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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
ALISAL WATER CORP, et al.,
Defendants.

Case No. [5:97-cv-20099-EJD](#)

**ORDER GRANTING MOTION FOR
ORDER CORRECTING CLERICAL
MISTAKES**

Re: Dkt. No. 1000

I. INTRODUCTION

Interested party Pajaro/Sunny Mesa Community Services District (“PSMCSD”) is presently before the court seeking an order correcting a “clerical mistake” pursuant to Federal Rule of Civil Procedure 60(a).¹ PSMCSD asks the court to revise a March 4, 2008 order by Judge Fogel approving the Bill of Sale effecting the transfer of certain water systems to PSMCSD. More specifically, PSMCSD asks the court to revise the order so that it identifies two parcels included in the Bill of Sale with sufficient detail to be acceptable to the Monterey County Office of the Assessor (“Assessor’s Office”) for secured tax roll purposes. Dkt. No. 1000 (PSMCSD’s Motion For Order Correcting Clerical Mistakes Or Mistakes Arising From Oversight Or Omission In Order Approving Original Bill of Sale [Fed. R. Civ. P. 609a]) (hereinafter “Motion”). Defendant Alisal Water Corporation (“Alco”) and AWC Holdings Trusts oppose the motion.² The County of Monterey filed a statement of non-opposition. For the reasons discussed below, PSMCSD’s

¹ PSMCSD’s accompanying request for judicial notice filed in support of its motion, which is unopposed, is granted.

² Alco’s request for judicial notice, which is unopposed, is also granted.

1 motion will be granted.

2 **II. BACKGROUND**

3 At the request of the Environmental Protection Agency, the United States Attorney
4 General initiated this suit over a decade ago in 1997 against Alco, its president and sole
5 shareholder, Robert T. Adcock (“Adcock”), and others (collectively “Defendants”) for violating
6 the Safe Drinking Water Act and regulations promulgated thereunder. Judge Fogel found that
7 Defendants failed to meet the Maximum Contaminant Level (“MCL”) for microbiological
8 contaminants; failed to report or give public notice of the MCL failures; failed to do required
9 repeat and increased routine monitoring; failed to report the lack of monitoring; failed to retain
10 documents as required; and failed to test for lead and copper in their water in a timely manner.
11 Dkt. Nos. 143 (Order Granting Plaintiff’s Motions For Partial Summary Judgment), 248 (Order
12 Granting In Part And Denying In Part Plaintiff’s Motion For Partial Summary Judgment; And
13 Denying Defendants’ Motion For Partial Summary Judgment). Many of the violations found by
14 the court involved intentional false reporting or non-reporting. Dkt. No. 301 (Findings Of Fact
15 And Conclusions Of Law). The court conducted a bench trial for the purpose of determining an
16 appropriate remedy for the violations, and ordered, among other things, that a receivership be
17 created to take control of the eight water systems operated by Defendants and that the Receiver
18 assess the feasibility of selling seven of the eight water systems. Included among the water
19 systems placed into receivership were those owned by Moss Landing Water System, Inc. (“Moss
20 Landing”) and North Monterey County Water Systems, Inc. (“NORMCO”). Dkt. No. 301
21 (Findings Of Fact And Conclusions Of Law). After Moss Landing and NORMCO were placed in
22 receivership, PSMCSD began management of the water systems and has continued to do so ever
23 since. Dkt. No. 1000-1 (Decl. of Don Rosa in Support of Motion).

24 On April 13, 2004, the court directed the court-appointed Receiver to sell the Moss
25 Landing and NORMCO water systems (and others) to PSMCSD. Dkt. No. 481-1 (Order
26 Regarding Sale Of Receivership Assets). In January of 2008, PSMCSD submitted to the court an
27 application for approval of a Bill of Sale for five water systems, including Moss Landing and

