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In Re SRBA Case No. 39576 Subase No. 37-00864 Respondent's Brief Dckt. 44716

IN THE SUPREME COURT OF THE STATE OF IDAHO

In Re SRBA CASE NO. 39576 SUBCASE NO. 37-00864 GARY AND GLENNA EDEN, Appellants, v. STATE OF IDAHO, Respondent.	Supreme Court Docket No. 44716-2016 SRBA CASE NO. 39576 SUBCASE NO. 37-00864

RESPONDENT'S BRIEF

Appeal from the District Court of the Fifth Judicial District for Twin Falls County
Honorable Eric J. Wildman, Presiding

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A. Nature of the Case

This is an appeal from an order issued by the Snake River Basin Adjudication ("SRBA") District Court denying a Motion to File a Late Notice of Claim and Motion to Set Aside the *Final Unified Decree* and the *Closure Order* for Basin 37 filed by Appellants Gary and Glenna Eden ("the Edens").[1] The Edens seek to file a Late Notice of Claim for water right no. 37-864, which was not claimed during the pendency of the SRBA and was, therefore, was decreed disallowed. The Edens allege that the *Final Unified Decree* and the *Closure Order* should be set aside because the Edens did not receive sufficient notice of the SRBA proceedings to satisfy due process. The State of Idaho ("State") filed an objection to the motions, asserting that the Edens received sufficient notice of the SRBA and procedures for filing claims and that the Edens failed to show circumstances that warranted undermining the finality of the *Final Unified Decree*, upon which all water users in the Snake River Basin rely. The District Court agreed and denied the Edens' motions. The Edens appealed.

B. Procedural Background

"On November 19, 1987, the District Court for the County of Twin Falls issued an order commencing a general adjudication of water rights from the Snake River Basin water system in Idaho." R. Vol. I, p. 715. This general adjudication was to "result in a decree determining all water rights from the [Snake River Basin] water system." *Id.* This decree would then allow for the creation of "an accurate schedule of water rights to assure the proper delivery of water in times of shortage." *Id.*

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[1] R. Vol. I, pp. 110–13 (*Order Closing Claims Taking Basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47, and 63, and Disallowal of Unclaimed Water Rights* (Feb. 13, 2013) [hereinafter "*Closure Order*"]), 933–947 (*Final Unified Decree* (August 26, 2014)).

When the Legislature decided to initiate the SRBA, "no reasonable method of initiating the proceeding, [and] providing notice to potential claimants . . . was provided by the existing Rules of Civil Procedure." *In re SRBA Case No. 39576*, 128 Idaho 246, 255, 912 P.2d 614, 623 (1995) [hereinafter "*Basin-Wide Issue 3*"]. "[I]n light of the absence of applicable Rules of Civil Procedure, it was necessary for the Legislature to provide special procedural rules for the initiation of the SRBA." *Id.* The Legislature set forth such procedures in chapter 14, title 42, Idaho Code.

One of the primary difficulties in a general stream adjudication like the SRBA is "the sheer multitude of the parties to the adjudication" which makes "personal service . . . too onerous, impractical and confusing in its employment, defeating any purpose for meaningful notice." *LU Ranching Co. v. United States*, 138 Idaho 606, 610, 67 P.3d 85, 89 (2003) (quoting *In re Rights to the Use of Gila River*, 830 P.2d 442, 453 (Ariz. 1992)). To deal with this issue, the Legislature developed the first and second-round service procedures set forth in Idaho Code § 42-1408.

Upon the commencement of the SRBA, the Director of the Idaho Department of Water Resources ("IDWR") prepared the first-round service commencement notice to inform potential claimants of the commencement of the SRBA and the procedures for filing notices of claims. *See* Idaho Code § 42-1408(1).[2] The notice was specifically required to inform potential claimants:

> section 42-1409, Idaho Code, requires in a general adjudication all claimants, except those as specifically excluded by law, to file for each water right a notice of claim on a form furnished by the Director; failure to file a required notice of claim will result in a court determination that no water rights exists for the use of water for which the required notice of claim was not filed;

[2] A copy of the first-round service commencement notice mailed out in Lincoln County, Idaho is in the Record at pages 715 through 718.

Idaho Code § 42-1408(1)(c).

Under Idaho Code § 42-1408(2), this first-round service commencement notice was required to be circulated throughout the Snake River Basin by being published in a newspaper of general circulation in each county that was a part of the water system and posted in each county courthouse, recorder's office, and assessor's office. Additionally, the first-round service commencement notice was mailed to "each person listed as owning real property on the real property assessment roll within the boundaries of the water system to be adjudicated at the address listed on the real property assessment roll." Idaho Code § 42-1408(2)(d).

The Director was then required to circulate a second-round service commencement notice upon the expiration of the period for filing notices of claims in each water basin. Idaho Code § 42-1408(4). In preparing the second-round service commencement notice, the Director was to compare the notices of claims filed in the SRBA with IDWR's records "to determine whether there are any rights to water from the water system for which no notice of claim was filed." *Id.* Then, the Director was to determine the owner of the land for which possibly unclaimed rights are appurtenant and serve such persons with a second-round service commencement notice including the same information required for first-round service along with "a final date for filing notices of claims."[3] *Id.* "Any person who fails to submit a required notice of claim shall be deemed to have been constructively served with notice of a general adjudication by publication and mailing as required by section 42-1408, Idaho Code." Idaho Code § 42-1409(5).

The Edens personally received both first and second-round service. R. Vol. I, pp. 710–714, 757–58 (*Affidavit of Service of Commencement Notice – Lincoln County* (Sept. 20, 1988) (listing Gary and Glenna Eden as persons mailed the first-round service commencement notice

[3] A copy of the second-round service commencement notice mailed out in Basin 37, Part 1, is included in the Record at pages 219 through 222.

on March 28, 1988)); R. Vol. I, pp. 215–17, 223 (*Affidavit of Danni M. Smith Re: Second Round Service of Commencement Notice for Basin 37, Part 1* (June 1, 2005) (listing Gary and Glenna Eden as persons mailed, by certified mail, the second-round service commencement notice on May 5, 2005)); R. Vol. I, p. 228 (return receipt for certified mail signed by Glenna Eden on May 6, 2005).

After the commencement of the SRBA, the Court issued a "Supplemental Order Granting Additional Powers to District Judge," which gave the SRBA District Court "the authority and power to modify the procedure for making service of pleadings, motions, notices of hearing and other documents . . ." *Basin-Wide Issue 3*, 128 Idaho at 251, 912 P.2d at 619. In response to that order, the SRBA District Court issued *SRBA Administrative Order 1, Rules of Procedure* (amended Oct. 16, 1997) [hereinafter "*AO1*"]. *Id.*; R. Vol. I, pp. 867–923.

Personal service of all filings in the SRBA could not practicably be made on all claimants or interested persons. *See LU Ranching*, 138 Idaho at 610, 67 P.3d at 89. To keep interested persons apprised of the proceedings in the SRBA, the SRBA District Court instituted the Docket Sheet Procedure set forth in *AO1* § 6. *See* R. Vol. I, p. 877 (*AO1* §2(h)) (defining "Docket Sheet Procedure" as "[t]he procedure established to give notice of proceedings on non-subcase matters to SRBA claimants and parties.").

Docket Sheets are issued by the SRBA District Court monthly and include a list of all orders, pleadings (except responses, pleadings or, orders filed in subcases), and other documents filed with or issued by the SRBA District Court since the last Docket Sheet.[4] R. Vol. I, p. 886 (*AO1* § 6(b)). Pursuant to *AO1* § 6(c), a copy of the Docket Sheet is posted in the district court

[4] The Docket Sheet also separately lists upcoming hearings, all objections and responses filed, Special Master Reports and Recommendations issued, Amended Director's Reports, and all partial decrees issued since the last Docket Sheet. R. Vol. I, p. 886 (*AO1* § 6(b)).

of each county within the SRBA boundaries and is made available at IDWR's central and regional offices.[5] R. Vol. I, p. 887. Additionally, interested persons have the option of paying a minimal annual fee to subscribe to the Docket Sheet. *Id.* (*AO1* § 6(d)); *see also LU Ranching*, 138 Idaho at 610, 67 P.3d at 89 ("AO1 (6)(d) allows one to subscribe to the SRBA docket sheet for a nominal fee."). "Compliance with the Docket Sheet Procedure constitutes notice to all parties to the adjudication." R. Vol. I, p. 888 (*AO1* § 6(f)(3)(b)).

