. Resp.* at 7. Again, these statements are speculative, not based upon admissible evidence, and do not establish facts of what existed or the reasons therefore prior to the entry of the partial decrees. As such, these alleged facts of the Irrigators should be disregarded as not supported by admissible evidence required by Idaho's civil rules.

Finally, to the extent the Irrigators now assert the term "continuous fill" is term of art or description that has some defined legal meaning, KPI disputes that contention. KPI hereby further withdraws its prior statement in the "procedural background" of its *Memorandum in Support of Kootenai Properties, Inc's Motion for Summary Judgment* at page 2. That statement was simply pulled from IDWR's 706 Report that was in turn taken from the "remarks" of the original *Notice of Late Claim* filed on June 24, 2022. *See 706 Report* at 2; Ex. 2 at 2 ("13. Remarks . . . The storage reservoir, which has a capacity of 396 acre-feet historically has been operated on a continuous fill basis to satisfy the decreed quantity of the water rights on Attachment 1 of 560.3 acre-feet"). A "remark" in the original notice of claim does not rise to the level of an "undisputed fact" or legal term of art. To the extent the Irrigators claim this statement is undisputed or should mean something not stated, KPI withdraws its prior reference and disputes the Irrigators' contention.

II. The Special Master Should Reject the Irrigators' Invitation to Interpret the Prior Partial Decrees.

The Irrigators do not dispute KPI's argument concerning the lack of evidence of actual beneficial use to support claim 95-18724. *See Irr. Resp.* at 4 ("Irrigators now agree that refill is not necessary"). That stipulation should end any contested determination related to KPI's motion. However, that is not the end of the Irrigators' response.

Curiously, the Irrigators spend the majority of their response asking the Special Master to interpret the prior decrees and issue an advisory opinion confirming their alleged reason for agreeing to KPI's motion. *See Irr. Resp.* at 4-10. The Special Master should reject this invitation as it clearly exceeds the scope of referral from the Presiding Judge, and wades into future questions of water right administration not before the Court.

First, the Irrigators allege that the existing storage rights "implicitly" authorize "continuous fill" and that the decrees "must be interpreted in light of how parent rights 95-2036, 2036A, 95-2036B and 95-2036C were exercised." *Irr. Resp.* at 4-5. Contrary to the Irrigators' argument, this subcase is not a forum to issue a ruling interpreting the prior partial decrees.

Partial decrees in the CSRBA are final judgments issued pursuant to I.R.C.P. 54(b). The Court cannot revisit those final judgments absent some basis under I.R.C.P. 60. This subcase concerning late claim 95-18274 is not a substitute for a Rule 60 motion or an untimely appeal. *See Matter of Estate of Bagley*, 117 Idaho 1091, 1093, 793 P.2d 1263, 1265 (Ct. App. 1990) ("The motion cannot be a disguised substitute for a timely appeal").

Moreover, the prior partial decrees speak for themselves, are binding on IDWR and the watermaster, and cannot be reinterpreted in the context of this subcase. *See Black Canyon Irr. Dist.*, 163 Idaho at 155, 408 P.3d at 910 ("Absent BCID undertaking appropriate proceedings to set aside a final judgment under Idaho Rule of Civil Procedure 60(b), we emphasize that the decrees are conclusive and final, which comports out general reluctance to allow already-decreed water rights to be relitigated"); *see also, State v. Nelson*, 131 Idaho 12, 16, 951 P.2d 943, 957 (1998) ("Finality in water rights is essential."); *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 811, 252 P.3d 71, 92 (2011) ("The amounts of the Spring Users' water rights had already been decreed based upon the amounts of water that they had diverted and applied to the

beneficial use of fish propagation. Subject to the rights of senior appropriators, they are entitled to the full amount of water they have been decreed for that use").

The Supreme Court addressed a similar issue from the SRBA in *Black Canyon Irr. Dist.* In that case the SRBA Court affirmed the Special Master's summary judgment decision finding the late storage claims were precluded by the prior Payette Adjudication. The Presiding Judge rejected the alternative recommendation that the late claims were duplicative of the rights already decreed in the SRBA. *See* 163 Idaho at 146, 408 P.3d 901. The Supreme Court affirmed finding that the late claims "indisputably predate both the Payette Adjudication and the SRBA and should have then been asserted." 163 Idaho at 152, 408 P.3d at 907. On the second issue, the Court found the Special Master exceeded the SRBA Court's orders of reference and explained:

> Here, the district court correctly held that the special master exceeded the district court's orders of reference by concluding the Late Claims were unnecessary as duplicative of the existing decrees. . . . Even so, the special master strayed beyond this threshold question by, as the district court correctly observed, "delving into the administration of previously decreed water rights" to conclude the Late Claims were unnecessary as duplicative of the existing rights. This analysis signifies error, as the existing rights were not at issue. Rather it was the 'supplemental beneficial use storage water rights' claimed in the Late Claims that were at issue. In addition, the administration of the existing water rights had no basis in the Director's reports and was raised for the first time before the special master" . . . Further, the special master's "additional basis" recommendation improperly encroaches on the Director's discretionary duty of administering water. It is well settled that the administration of water is a matter committed to the Director's discretion.

163 Idaho at 156-57, 408 P.3d at 911-12.

The Irrigators invite the Special Master to make a similar mistake by asking for an interpretation of the prior decrees. *See Irr. Resp.* at 9-10 ("the Special Master should find that the CSRBA decreed rights implicitly recognize the right to operate Chilco Reservoir on a 'continuous fill' basis to allow a complete fill of the individually decreed rights in priority").

Again, this subcase concerns the adjudication of claim 95-18274, not a declaratory ruling on the prior decrees and how those rights should or should not be administered. Since the Irrigators have failed to come forward with evidence to show actual beneficial use to support claim 95-18724, KPI's motion should be granted as a matter of law. Issues of administration of the prior decreed storage water rights are beyond the scope of the subcase. Although the total quantity of the prior decrees (560.3 acre-feet) is relevant to show IDWR has no evidence to support a second water right for 95-18274, how those rights are administered going forward (or historically) is not relevant. The Special Master should decline to issue findings on such issues as a matter of law. *See e.g. Blasch v. HP, Inc.*, 173 Idaho 586, 590, 545 P.3d 581, 585 (2024) ("This Court is not empowered to issue purely advisory opinions").

In sum, KPI's motion for summary judgment can be granted and the Irrigators' request to for a determination on issues beyond the scope of 95-18274 should be denied.

III. The Parties Support an Enlargement Claim of 99 Acre-Feet for Seepage and Evaporation Losses.

KPI explained that water right 95-18274 could be decreed as an enlargement water right to cover evaporation and seepage losses in the reservoir. *See KPI Memo* at 14. The Irrigators now support this theory and have submitted a second declaration of Ryan Fobes describing his calculations and personal observation. *See Irr. Resp.* at 11.

Based upon the evidence in the record, KPI submits there is no genuine dispute as to any material fact on this issue and the Special Master can recommend water right 95-18274 as an enlargement of the existing storage water rights.

CONCLUSION

KPI's motion for summary judgment should be granted. The Irrigators have not presented any admissible evidence to support a constitutional use water right for water right 95-18274. At most, an enlargement water right to cover seepage and evaporation losses can be recommended consistent with section 42-1426, Idaho Code.

DATED this 27th day of January, 2026.

PARSONS BEHLE & LATIMER

/s/ Travis L. Thompson
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Attorneys for Kootenai Properties, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January, 2026, I served a true and correct copy of the foregoing *Kootenai Properties Inc.'s Reply in Support of Motion for Summary Judgment* on the following by the method indicated:

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