1 NORMCO. Dkt. No. 802-2 (Bill Of Sale). Voluminous Condition of Title reports from the
2 Chicago Title Insurance Company were attached to and incorporated by reference into the Bill of
3 Sale. Dkt. No. 802-2 at 1. Among the Condition of Title reports was one for NORMCO parcel
4 APN 125-151-006—one of the two parcels at issue. Dkt. No 802-12 at 25-31. The Condition of
5 Title report for the other parcel at issue, Moss Landing parcel APN 131-061-008, was
6 inadvertently omitted. The NORMCO and Moss Landing parcels are connected via pipes to the
7 NORMCO and Moss Landing water systems, respectively. Dkt. 100-1 at 3 (Decl. of Don Rosa in
8 Support of Motion). The only purpose and only use of the two parcels are to serve customers of
9 the two water systems. *Id.*

10 On March 4, 2008, Judge Fogel issued an Order Resolving Pending Issues Re Receivership
11 (“March 4, 2008 Order”) which included the following provisions relevant to the instant motion:

- 12
- 13 1) Pajaro/Sunny Mesa Community Services District (“PSMCS D”) seeks final Court approval of the Bill of Sale for five small water
14 systems in North Monterey County, termination of the existing
15 Management Agreements, and release of all claims. Pursuant to
16 this Court’s Order dated April 13, 2004, PSMCS D was
17 designated as the purchaser of the assets of the Moss Landing
18 Water System, Inc., North Monterey County Water System, Inc.
19 (“NORMCO”), Blackie Road Mutual Water System #18, Vierra
20 Canyon Water System, and Langley/Valle Pacifico Water
21 System. On or about January 12, 2005, PSMCS D entered into
22 “Operational and Management Agreements” with the Receiver
23 for the five systems. In June, 2007, at the Court’s direction,
24 PSMCS D engaged the Chicago Title Company to complete title
25 research and production of title documents, easement
26 descriptions, and maps and the Bill of Sale to complete the
27 transfer of the five systems. The Court hereby authorizes and
28 confirms the sale of the five systems to PSMCS D and directs the
Receiver to execute and deliver the Bill of Sale that has been
presented to the Court.

* * *

- 11) The Receivership shall remain in effect with respect to the
San Jerardo water system only. . . .

26 Dkt. No. 824. PSMCS D submitted the Bill of Sale to the Monterey County Recorder’s Office
27 (“Recorder’s Office”) on April 11, 2008. Dkt. No. 825. The Recorder’s Office, however, did not

1 record the transfer of Moss Landing parcel APN 131-061-008 from Alco to PSMCSD presumably
2 because the Condition of Title report for that particular parcel had been inadvertently omitted from
3 the Bill of Sale. Dkt. No. 100 at 4 (PSMCSD’s Motion). The Recorder’s Office also did not
4 record the transfer of NORMCO parcel APN 125-151-006 even though the Condition of Title
5 report for this parcel was attached to the Bill of Sale. *Id.* (citing Dkt. No. 802-12). The transfer of
6 the NORMCO parcel was not recorded because the Bill of Sale did not include a “metes-and-
7 bounds” description for that parcel. Dkt. No. 1005 at 4 (Opp’n of Alisal Water Corporation And
8 The AWC Holdings Trusts To Motion); *see also* Dkt. No. 1008 at 6 (PSMCSD’s Reply).

9 Even though Judge Fogel, the Receiver, Alco, and PSMCSD all understood that the Moss
10 Landing and NORMCO water systems were to be sold and transferred to PSMCSD and the Bill of
11 Sale had been recorded, the Assessor’s Office continued sending tax notices and demands for
12 payment to Alco for the two parcels at issue. Dkt. No. 1006 at 3. The tax bills were dated
13 November 19, 2008, October 15, 2009, June 22, 2010, November 23, 2010, August 10, 2011,
14 February 15, 2011 and February 16, 2011. *Id.* Alco forwarded these tax notices to PSMCSD and
15 asked PSMCSD to pay the bills and to take the necessary action to change ownership of the two
16 parcels to PSMCSD. *Id.* at 6-64. Alco copied the Monterey County Treasurer-Tax Collector on
17 all but one of the letters to PSMCSD. *Id.*