As the SRBA was winding down, the District Court began issuing orders informing water users that it would start closing claims taking in specific water basins. *See, e.g.*, R. Vol. I, pp. 5–8 (*Order Establishing Deadline for Late Claim Filings in Basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47, and 63* (Oct. 12, 2012) [hereinafter "*Deadline Order*"]). Closing claims taking in individual basins was "an essential first step to completion of the SRBA. Without it, completion of the SRBA will not occur." R. Vol. I, p. 6. Notice of the completion of claims taking was not required under chapter 14, title 42, Idaho Code, but was given as an additional courtesy to water users. R. Vol. I, p. 7.

The *Deadline Order* was issued in October 2012, and stated that "the last date to file a MOTION TO FILE LATE CLAIM in [Basin 37] shall be January 31, 2013. No late claims will be accepted for filing in [Basin 37] after January 31, 2013." R. Vol. I, pp. 5, 8. The *Deadline Order* stated that claimants "previously received extensive first-round and second-round *Notice of Filing Requirements* in the SRBA" and "there is limited subcase activity in these basins. Accordingly, the Court finds that it is appropriate to begin the basin closure process." R. Vol. I, pp. 6–7.

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[5] The Docket Sheet is also posted on the SRBA website. *See* http://www.srba.state.id.us/DOCSHT.HTM.

Attached to the *Deadline Order* as Exhibit 1 was "a list of *non-de minimis* water rights from IDWR's water rights database" for which "IDWR is unable to ascertain . . . that a claim has been filed in the SRBA." R. Vol. I, p. 7. The *Deadline Order* admonished potential claimants to "examine Exhibit 1 to determine whether the listed water right numbers are active water rights. The burden of determining whether to file a motion for late claim for any of the listed water right numbers rests solely with the water right holder." *Id.* The *Deadline Order* further provided that "[i]f unclaimed, these water rights will be decreed as disallowed." *Id.* Water right no. 37-864 was listed in Exhibit 1 as an unclaimed water right.[6] R. Vol. I, pp. 17, 54. Notice of the issuance of the *Deadline Order* was served via the Docket Sheet Procedures in *AO1* § 6. R. Vol. I, p. 1147.

The *Closure Order* for Basin 37 was issued on February 13, 2013. R. Vol. I, p. 110. The *Closure Order* reiterated that the *Deadline Order* informed claimants that the last date to file a Motion to File Late Claim in Basin 37 was January 31, 2013, and that water rights listed in Exhibit 1 would be decreed disallowed if unclaimed. R. Vol. I, p. 111. The *Closure Order* then officially ordered the closing of claims taking in Basin 37, with a few exceptions not applicable here, and ordered that "all unclaimed water rights represented by the water right numbers listed on Exhibit 1 . . . are hereby decreed as disallowed." R. Vol. I, pp. 112–13. Water right no. 37-864 was included in Exhibit 1 and expressly decreed disallowed in the *Closure Order.*[7] R. Vol.

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[6] Water right no. 37-864 appeared on page 4 of 16 of the subsection of Exhibit 1 labeled "Basin 37 Potentially Unclaimed Water Rights." R. Vol. I, pp. 51, 54. The entry for the water right stated that it was sourced from the Big Wood River for irrigation, it was based on a decree, and the owner of record was Anthony M. Gomes. R. Vol. I, p. 54.

[7] Like in the *Deadline Order*, water right no. 37-864 appeared on page 4 of 16 of the subsection of Exhibit 1 labeled "Basin 37 Potentially Unclaimed Water Rights." R. Vol. I, pp. 147, 150. The entry for the water right stated that it was sourced from the Big Wood River for irrigation, it was based on a decree, and the owner of record was Anthony M. Gomes. R. Vol. I, p 150.

I, p. 150. Notice of the issuance of the *Closure Order* was also served via the Docket Sheet Procedures in *AOI* § 6. R. Vol. I, p. 1168.

On August 26, 2014, almost twenty-seven years after the commencement of the SRBA, the District Court issued the *Final Unified Decree*.[8] R. Vol. I, p. 933. The *Final Unified Decree* decrees more than 158,600 water rights. Ann Y. Vonde *et al.*, *Understanding the Snake River Basin Adjudication*, 52 IDAHO L. REV. 53, 56 (2016). With few exceptions, this decree is "conclusive as to the nature and extent of all water rights within the Snake River Basin within the State of Idaho with a priority date prior to November 19, 1987" and "is binding against all persons." R. Vol. I, pp. 941, 943; Idaho Code § 42-1420(1). "All prior water right decrees and general provisions within the Snake River Basin water system are superseded by this Final Unified Decree except as expressly provided otherwise by partial decree or general provision of th[e] Court." R. Vol. I, p. 944. Incorporated into the *Final Unified Decree* is Attachment 6 which sets forth "water rights of record with the Idaho Department of Water Resources that were required to be claimed but were not claimed in this proceeding and therefore were decreed disallowed." R. Vol. I, p. 943. Water right no. 37-864 is included in Attachment 6 as an unclaimed water right expressly decreed disallowed. R. Vol. I, p. 956.

Although the District Court would regularly grant motions to file late claims prior to closure orders being issued, late claims have not been permitted after the entry of the *Final Unified Decree*.[9] *See* Vonde, *Understanding the Snake River Basin Adjudication*, 52 IDAHO L.

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[8] Idaho Code § 42-1412(8) directs that "[u]pon resolution of all objections to water rights acquired under state law, to water rights established under federal law, and to general provisions, and after entry of partial decree(s), the district court shall combine all partial decrees and the general provisions into a final decree."

[9] On appeal, the Edens allege that their motion to file a late claim was "consistent with precedent, including in recent months, for individual SRBA water right Partial Decrees to be

REV. at 68–69; R. Vol. I, p. 382–83. On September 30, 2016, over two years after the entry of the *Final Unified Decree*, the Edens filed the current Motion to File a Late Claim and Motion to Set Aside the *Final Unified Decree* and *Closure Order*. R. Vol. I, pp. 245–271. The Edens alleged that the *Final Unified Decree* and *Closure Order* should be set aside either under Idaho Rule of Civil Procedure ("I.R.C.P.") 60(b)(4) because the Edens did not receive sufficient notice and an opportunity to be heard or under I.R.C.P. 60(b)(6) because their situation presents unique and compelling circumstances justifying relief. R. Vol. I, pp. 265–68.

On October 14, 2016, the State filed a response to the Edens' motions. R. Vol. I, p. 333. The State argued that the Edens received sufficient notice of the need to file a claim for water right no. 37-864 in the form of first and second-round service as well as the District Court's issuance of the *Deadline Order*, listing water right no. 37-864 as an unclaimed right. R. Vol. I, pp. 339–41. Additionally, the State argued that the Edens failed to show unique and compelling circumstances that warranted setting aside the *Final Unified Decree* and disrupting the finality of the over 158,600 water rights incorporated therein. R. Vol. I, pp. 342–48.

A hearing was held on the Edens' motions on October 27, 2016. R. Vol. I, pp. 372–73. On November 8, 2016, the District Court issued its *Order Denying Motion to Set Aside; Order Denying Motion to File Late Claim* ("*Order*"). R. Vol. I, pp. 375–84. The Edens appealed. R. Vol. I, pp. 385–91.

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periodically opened for correction or amendment, without impacting other aspects of the SRBA Final Unified Decree." *Appellants' Br.* at 9. In support of this argument, the Edens point to the SRBA Docket Sheets for October, November, and December 2016. *Id.* (citing R. Vol. I, pp. 1191, 1204, 1206, 1212). The proceedings referenced by the Edens were situations where the District Court acted to correct clerical errors in partial decrees under I.R.C.P. 60(a), after such errors were identified by IDWR. *See* R. Vol. I, pp. 1191, 1204, 1206, 1212. This does not establish precedent for persons to move to set aside the *Final Unified Decree* under I.R.C.P. 60(b) in order to file a late notice of claim.

C. Statement of Facts

The Edens' *Late Notice of Claim* for water right no. 37-864 asserts a right to divert 1.00 cubic feet per second ("cfs") of water from the Big Wood River to irrigate 40 acres in Lincoln County, Idaho, that the Edens purchased in 1992. R. Vol. I, pp. 251–52, 256. The claim is allegedly based on a prior decree and seeks a priority date of September 28, 1896. R. Vol. I, pp. 251, 253–255. This water right was not claimed during the pendency of the SRBA and was, therefore, decreed disallowed.

Water right no. 37-864 was not the Edens only water interest in the Snake River Basin. The Edens own at least one other water right that was properly claimed in the SRBA, water right no. 37-10953. R. Vol. I, pp. 316–17. The Edens received a partial decree for water right no. 37-10953 in 2002. R. Vol. I, p. 709.

The Edens' Motion to Set Aside focused on events that occurred in April and May of 2005. The Edens alleged that on April 28, 2005, they received a letter from IDWR asking the Edens to confirm their mailing address had changed.[10] R. Vol. I, p. 214. A few weeks later, on May 6, 2005, the Edens received the *Second-Round Service Commencement Notice for Basin 37, Part 1* [hereinafter "*Second-Round Service Notice*"]. R. Vol. I, pp. 215–221, 223, 228. It was undisputed in the proceeding before the District Court that the Edens, in fact, received the *Second-Round Service Notice* included in the Record at pages 219 through 222.[11]

The *Second-Round Service Notice* informed the Edens that they may own a water right in the Snake River Basin for which a claim had not been filed in the SRBA. R. Vol. I, p. 219.

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[10] This letter referred to "Snake River Basin Adjudication (SRBA) Notices of Claim to a Water Right #37-365, 37-366 and 37-367B and Decrees #37-10322 and 10953." R. Vol. I, p. 214. IDWR's records indicate that notice of claims were filed for the above water rights in the SRBA by the Edens' predecessors in interest and ownership of those claims was transferred to the Edens. R. Vol. I, pp. 308–319.

[11] *See infra* Section V.A.1.i, pp. 15–17.

Additionally, the *Second-Round Service Notice* clearly stated: "**FAILURE TO FILE A REQUIRED NOTICE OF CLAIM WILL RESULT IN A DETERMINATION BY THE COURT THAT THE WATER RIGHT NO LONGER EXISTS.**" *Id.*

As required by Idaho Code § 42-1408(4), the *Second-Round Service Notice* also provided the Edens with instructions for filing a notice of claim in the SRBA, including that "Notices of Claims must be filed on forms prepared by IDWR or a reasonable facsimile" and that failure to include the required filing fee would "result in a rejection of the Notice of Claim." R. Vol. I, pp. 220–21. These requirements reflect the requirements for filing notices of claims set forth in chapter 14, title 42 Idaho Code. *See* Idaho Code §§ 42-1409, 42-1414.

According to the Edens' Motion to Set Aside, the *Second-Round Service Notice* prompted the Edens to attempt to claim water right no. 37-864 in the SRBA. R. Vol. I, p. 261. The Edens, however, did not obtain and file a notice of claim form. Rather, "[a]long with returning the signed April 28, 2005, address change letter to IDWR, and apparently in response to the recently received *Second Round Service Notice*, the Edens also enclosed documentation attempting to claim Water Right No. 37-864 in the SRBA." R. Vol. I, p. 261; *see also* R. Vol. I, p. 229. The Edens offered no evidence in this proceeding as to what "documentation" they allegedly enclosed with the change of address letter. Tr. Vol. I, p. 19 L. 22–p. 20 L. 19. The Edens did not include the required filing fee. Tr. Vol. I, p. 13 Ls. 10–17; R. Vol. I, p. 229.

The Record includes a copy of an unsigned letter allegedly drafted by an IDWR employee. R. Vol. I, p. 229. The letter stated that IDWR received the signed address change letter and further provides: "I gathered from the enclosures you sent me that you would like to file a claim on 37-864. I have enclosed a claim form with instructions for your possible use. The filing fee is $50.00 and the late fee is $50.00." *Id.* It is unclear if the letter was ever sent.

Tr. Vol. I, p. 12 Ls. 10–17, p. 13 Ls. 19–21. The Edens allege that they never received the letter. R. Vol. I, pp. 231, 238–39.

The Edens stated that because they received no response from IDWR, they believed they had adequately filed a claim. R. Vol. I, pp. 231, 239. The Edens alleged that they did not know of an issue until 2016 when a director of the Big Wood Canal Company informed them that they would not be receiving storage water supplemental to water right no. 37-864. R. Vol. I, pp. 231, 261–62. The Edens received a letter from the Treasurer/Secretary for Water District 37, dated March 20, 2015. R. Vol. I, p. 356. The letter states, "it has come to our attention that Water Right 37-864 was disallowed in the states [sic] adjudication process." *Id.* The letter also states that IDWR "records show the water right in the name of Anthony M. Gomez [sic]. Water Right 37-864 had not been transferred to your ownership." *Id.* The Edens filed the Motion to Set Aside and Motion to File a Late Notice of Claim for water right no. 37-864 on September 30, 2016. R. Vol. I, pp. 245, 259.

II. ISSUES ON APPEAL

1. Whether the District Court abused its discretion by denying the Edens' Motion to Set Aside the *Final Unified Decree* and the *Closure Order* under I.R.C.P. 60(b)(4).
    a. Whether there was substantial evidence on the record to support the District Court's finding that the Edens received second-round service.
    b. Whether the District Court erred in ruling that the Edens' belief that they properly filed a claim for water right no. 37-864 was unreasonable.
    c. Whether the District Court erred in ruling that due process did not require that the Edens be personally served with three-days' notice of the *Closure Order*.
2. Whether the District Court abused its discretion by denying the Edens' Motion to Set Aside the *Final Unified Decree* and the *Closure Order* under I.R.C.P. 60(b)(6).
3. Whether the District Court erred in denying the Edens' Motion to File a Late Notice of Claim.

III. ADDITIONAL ISSUE ON APPEAL

1. Whether the State is entitled to an award of attorney fees on appeal under Idaho Code § 12-121.

IV. STANDARD OF REVIEW

A district court's decision to grant or deny relief from a final judgment under I.R.C.P. 60(b) is reviewed under an abuse of discretion standard. *Cummings v. Stephens*, 160 Idaho 847, 850, 380 P.3d 168, 171 (2016). The district court's decision will be upheld if it "(1) correctly perceived the issue as discretionary, (2) acted within the boundaries of its discretion and consistent with the applicable legal standards, and (3) reached its determination through an exercise of reason." *Waller v. State, Dep't of Health & Welfare*, 146 Idaho 234, 237, 192 P.3d 1058, 1061 (2008). "If the trial court applies the facts in a logical manner to the criteria set forth in Rule 60(b), while keeping in mind the policy favoring relief in doubtful cases, the court will be deemed to have acted within its discretion." *Id.* at 238, 192 P.3d at 1062 (citation omitted).

"A determination under Rule 60(b) turns largely on questions of fact to be determined by the trial court." *Id.* at 237, 192 P.3d at 1061 (citation omitted). "Those factual findings will be upheld unless they are clearly erroneous." *Id.* at 238, 192 P.3d at 1062. "[A] factual finding will not be deemed clearly erroneous unless, after reviewing the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *State, Dep't of Health & Welfare v. Roe*, 139 Idaho 18, 21, 72 P.3d 858, 861 (2003). "[C]lear error will not be deemed to exist if the findings are supported by substantial and competent, though conflicting, evidence." *Id.*

"Due process issues are generally questions of law, and this Court exercises free review over questions of law." *Meyers v. Hansen*, 148 Idaho 283, 287, 221 P.3d 81, 85 (2009) (quoting

Kootenai Med. Ctr. v. Idaho Dep't of Health & Welfare, 147 Idaho 872, 876, 216 P.3d 630, 634 (2009)).

V. ARGUMENT

I.R.C.P. 60(b) provides that a court may relieve a party from a final judgment, order, or proceeding for:

> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

"Although courts have broad discretion in granting or denying such motions, that discretion is bounded by the requirement that the party seeking relief demonstrate 'unique and compelling circumstances' which justify relief." *Maynard v. Nguyen*, 152 Idaho 724, 726, 274 P.3d 589, 591 (2011) (quoting *Miller v. Haller*, 129 Idaho 345, 349, 924 P.2d 607, 611 (1996)).

Additionally, "[i]t is incumbent upon a party seeking relief from a judgment not only to meet the requirements of I.R.C.P. 60(b), but also to show, plead or present evidence of facts which, if established, would constitute a meritorious defense to the action." *Id.* (citation omitted). "This policy recognizes that it would be an idle exercise and a waste of judicial resources for a court to set aside a judgment if, in fact, there is no genuine justiciable controversy." *Id.* (citation omitted).

A motion under Rule 60(b) must also be timely. "A motion under Rule 60(b) must be made within a reasonable time, and for reasons (1), (2), and (3) no more than 6 months after the entry of judgment or order or the date of the proceeding." I.R.C.P. 60(c)(1). The Edens

requested relief from the *Final Unified Decree* and the *Closure Order* under Rule 60(b)(4) and Rule 60(b)(6). R. Vol. I, pp. 259–71.

A. The District Court Did Not Abuse Its Discretion by Denying the Edens' Motion to Set Aside the *Final Unified Decree* and the *Closure Order* Under I.R.C.P. 60(b)(4).

To grant a motion under I.R.C.P. 60(b)(4), the District Court would have had to conclude that both the *Final Unified Decree* and the *Closure Order* were void. "Generally, the [c]ourt may declare a judgment void only for defects of personal jurisdiction or subject-matter jurisdiction." *Meyers*, 148 Idaho at 291, 221 P.3d at 89. "However, a judgment is also void if the 'court's action amounts to a plain usurpation of power constituting a violation of due process.'" *Id.* (quoting *Dep't of Health & Welfare v. Housel,* 140 Idaho 96, 100, 90 P.3d 321, 325 (2004)). The Edens did not challenge the District Court's personal or subject matter jurisdiction, but instead argued that their right to due process was violated. R. Vol. I, pp. 265–67.