18 On February 23, 2009, the Assessor’s Office sent PSMCSD a letter explaining that the
19 two parcels at issue “do not appear to be described” in the recorded Bill of Sale, and therefore the
20 Assessor’s Office “cannot change the ownership until a document describing the subject properties
21 is recorded.” *Id.* at 65. On October 23, 2008, the Assessor’s Office wrote to PSMCSD again
22 reiterating that the Bill of Sale did not describe the properties at issue, and therefore the Office of
23 the Assessor’s records would continue to reflect that one of Alco’s trusts, AWC II Holdings LLC,
24 was the owner of record. *Id.* at 66. The Assessor’s Office also sent Alco a letter stating that the
25 parcels at issue were “referenced” in the April 11, 2008 Bill of Sale but not “described.” *Id.* at 68.
26 Therefore, the Assessor’s Office did not change ownership of the parcels in its records. *Id.* The
27 Assessor’s Office asked Adcock to contact PSMCSD or a title company to prepare and record the

1 necessary conveyance documents to enable the Assessor’s Office “to finally remove [Alco] from
2 title and reflect [PSMCSD] as the new owner of record as intended with the recording of the Bill
3 of Sale.” *Id.*

4 Apparently, no action was taken to address the Assessor’s Office issue for approximately
5 four years. During that time, Alco continued to receive, but did not pay, the tax bills for the two
6 parcels at issue. Eventually the Receiver’s attorney had the Receiver execute an Addendum to Bill
7 of Sale on August 15, 2012, which included as attachments the inadvertently omitted legal
8 description of the Moss Landing parcel and the same legal description of the NORMCO parcel
9 that had been attached to the Bill of Sale. Dkt. No. 1000 at 5 (PSMCSD’s Motion). The
10 Receiver’s attorneys filed a Notice of Receiver’s Execution of Addendum to Bill of Sale on
11 August 23, 2012, and served the Notice on Alco’s counsel, the Deputy County Counsel, and
12 others. Dkt. No. 980. The Recorder’s Office recorded the Addendum to Bill of Sale on
13 September 19, 2012. Dkt. No. 1001-1 at 25. On August 12, 2013, Judge Fogel issued an Order
14 Discharging Receiver And Terminating Proceedings. Dkt. No. 995.

15 A couple of years later, in approximately June 2015, the Monterey County Treasurer-Tax
16 Collector caused its agent, Bid-4-Assets, to conduct an internet auction to sell the two parcels at
17 issue in order to satisfy the delinquent taxes assessed against Alco. Dkt. No. 1005 at 6-7 (Alco’s
18 Opp’n). A third-party bidder purportedly purchased both parcels. *Id.* at 7. The purported sale of
19 the parcels resulted in excess tax sales proceeds of approximately \$32,000 and has led to two state
20 court actions. First, two of Alco’s trusts have filed an action against the County of Monterey
21 seeking recovery of the excess tax sales proceeds. Dkt. No. 1007 at 4-16 (*AWC Holding Trust v.*
22 *County of Monterey et al.*, No. 18cv1746). Second, the alleged purchaser of the two parcels at
23 issue has filed a quiet title action against PSMCSD. Dkt. No. 1007 at 17-22 (*Pacheco v.*
24 *PSMCSD*, No. 18cv1728).

25 Now that the two parcels at issue are the subject of the state court actions, PSMCSD finally
26 seeks an order correcting the “clerical mistakes” in the March 4, 2008 Order approving the
27 original Bill of Sale. Specifically, PSMCSD requests that the March 4, 2008 Order be amended so

1 that the sentence, “The Court hereby authorizes and confirms the sale of the five systems to
2 PSMCSD and directs the Receiver to execute and deliver the Bill of Sale that has been presented
3 to the Court,” is modified to read, “The Court hereby authorizes and confirms the sale of the five
4 systems to PSMCSD and directs the Receiver to execute and deliver the Bill of Sale that has been
5 presented to the Court as modified by the Addendum to Bill of Sale, including attachments A and
6 B thereto, executed by the Receiver on August 15, 2012, and recorded in the Office of the
7 Monterey County Recorder on September 19, 2002.” Dkt. No. 1000 at 9 (PSMCSD’s Motion).