"Procedural due process requires that there must be some process to ensure that the individual is not arbitrarily deprived of his rights in violation of the state or federal constitutions." *Meyers*, 148 Idaho at 291, 221 P.3d at 89 (quoting *Cowan v. Bd. of Comm'rs,* 143 Idaho 501, 510, 148 P.3d 1247, 1256 (2006)). "[A]n individual must be provided with notice and an opportunity to be heard." *Id.* (quoting *Spencer v. Kootenai Cty.,* 145 Idaho 448, 454, 180 P.3d 487, 493 (2008)). Importantly, "[d]ue process is not a rigid concept. Instead, the protections and safeguards necessarily vary according to the situation." *Id.* at 292, 221 P.3d at 90.

1. The Edens' Arguments That They Did Not Receive Second-Round Service and That the Affidavit of Second-Round Service Did Not Meet Statutory Requirements Were Not Raised at the District Court and Are, Therefore, Waived.

The Edens agree with the District Court's conclusion that that the first and second-round notice procedures set forth in Idaho Code § 42-1408 meet constitutional due process requirements. *Appellants' Br.* at 20 (citing *LU Ranching Co. v. United States*, 138 Idaho 606, 608-10, 67 P.3d 85, 87–89 (2003)); R. Vol. I, p. 377. On appeal, the Edens allege, however, that there was not substantial evidence to support the District Court's finding that the Edens, in fact, received second-round service in May 2005. *Appellants' Br.* at 4–6, 16–22. The Edens also appear to argue that the second-round service circulated in Basin 37 was insufficient because the affidavit of second-round service for Basin 37, Part 1, filed with the District Court on June 1, 2005, did not meet the requirements of Idaho Code § 42-1408(5). *Id.* at 16–22. These arguments were never raised before the District Court. Moreover, these allegations are inapposite to the factual allegations made by the Edens before the District Court in support of their motions.

i. It Was Undisputed in the Proceeding Before the District Court That the Edens Received Second-Round Service.

The Edens Motion to Set Aside the *Final Unified Decree* and the *Closure Order* alleged that "in early May 2005, *the Edens received the SRBA Second Round Service Notice*, likely due to their ownership of the place of use associated with unclaimed Water Right No. 37-864." R. Vol. I, p. 261 (emphasis added). The Edens further alleged that "in response to *the recently received Second Round Service Notice*, the Edens also enclosed [with the change of address form] documentation attempting to claim Water Right No. 37-864 in the SRBA." *Id.* (emphasis added). The legal theories advanced by the Edens at the District Court for setting aside the *Final*

Unified Decree and the *Closure Order* were prefaced on the Edens, in fact, receiving second-round service:

> Without a response, the Edens believed IDWR had accepted their submission and that it was adequate...*This belief was reasonable in view of their receipt of the Second Round Service Notice,* stating that, "Assistance in filing Notices of Claims filed in this adjudication may be obtained at all offices of IDWR' "and that Notices of Claims must be filed on forms prepared by IDWR or a reasonable facsimile." *Affidavit of Dana Hofstetter, Exhibit 2, at Exhibit B, p. 3 (emphasis added). Having received Second Round Service and then complying* by contacting IDWR to claim 37-864, the Edens effectively were denied their due process notice and hearing opportunities with respect to 37-864 when IDWR used the incorrect address for the May 19, 2005 response letter.

R. Vol. I, p. 266 (emphasis added).

In support of their motions, the Edens filed the *Affidavit of Dana L. Hofstetter* ("*Hofstetter Affidavit*") with attached exhibits. R. Vol. I, pp. 206–29. The *Hofstetter Affidavit* stated:

> Attached hereto as Exhibit 2 is a true and correct copy of *Affidavit of Danni M. Smith Re: Second Round Service of Commencement Notice for Basin 37, Part 1*, filed with the SRBA Court on June 1, 2005. I obtained this copy of Exhibit 2 from IDWR. Attached as Exhibits A and B to this document (but unmarked in this version) are copies of respectively the Second Round Service Commencement Notice for Basin 37, Part 1 and the service list for Second Round Service of Commencement Notice for Basin 37, Part 1. The first page of Exhibit B to the *Affidavit of Danni M. Smith*, indicates *inter alia* that on May 5, 2005, Gary T. and Glenna Eden were mailed Second Round Service of Commencement Notice for Basin 37, Part 1 at the correct mailing address they had confirmed by return of the April 28, 2005 letter . . .

R. Vol. I, p. 207.

The *Affidavit of Danni M. Smith Re: Second Round Service of Commencement Notice for Basin 37, Part 1* ("*Smith Affidavit*") including Exhibits A and B that the Edens filed in support of their motions is included in the Record at pages 215 through 227. Also attached to the *Hofstetter Affidavit* as Exhibit 3 was "a true and correct copy of the certified return receipt signed by Glenna Eden on May 6, 2005, that [Ms. Hofstetter] obtained from IDWR." R. Vol. I, pp. 207,

228. It was undisputed in the proceeding before the District Court that the *Second-Round Service Notice* attached as Exhibit A to the *Smith Affidavit* filed by the Edens was the notice the Edens received in May 2005. *See* R. Vol. I, pp. 207, 266.

At the hearing before the District Court, the Edens' counsel continued to represent that the Edens received second-round service and continued to rely on the *Second Round Service Notice* attached as Exhibit A to the *Smith Affidavit* in arguing the Edens' motions. Tr. Vol. I, p. 9 Ls. 10–24, p. 10 Ls. 11–18, p. 11 Ls. 15–20, p. 19 Ls. 9–21, p. 21 Ls. 1–6. In fact, at the hearing, the Edens' counsel referred to blown up pages from the *Second Round Service Notice* to emphasize language that the Edens argued led them to believe that filing documentation with a change of address form was sufficient to file a claim in the SRBA. Tr. Vol. I, p. 14 Ls. 18–24. The District Court also specifically asked the Edens' counsel whether the Edens were arguing that they did not receive notice or that the notice they received was defective. Tr. Vol. I, p. 17 Ls. 19–22. In response, counsel for the Edens stated: "Okay. So I want to make it absolutely clear we're not contesting whether they received second round service notice. We agree they received that. We're not challenging the content of the second round service and it's [sic] adequacy." Tr. Vol. I, p. 19 Ls. 9–13.

It was uncontested in the proceeding before the District Court that the Edens received the *Second-Round Service Notice* attached as Exhibit A to the *Smith Affidavit*. In fact, it was the Edens who introduced the *Smith Affidavit* and the *Second-Round Service Notice* into evidence in the proceeding before the District Court. The District Court, therefore, did not error in finding that "in early May 2005, the Movants received second round service notice of the commencement of the SRBA." R. Vol. I, p. 376. As the District Court correctly concluded, that fact was undisputed. R. Vol. I, p. 378.

ii. Whether the Affidavit of Second-Round Service for Basin 37, Part 1 Met the Requirements of Idaho Code § 42-1408(5) Is a New Legal Theory Raised for the First Time on Appeal.

On appeal, the Edens for the first time allege that the affidavit of second-round service for Basin 37, Part 1, filed with the District Court on June 1, 2005, did not comply with Idaho Code § 42-1408(5). *Appellants' Br.* at 16–22. In support of this argument, the Edens rely on the *Smith Affidavit* included in the Record at pages 924 through 932.

The Record on Appeal includes two copies of the *Smith Affidavit*. The *Smith Affidavit* on pages 215 through 227 is the *Smith Affidavit* that Ms. Hofstetter obtained from IDWR's records, that was filed in SRBA subcase 37-864 by the Edens, and was before the District Court when it ruled on the Edens' motions. *See* R. Vol. I, p. 207. The *Smith Affidavit* on pages 924 through 932 is the *Smith Affidavit* from the SRBA main case (case no. 00-39576) that IDWR allegedly filed on June 1, 2005.[12] In their Notice of Appeal, the Edens requested the inclusion of the *Smith Affidavit* from the SRBA main case file in the Record on Appeal. R. Vol. I, p. 387. This copy of the *Smith Affidavit* from the SRBA main case records was not presented in the subcase below or considered by the District Court in ruling on the Edens' motions.

On appeal, the Edens for the first time allege that the *Smith Affidavit* from the SRBA main case file is insufficient because it is missing Exhibit A (the Second-Round Service Commencement Notice for Basin 37, Part 1). *Appellants' Br.* at 16–22. The Edens state in their briefing that the alleged discrepancy between the *Smith Affidavit* in the SRBA main case file and the *Smith Affidavit* from IDWR's records was not discovered by the Edens until they were served with the record in this appeal. *Id.* at 17 n.3.

[12] As this issue has not been raised until on appeal, the State has not had an opportunity to investigate this issue and whether the *Smith Affidavit* currently on record in the SRBA main case is representative of what IDWR actually filed on June 1, 2005.

The version of the *Smith Affidavit* from the SRBA main case was never filed in SRBA subcase no. 37-864. Nor was any potential discrepancy between the *Smith Affidavit* on file with IDWR—which was filed in this subcase—and the *Smith Affidavit* from SRBA main case records raised in the proceeding before the District Court on the Edens' motions. As this Court recently reiterated, "[a]n appellant is bound by the issues and theories upon which the case was tried below. Although a judgment may be sustained upon any legal theory, a new theory cannot be employed on appeal to attack the judgment." *Deiter v. Coons*, 162 Idaho 44, 47, 394 P.3d 87, 90 (2017) (quoting *Clements Farms, Inc. v. Ben Fish & Son*, 120 Idaho 185, 207, 814 P.2d 917, 939 (1991)). The Edens' argument that the *Final Unified Decree* and the *Closure Order* for Basin 37 should be set aside because the *Smith Affidavit* from the SRBA main case file is missing pages cannot be employed to attack the District Court's *Order*.

Additionally, even if the argument was not waived, it would not support a conclusion that the *Final Unified Decree* and *Closure Order* for Basin 37 should be set aside because the Edens did not receive due process. The *Smith Affidavit* from the SRBA main case records appears to be missing Exhibit A (The Second Round Service of Commencement Notice for Basin 37, Part 1). *Compare* R. Vol. I, pp. 215–227, *with* R. Vol. I, pp. 924–932. Besides the missing pages and some handwritten notations, the *Smith Affidavit* from IDWR's records and the *Smith Affidavit* from the SRBA main case records are identical. *Id.*

Both copies of the *Smith Affidavit* state that "A Second Round Service of Commencement Notice for Basin 37, Part 1 (Second Round Notice) was prepared pursuant to Idaho Code § 42-1408(4) and is attached hereto as Exhibit A and incorporated by this reference." R. Vol. I, pp. 216, 925 (emphasis in original). It appears that the *Smith Affidavit* from the SRBA

main case file was intended to include Exhibit A, but for reasons unknown those pages are missing.

However, even if pages were lost in the transmission of the *Smith Affidavit* from IDWR to the District Court in June 2005, it would not change the second-round service notice actually received by the Edens. The *Smith Affidavit* lists the Edens as persons who were mailed the *Second-Round Service Notice*. R. Vol. I, pp. 223, 928. IDWR is the entity charged with circulating first and second-round service. Idaho Code § 42-1408. IDWR's records show that the *Second-Round Service Notice* included in the Record at pages 219 through 222 was the notice mailed out in Basin 37, Part 1. *See* R. Vol. I, pp. 207, 215–22. The Edens never disputed this fact before the District Court. IDWR records also indicate that the Edens, in fact, received by certified mail the *Second-Round Service Notice* on May 6, 2005. R. Vol. I, pp. 223, 228. Any error in transmitting the *Smith Affidavit* from IDWR to the SRBA District Court did not affect the notice served on the Edens and is irrelevant to the determination of whether the Edens received due process.

Additionally, Idaho Code § 42-1408(5) states that "[t]he director shall file with the district court such proof of service as may be required to demonstrate compliance" with the requirements in Idaho Code § 42-1408(1)–(4). There is no express statutory requirement that an affidavit filed with the court include a copy of the second-round service notice circulated to meet this requirement. Even if a copy of the second-round service notice was not attached to the *Smith Affidavit*, paragraph 3 of the *Smith Affidavit* independently verifies that the second-round notice was served upon all persons listed in Exhibit B. R. Vol. I, pp. 216, 925. The Edens do not provide any argument beyond conclusory statements as to why an affidavit of service of second-

round notice must include a copy of the notice circulated to meet the requirements of Idaho Code § 42-1408(5).[13] *See Appellants' Br.* at 18–19.

The Edens are attempting to raise new issues on appeal and to support those issues with evidence that was not before the District Court in this proceeding. The Edens had an opportunity to raise these issues below and give the State an opportunity to address these factual contentions regarding the *Smith Affidavit*. They did not. They cannot now raise these issues for the first time on appeal and attempt to overturn the District Court's *Order* based on evidence and legal theories the District Court did not consider.

2. The District Court Did Not Err in Ruling That the Edens' Belief That They Properly Filed a Claim in the SRBA Was Unreasonable.

"This Court has long accepted that water rights adjudications present unique circumstances, often requiring a departure from established rules of procedure." *Basin-Wide Issue 3*, 128 Idaho 246, 254, 912 P.2d 614, 622 (1995). It is for this reason that the Legislature developed the specific procedural rules for stream adjudications in chapter 14, title 42, Idaho Code, including the notice procedures set forth in Idaho Code § 42-1408. *Id.* at 255, 912 P.2d at 623. As the Edens recognize on appeal, this Court has previously held that the notice procedures utilized in the SRBA meet constitutional due process requirements. *Appellants' Br.* at 20; *LU Ranching Co. v. United States*, 138 Idaho 606, 608–10, 67 P.3d 85, 87–89 (2003). "Any person who fails to submit a required notice of claim shall be deemed to have been constructively served with notice of a general adjudication by publication and mailing as required by section 42-1408, Idaho Code." Idaho Code § 42-1409(5). It was uncontroverted in the proceeding before the

[13] The Edens also appear to argue that the *Smith Affidavit* from IDWR's records does not meet the requirements of Idaho Code § 42-1408(5) because Exhibit A and Exhibit B are not labeled. *Appellants' Br.* at 18–19. This issue was also not raised before the District Court. Additionally, such an argument is unavailing because while the individual exhibits are not labeled, the nature of the exhibits are plain from their description in the *Smith Affidavit.* R. Vol. I, pp. 216, 925. The failure to label the exhibits does not render the affidavit of service inadequate.

District Court that the Edens personally received both first and second-round service. R. Vol. I. pp. 223, 228, 377–78, 757–58.

At the District Court, the Edens alleged that the *Second-Round Service Notice* they received led them down the wrong path. According to the Edens, due process required IDWR to inform them that sending "documentation" with their change of address form was not sufficient to file a claim in the SRBA. R. Vol. I, pp. 266. The Edens' alleged that their belief that they properly filed a claim in SRBA "was reasonable in view of their receipt of the *Second Round Service Notice*, stating that, 'Assistance in filing Notices of Claims filed in this adjudication may be obtained at all offices of IDWR' and that 'Notices of Claims must be filed on forms prepared by IDWR or a reasonable facsimile.'" *Id.* (emphasis in original). The Edens' arguments on this issue mirror those presented at the District Court—except for the Edens' curious allegation on appeal that they did not, in fact, receive the *Second Round Service Notice* that they purport led them to believe they had properly filed a claim. *Appellants' Br.* at 28–30.

The District Court held that "[i]t is unreasonable to believe that sending miscellaneous enclosures to the Department concerning a water right is sufficient to claim that right in an adjudication." R. Vol. I, p. 379. Specifically, the District Court concluded that the Edens' belief was unreasonable both as a matter of fact, because the Edens were put on notice of the proper procedure for filing claims and that no claim had been filed for water right no. 37-864, and as a matter of law, because any such belief was contrary the statutory requirements for filing claims. R. Vol. I, pp. 377–80.

The District Court found that the Edens did not comply with the instructions for submitting a claim as provided in the *Second-Round Service Notice*. R. Vol. I, pp. 378–79. Specifically, the District Court reasoned that the Edens did not submit a Notice of Claim on the

required form "[n]or have they established they submitted a reasonable facsimile" because no evidence was presented as to what the Edens allegedly sent. R. Vol. I, pp. 379, 379 n.4. Additionally, it was undisputed that the Edens did not include the required filing fee. Tr. Vol. I, p. 13 Ls. 10–17; R. Vol. I, p. 229. As found by the District Court, the *Second-Round Service Notice* specifically informed the Edens that they must submit the appropriate filing fee with their Notice of Claim. R. Vol. I, p. 379; *see also* R. Vol. I, p. 220 ("Failure to pay the fee will result in rejection of the Notice of Claim.").

The District Court also concluded that the Edens received notice that they had not properly filed a claim for water right no. 37-864 because it was listed as an unclaimed right in the *Deadline Order*. R. Vol. I, p. 379. As stated in the *Deadline Order*, "[c]laimants should examine Exhibit 1 to determine whether the listed water right numbers are active water rights. The burden of determining whether to file a motion for late claim for any of the listed water right numbers rests solely with the water right holder." R. Vol. I, p. 7. The Edens were parties to the SRBA, as they owned at least one water right that had been decreed in their name. R. Vol. I, p. 709. Therefore, as found by the District Court, the Edens were put on notice of the issuance of the *Deadline Order* when it was included on the SRBA Docket Sheet. R. Vol. I., p. 379 n.7, 1147. "Compliance with the Docket Sheet Procedure constitutes notice to all parties to the adjudication." R. Vol. I, p. 888 (*AO1* § 6(f)(3)(b)).

Second, the District Court concluded that the Edens' belief that they properly filed a claim was unreasonable because it was contrary to the law. R. Vol. I, p. 379. As found by the District Court, Idaho Code § 42-1409 requires all water right owners to file a notice of claim that meets specified requirements, including that the claimant, "solemnly swear or affirm under penalty of perjury that the statements contained in the notice of claim . . . are true and correct."

R. Vol. I, p. 379–80; Idaho Code § 42-1409(3). Idaho Code § 42-1414 further instructs that each claimant must file the appropriate filing fee. R. Vol. I, p. 379. Sending random documentation without the required fee does not meet the statutory requirements for filing a claim in the SRBA; therefore, as the District Court correctly concluded, the Edens' belief that they filed a claim was unreasonable. *See Wash. Fed. Sav. & Loan Ass'n v. Transamerica Premier Ins. Co.*, 124 Idaho 913, 917, 865 P.2d 1004, 1008 (1993) ("ignorance of the law or rules of procedure are generally inexcusable"); *State v. Lawrence*, 70 Idaho 422, 426, 220 P.2d 380, 382 (1950) ("all persons are presumed to know the law").

The District Court also correctly concluded that due process did not require IDWR to personally inform the Edens that they failed to properly file a claim. R. Vol. I, p. 380. Once the notice requirements in Idaho Code § 42-1408 are satisfied, the burden is on the water right holder to properly file a water right claim in compliance with the law. *Id.*; *see also* Idaho Code § 42-1409(4)–(6). As the District Court reasoned:

> The [Edens'] argument attempts to shift the responsibility for filing claims to the Department. The fact that they did not receive a response from the Department to the enclosures they sent it has no legal significance in the context of due process of law. Due process of law was satisfied in this case when the [Edens] and their predecessors received first and second round service notice. These notices gave the [Edens] notice of the adjudication as well as the applicable filing requirements. It was then their burden, having received first and second round notice, to make sure they filed a claim with the Department that complied with applicable filing requirements.

R. Vol. I, p. 380.

On appeal, the Edens do not address the reasoning of the District Court or identify in what manner they believed the District Court erred. *See Appellants' Br.* at 27–30. For the reasons set forth above, the District Court's findings were supported by substantial evidence and its conclusions were supported by the law. Therefore, the District Court did not error in

concluding that due process did not require IDWR to notify the Edens that sending "documentation" with their change of address form was insufficient to file a claim in the SRBA.

3. The District Court Did Not Err in Concluding That Due Process Did Not Require That the Edens Be Personally Served With Three-Days' Notice of the *Closure Order.*

The Edens allege that their right to due process was violated because they were not personally served with notice of the District Court's issuance of the *Closure Order*, which expressly decreed water right no. 37-864 disallowed. *Appellants' Br.* at 23–27. In support of this contention, the Edens rely on I.R.C.P. 55(b)(2). *Id.* I.R.C.P. 55(b)(2) provides that "[i]f the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing."[14]

The District Court correctly concluded that Rule 55(b)(2) only applies to default judgments, and "[t]he disallowal of an unclaimed water right in a general adjudication is not a default judgment." R. Vol. I, p. 380. As the District Court reasoned, "[s]uch a disallowal is not entered pursuant to the procedures set forth in Rule 55," but rather, "the disallowal is entered pursuant to, and by operation of, statute." R. Vol. I, p. 380. Unless expressly exempted, the result of failing to file a required notice of claim for a water right in the SRBA is a determination that the water right is lost. Idaho Code § 42-1420; *see also* Idaho Code § 42-1408(1)(c). The Edens were expressly put on notice of this requirement in the *Second Round Service Notice*: "**FAILURE TO FILE A REQUIRED NOTICE OF CLAIM WILL RESULT IN A DETERMINATION BY THE COURT THAT THE WATER RIGHT NO LONGER EXISTS.**" R. Vol. I, p. 219.

[14] As noted by the Edens, there have been some changes to the language in Rule 55 since 2012. *See Appellants' Br.* at 37–38. However, the substantive requirements of the applicable provision appear to be the same as the current rule. *Id.*

On appeal, the Edens argue that this Court has previously ruled that the SRBA District Court must comply with notice procedures in I.R.C.P. 55(b). *Appellants' Br.* at 24–26 (citing *Basin-Wide Issue 3*, 128 Idaho 246, 912 P.2d 614 (1995)). This is inaccurate.

In *Basin-Wide Issue 3*, the Court addressed, in part, the provision in Idaho Code § 42-1411(4) providing that a water right shall be decreed as reported in the director's report if no objections are filed. *Basin-Wide Issue* 3, 128 Idaho at 258, 912 P.2d at 626. This Court held that this provision is in conflict with the Rules of Civil Procedure and the constitutional authority of the courts because it "removes the authority of the courts to apply the facts to the law and render a conclusion." *Id.* This Court went on to reason:

> The procedure to be followed by the district court where no objection has been raised is established by the rules for entering a default judgment in civil actions, set out in I.R.C.P. 55. In addition to providing for the entry of judgment by default, that Rule retains in the district court the inherent power to apply law to facts and render a decision.

Id.

Nothing in the Court's decision in *Basin-Wide Issue 3*, however, requires the SRBA District Court to apply the notice provisions in I.R.C.P. 55(b)(2) when issuing an order closing claims taking and decreeing unclaimed water rights disallowed. In fact, in *Basin-Wide Issue 3*, the Court recognized "that water rights adjudications present unique circumstances, often requiring a departure from established rules of procedure." *Id.* at 254, 912 P.2d at 622. As this Court stated: "When the SRBA was authorized by statute in 1986, no reasonable method of . . . providing notice to potential claimants . . . was provided by the existing Rules of Civil Procedure." *Id.* at 255, 912 P.2d at 623. It was for this reason that the Legislature had to provide for the special first and second-round notice procedures in Idaho Code § 42-1408. *See id.*

As this Court later concluded in *LU Ranching*, when considering due process requirements in a general stream adjudication "[t]he most significant factor . . . is the sheer

multitude of the parties to the adjudication." 138 Idaho at 610, 67 P.3d at 89 (quoting *In re Rights to the Use of Gila River*, 830 P.2d 442, 453 (1992)). In such cases, "a requirement of personal service would be too onerous, impractical and confusing in its employment, defeating any purpose for meaningful notice." *Id.* (quoting *In re Rights to the Use of Gila River*, 830 P.2d at 453).

For this reason, the Court gave leave for the SRBA District Court "to modify the procedure for making service of pleadings, motions, notices of hearing and other documents." *Basin-Wide Issue 3*, 128 Idaho at 251, 912 P.2d at 619. Under this authority, the SRBA District Court issued *AO1*, which set forth the SRBA Docket Sheet Procedures. *AO1* does provide that "[t]he litigation of the SRBA will be governed by the Idaho Rules of Civil Procedure (I.R.C.P.), Idaho Rules of Evidence (I.R.E.) and the Idaho Appellate Rules (I.A.R.)." R. Vol. I, p. 877 (*AO1* § 1(a)). However, the procedures set forth in *AO1* supplement those procedures, "to the extent necessary to allow for the fair and expeditious resolution of all claims or issues in the SRBA." *Id.* (*AO1* § 1(b)). Additionally, the "[p]rovisions setting forth the matter of service and notice [were] adopted under the authority granted by *Supplemental Order Granting Additional Powers to District Judge*, Idaho S. Ct. 99143 (February 20, 1988)." *Id.* (*AO1* § 1(c)); *see also Basin-Wide Issue 3*, 128 Idaho at 251, 912 P.2d at 619.

Notice of the District Court's issuance of the *Deadline Order*, *Closure Order*, and *Final Unified Decree* were made pursuant to the SRBA Docket Sheet Procedure in *AO1* § 6. R. Vol. I, pp. 1147, 1168, 1179. As the Edens were parties to the SRBA, having at least one water right decreed in their name, the Edens were on notice of the Court's issuance of these orders. R. Vol. I, p. 888 (*AO1* § 6(f)(3)(b)). If the Edens wished to be personally served with the Docket Sheets, they had the same option as every other party in the SRBA to subscribe to the Docket Sheet by

paying a nominal fee. R. Vol. I, pp 887 (*AO1* § 6(d)); *LU Ranching*, 138 Idaho at 610, 67 P.3d at 89.

Personally serving three-days' notice to all persons with water rights decreed disallowed in the *Closure Order* would not have been practicable. There were over two thousand water rights that were unclaimed in the applicable basins that were expressly decreed disallowed in the *Closure Order*. R. Vol. I, 120–205. Additionally, where no notice of claim had been filed for those water rights, ascertaining all persons who potentially needed to be served with the notice would have been overly onerous and burdensome for the District Court. IDWR already went through the onerous process of attempting to notify potential owners of unclaimed rights of the need to file claims in the second-round service process. *See* Idaho Code § 42-1408(4); R. Vol. I, p. 216. Requiring personal service three days before the *Closure Order* was issued would have amounted to a reissuance of second-round service, involving "a flood of paper that would do no more than what is done by existing procedures." *See LU Ranching*, 138 Idaho at 610, 67 P.3d at 89.

Even if Rule 55(b)(2) did apply, it would only require three-days' notice to be given when a party appeared in the action either personally or through a representative. I.C.R.P. 55(b)(2). The Edens argue that they should be considered to have appeared in the SRBA as owners of water right no. 37-864 because of the enclosures sent in with their change of address form or because they had received a partial decree for another water right in the SRBA. *Appellants' Br.* at 26.

In normal civil actions, "[a]n appearance triggering the requirement of the three-day notice has been broadly defined and conducted on the part of the defendant which indicates an intent to defend against the action an appearance within the meaning of the rule." *Catledge v.*

Transp. Tire Co. Inc., 107 Idaho 602, 606, 691 P.2d 1217, 1221 (1984). However, this broad definition is not without limitations: "[T]he defendant's actions 'must be responsive to plaintiff's formal [c]ourt action,' so it is insufficient to simply be interested in the dispute or to communicate to the plaintiff an unwillingness to comply with the requested relief." *Meyers v. Hansen*, 148 Idaho 283, 288, 221 P.3d 81, 86 (2009) (quoting *Baez v. S.S. Kresge Co.*, 518 F.2d 349, 350 (5th Cir. 1975)). There has not been an appearance merely because the plaintiff knew the defendant intended to resist the suit. *Baez*, 518 F.2d at 350.

Under the circumstances presented, the Edens should not be considered as having appeared as owners of water right no. 37-864 in the SRBA. First, the fact that the Edens own another water right that was decreed in the SRBA does not relate to whether the Edens appeared in the SRBA as owners of water right no. 37-864. Owning one decreed water right does not establish whether the Edens owned other water rights and whether they would pursue claims to those rights. Second, the Edens' allegation that they sent unknown documentation to IDWR sometime in 2005 is not enough to establish that the Edens appeared in the SRBA as owners of water right no. 37-864.

Once ownership of water right no. 37-864 was transferred to the Edens in 1992, the burden was on them (1) to ascertain whether a claim had been filed for that water right and file a claim if none had been filed and (2) to file with IDWR a notice of transfer of ownership form. Idaho Code § 42-1409(6). The Edens failed to meet this burden in both respects. It is uncontroverted that neither the Edens nor their predecessors in interest filed a notice of claim in the SRBA for water right no. 37-864. Additionally, the Edens failed to provide IDWR with

notice of a transfer in ownership for water right no. 37-864.[15] When the *Deadline Order* and the *Closure Order* were issued, the owner of record for water right no. 37-864 was Anthony M. Gomes. R. Vol. I, pp. 54, 150. The Record indicates that as late as 2015, IDWR had not received a notice of change of ownership form from the Edens for water right no. 37-864. R. Vol. I, p. 356.

In a normal civil case, when a defendant attempts to appear in action, who the defendant is and their interest in the litigation are apparent. The same is not true where a potential claimant does not properly file a water right claim in a general stream adjudication and does not take the statutorily mandated steps to ensure that IDWR has up to date information on the ownership of specific water rights.

Idaho Code § 42-1409(6) mandates that purchasers of water rights exercise a certain level of diligence. The Edens did not meet their statutory burden to file a claim or to provide IDWR with the required information as to their ownership interest in water right no. 37-864. Therefore, they should not be considered to have appeared as owners of water right no. 37-864 in the SRBA and trigger any alleged requirement that the SRBA District Court provide them with personal service of the order decreeing that water right disallowed.

For the forgoing reasons, the District Court correctly concluded that due process did not require the Edens to be personally served with three days' notice of the *Closure Order* decreeing water right no. 37-864 disallowed. [16]

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[15] It is unclear why the Edens' did not file a notice of transfer of ownership form for water right no. 37-864 when they had filed such forms for other water rights. R. Vol. I, pp. 318–22.

[16] In order to state a claim for relief under I.R.C.P. 60(b)(4), the Edens must show that "the judgment is void." As this Court has previously stated, the failure to deliver three-days' notice under Rule 55(b)(2) renders a judgment merely voidable—not void. *Meyers*, 148 Idaho at 288, 221 P.3d at 86. Even if the Court were to rule that the Edens appeared in the SRBA and should

B. The District Court Did Not Abuse Its Discretion by Denying the Edens' Motion to Set Aside the *Final Unified Decree* and the *Closure Order* Under I.R.C.P. 60(b)(6).

Under Rule 60(b)(6), a district court may set aside a final judgment or order for "any other reason that justifies relief." I.R.C.P. 60(b)(6). A motion under Rule 60(b)(6) "may be granted only on a showing of 'unique and compelling circumstances' justifying relief." *Berg v. Kendall*, 147 Idaho 571, 578, 212 P.3d 1001, 1008 (2009) (quoting *Miller v. Haller*, 129 Idaho 345, 349, 924 P.2d 607, 611 (1996)). Additionally, I.R.C.P. 60(b)(1) and I.R.C.P. 60(b)(6) are mutually exclusive, "such that a ground for relief asserted, falling fairly under 60(b)(1), cannot be granted under 60(b)(6)." *LeaseFirst v. Burns*, 131 Idaho 158, 163, 953 P.2d 598, 603 (1998) (quoting *Pullin v. City of Kimberly*, 100 Idaho 34, 37 n.2, 592 P.2d 849, 852 n.2 (1979)).

On appeal, the Edens allege that their "attempt to file the Notice of Claim for 37-864 and their failure to receive the May 19, 2005, IDWR response, due to IDWR's use of an incorrect mailing address . . . certainly together constitute 'unique and compelling circumstances,' justifying relief under Rule 60(b)(6)." *Appellants' Br.* at 30–31. The Edens do not address the District Court's reasoning for denying their motion or in what manner they believe the District Court erred.

The District Court correctly concluded that the Edens were impermissibly attempting to disguise a Rule 60(b)(1) motion as a Rule 60(b)(6) motion to get around the time limitations in Rule 60(c)(1). R. Vol. I, p. 381. In essence, the Edens' argument before the District Court was that they mistakenly believed that they had filed a claim in the SRBA by sending unknown

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have personally received three-days' notice before the *Closure Order* was issued, that by itself would not render the *Closure Order* and *Final Unified Decree* void. The Edens would have to establish that the failure to be personally served with three-days' notice amounted to "a plain usurpation of power constituting a violation of due process." *Id.* at 291, 221 P.3d at 89 (citation omitted). The Edens have offered no argument as to why the failure to receive three-days' notice of the *Closure Order*, if required, would be a violation of due process. For the reasons set forth above, it would not.

"documentation" with their change of address letter. *See* R. Vol. I, pp. 260–270. Such an allegation of mistake would usually fall within the purview of Rule 60(b)(1), which allows a judgment to be set aside based on "mistake, inadvertence, surprise, or excusable neglect." I.R.C.P. 60(b)(1). However, a motion under Rule 60(b)(1) must be filed "no more than 6 months after the entry of the judgment or order." I.R.C.P. 60(c)(1). When the Edens' Motion to Set Aside was filed on September 30, 2016, it had been well past six months since the *Closure Order* was issued on February 13, 2013.[17] As the District Court concluded, allowing the Edens' motion to go forward under Rule 60(b)(6) would be allowing the Edens to circumvent the time limitations in Rule 60(c)(1). R. Vol. I, p. 381.

Moreover, the Edens failed to show unique and compelling circumstances that warrant setting aside the *Final Unified Decree* and the *Closure Order*. The intended result of the SRBA was a decree determining all water rights in the Snake River Basin, which would allow for the creation of an accurate schedule of water rights for delivery in times of shortage. R. Vol. I, p. 715. "By statute, 'decree[s] entered in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system.'" *City of Blackfoot v. Spackman*, No. 44207, 2017 WL 2644703, at *4 (June 20, 2017) (quoting Idaho Code § 42-1420(1)). This is an essential aspect of the SRBA, as "[f]inality in water rights is essential." *Id.* (quoting *State v. Nelson*, 131 Idaho 12, 16, 951 P.2d 943, 947 (1998)).

Setting aside an order disallowing a water right and allowing a late claim to proceed after the *Final Unified Decree* has been issued would impact the finality of the over 158,600 water

[17] The *Final Unified Decree* states that "[t]he time period for determining forfeiture of a partial decree based upon state law shall be measured from the date of issuance of the partial decree by this Court and not from the date of this Final Unified Decree." R. Vol. I, p. 944. Even if the time period was to start from the time the *Final Unified Decree* was issued on August 26, 2014, the Edens' motion would still be untimely.

rights that were properly claimed, adjudicated, and decreed during the pendency of the SRBA. *See* Ann Y. Vonde *et al.*, *Understanding the Snake River Basin Adjudication*, 52 IDAHO L. REV. 53, 56 (2016). As this Court has previously stated, "by reason of the interlocking of adjudicated rights on any stream system, any order or action affecting one right affects all such rights." *In re Snake River Basin Water Sys.*, 115 Idaho 1, 7, 764 P.2d 78, 84 (1988) (quoting S. Rep. No. 755, 82d Cong., 1st Sess. 2, 4–6 (1951)). "Each water rights claim by its 'very nature raise[s] issues inter se as to all such parties for the determination of one claim necessarily affects the amount available for the other claims.'" *Nevada v. United States*, 463 U.S. 110, 140, 103 S. Ct. 2906, 2923, 77 L. Ed. 2d 509 (1983) (quoting *City of Pasadena v. City of Alhambra*, 180 P.2d 699, 715 (Cal. App. 1947)).

The Edens received the same notice as all other potential claimants in the SRBA. Although the Edens received both first and second-round service, which instructed them on how to properly file claims, they failed to follow such instructions. Additionally, there is no indication that the Edens took any steps to protect their interest in water right no. 37-864 in between the time they allegedly sent documentation to IDWR and filing the instant motions. The Edens were familiar with the SRBA, as they owned at least one water right that was decreed. R. Vol. I, pp. 316–17, 709. It is unclear how the Edens could have reasonably thought that water right no. 37-864 was properly claimed in the SRBA when, unlike their other water right, they never received a partial decree. Additionally, the Edens were put on notice that no claim had been filed for water right no. 37-864 by the SRBA District Court's issuance of the *Deadline Order*, *Closure Order*, and the *Final Unified Decree*, all of which expressly listed water right no. 37-864 as unclaimed, and for that reason expressly decreed disallowed. R. Vol. I, pp. 17, 54, 112–13, 150, 943, 956, 1147, 1168, 1179.

The foregoing does not present unique and compelling circumstances that warrant setting aside the *Final Unified Decree* and *Closure Order* so the Edens may now file a late claim in the SRBA. Therefore, the District Court did not abuse its discretion in denying the Edens' Rule 60(b)(6) motion.

C. The District Court Did Not Err in Denying the Edens' Motion to File a Late Notice of Claim.

The Edens request that "if on appeal, this Court determines that at least one of the Rule 60(b) grounds for setting aside the Partial Decree is satisfied, the District Court's ruling as to the Motion to File Late Notice of Claim also should be overturned. " *Appellants' Br.* at 31.

In its *Order*, the District Court correctly ruled that "[s]ince the Movants have failed to set forth sufficient grounds under Rule 60(b) to set aside the Court Documents their *Motion to File a Late Notice of Claim* must be denied." R. Vol. I, p. 381. As no claim for water right no. 37-864 was filed during the pendency of the SRBA, it was expressly decreed disallowed as was required under Idaho Code § 42-1420. The *Final Unified Decree* is "conclusive as to the nature and extent of all water rights within the Snake River Basin within the State of Idaho with a priority date prior to November 19, 1987." R. Vol. I, p. 941; Idaho Code § 42-1420(1). All prior water rights that were required to be claimed in the SRBA were superseded by the *Final Unified Decree*. R. Vol. I, p. 944. The *Closure Order* and the *Final Unified Decree* conclusively ruled that water right no. 37-864 no longer exists. Thus, in order to file a late Notice of Claim for water right no. 37-864, the *Final Unified Decree* and the *Closure Order* would have to be set aside. For the reasons discussed above, the District Court did not abuse its discretion in denying the Edens' Motion to Set Aside the *Final Unified Decree* and the *Closure Order.* The District Court, therefore, also did not error in denying the Edens' Motion to File a Late Notice of Claim.

If the Court determines that the *Final Unified Decree* and the *Closure Order* should be set aside, this proceeding should be remanded to the District Court to determine in the first instance whether a Late Notice of Claim should proceed under I.R.C.P. 55(c). Motions to file a Late Notice of Claim are reviewed under the criteria in I.R.C.P. 55(c). R. Vol. I, p. 883 (*AO1* § 4(d)(2)(d)). I.R.C.P. 55(c) provides that a court may set aside an entry of default "for good cause." Whether good cause exists under Rule 55(c) is a discretionary decision to be made by the trial court. *AgStar Fin. Servs., ACA v. Gordon Paving Co., Inc.*, 161 Idaho 817, 819, 391 P.3d 1287, 1289 (2017).

Although the matter should not be considered for the first time on appeal, the State would note that it disagrees with the Edens' assertion that allowing the late claim to proceed would not prejudice other water users in the Snake River Basin. *See Appellants' Br.* at 32–33. There has been a long standing water shortage in Basin 37, and a moratorium on new consumptive rights has been in place since 1993. R. Vol. I, pp. 326–32. Allowing the Edens to assert a claim to a water right disallowed in the adjudication would prejudice junior water users by reducing the amount of legally available water and by allowing a new senior to assert priority.

Allowing a new claim to be filed in the SRBA after the *Final Unified Decree* has been issued would also undermine the finality of the over 158,600 water rights that were timely claimed, adjudicated, and decreed. Water users in the Snake River Basin must be able to rely on the finality of the decree that concluded the twenty-seven year general stream adjudication. The Edens argue that other parties to the SRBA will not be impacted because the *Final Unified Decree* would only be opened up "as to its effect on Water Right No. 37-864." *Appellants' Br.* at 33. This argument, however, fails to recognize the interrelation between water rights within the same water system. It is this interrelation that spurred the initiation of general stream

adjudications such as the SRBA. "Each water rights claim by its 'very nature raise[s] issues inter se as to all such parties for the determination of one claim necessarily affects the amount available for the other claims.'" *Nevada*, 463 U.S. at 140 (quoting *City of Pasadena*, 180 P.2d at 715).

Additionally, as the District Court stated, "[t]he process for adjudicating a late claim is a lengthy process even if the claim is ultimately uncontested." R. Vol. I, p. 382. "A motion to file a late claim must generally comply with docket sheet notice procedure. If granted, the Department must investigate the claim and file a director's report and provide a period of time for objections and responses. If the Department's recommendation is contested the process can take much longer." *Id.* Allowing the Late Notice of Claim to proceed, therefore, would not have the insignificant impact argued by the Edens. *See Appellants' Br.* at 32–33.

D. The State Is Entitled to Attorney Fees on Appeal Under Idaho Code § 12-121.

The State requests an award of costs and attorney fees on appeal pursuant Idaho Appellate Rules 40 and 41 and Idaho Code § 12-121 because the Edens' pursuit of this appeal was unreasonable, frivolous, and without foundation. A substantial portion of the Edens' briefing on appeal is devoted to legal theories that were not raised at the District Court. *Appellants' Br.* at 16–22. It is well established that an appellant is bound by the legal theories raised before the district court and may not challenge the district court's decision based on legal theories raised for the first time on appeal. *Deiter v. Coons*, 162 Idaho 44, 47, 394 P.3d 87, 90 (2017).

Moreover, where the Edens do address the issues actually raised in the proceeding below, they merely reiterate the arguments made before the District Court without adding additional analysis or even addressing the District Court's analysis. *Appellants' Br.* at 23–31. This Court has previously held that an award of attorney fees on appeal was warranted under Idaho Code

§ 12-121 where the non-prevailing party "continued to rely on the same arguments used in front of the district court, without providing any additional persuasive law or bringing into doubt the existing law on which the district court based its decision." *Thornton v. Pandrea*, 161 Idaho 301, 320, 385 P.3d 856, 875 (2016) (quoting *Castrigno v. McQuade*, 141 Idaho 93, 98, 106 P.3d 419, 424 (2005)).

The Edens have failed to raise a legitimate challenge to the District Court's decision. For this reason, the State requests that it be awarded its costs and attorney fees incurred in defending against this appeal.

VI. CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm the SRBA District Court's *Order* and that the State be awarded its costs and attorney fees on appeal.

RESPECTFULLY SUBMITTED this 21st day of July 2017.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of July, 2017, I caused to be served true and correct copies of the foregoing document to the following, in the quantities listed and by the methods indicated:

Original, Plus Six (6) Copies to:	
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