8 **III. STANDARDS**

9 Federal Rule of Civil Procedure 60(a) provides, in relevant part: “The court may correct a
10 clerical mistake or a mistake arising from oversight or omission whenever one is found in a
11 judgment, order, or other part of the record. The court may do so on motion or on its own, with or
12 without notice.” Fed. R. Civ. P. 60(a). A district court’s jurisdiction to enter an order *nunc pro*
13 *tunc* under Rule 60(a) “is limited to making the record reflect what the court actually intended to
14 do at an earlier date, but which it did not sufficiently express or accomplish due to some error or
15 inadvertence.” *Nisenan Tribe of the Nev. City Rancheria v. Jewell*, 650 Fed. Appx. 497, 499 (9th
16 Cir. 2016) (quoting *United States v. Sumner*, 226 F.3d 1005, 1010 (9th Cir. 2000)). What the
17 district court intended to do may be determined by looking to the circumstances surrounding the
18 original order and also to the court’s subsequent statements of its original intent, providing that the
19 record gives no reason to doubt such statements. *Guenther v. United States*, 44 Fed. Appx. 149,
20 150 (9th Cir. 2002). There is no time limit for bringing a motion under Rule 60(a). *Jones &*
21 *Guerrero Co. v. Sealift Pac.*, 650 F.2d 1072, 1074 (9th Cir. 1981).

22 **IV. DISCUSSION**

23 As an initial matter, the court need not consider Alco’s opposition to PSMCSD’s motion
24 because it is untimely, having been filed one day after the deadline set forth in the court’s Order
25 Setting Briefing Schedule For Interested Party’s Motion For Order Correcting Clerical Mistakes
26 (Dkt. No. 1003). Nevertheless, the court will address the merits of PSMCSD’s motion because of
27 the significant issues it raises and to assist in the efficient and just resolution of the pending state

1 court actions.

2 **A. Standing**

3 Alco argues that PSMCSD lacks standing to bring the instant motion because PSMCSD is
4 not a named party to the action. The argument is without merit. First, Rule 60(a) makes no
5 reference to the movant’s status, whether it be party or non-party, and instead recites that the court
6 may correct a clerical mistake or a mistake arising from oversight or omission whenever one is
7 found in a judgment or order. In this regard, Rule 60(a) is distinguishable from Rule 60(b), which,
8 by its terms affords relief only to “parties.” Fed. R. Civ. P. 60(b) (providing that “the court may
9 relieve a party or its legal representative from a final judgment, order, or proceeding. . . .”).
10 Second, PSMCSD has constitutional standing because it is named in the March 4, 2008 Order and
11 the Bill of Sale and asserts that it will be adversely affected by the “clerical error” in the March 4,
12 2008 Order if it is not corrected. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)
13 (stating that the irreducible constitutional minimum for standing requires party to have suffered an
14 injury-in-fact which is (a) “concrete and particularized,” (b) “actual or imminent, not conjectural
15 or hypothetical,” and (c) likely to be redressed by a favorable decision).

16 **B. Applicability of Rule 60(a) re Clerical Mistake**

17 Alco contends that the errors PSMCSD seeks to correct are not clerical mistakes, but errors
18 subject to the one year or “reasonable time” limitations period set forth in Rule 60(b). Again,
19 Alco’s argument is unpersuasive. The record shows that Judge Fogel intended to order the
20 transfer of all assets of the five water systems to PSMCSD, which included the two parcels at
21 issue, and PSMCSD’s proposed correction will “mak[e] the record reflect what the court actually
22 intended to do at an earlier date, but which it did not sufficiently express or accomplish due to
23 some error or inadvertence.” *Nisenan Tribe v. Jewell*, 650 Fed. Appx. at 499. Alco understood
24 Judge Fogel’s intent and indeed told PSMCSD in several letters that PSMCSD was responsible for
25 the tax bills for the two parcels at issue because the parcels “belong” to PSMCSD. Dkt. No. 1006
26 at 6, 14, 19, 28, 33, 48, 58.

27 The errors PSMCSD seeks to correct are clerical in nature. The Bill of Sale included the

1 Condition of Title report for NORMCO parcel APN 125-151-006, but should have also included
2 (according to the Assessor’s Office) a metes and bounds description of the parcel. The Condition
3 of Title report for the Moss Landing parcel APN 131-061-008 was inadvertently omitted. Clerical
4 mistakes of omission and inadequate property description are the types of error that a court is
5 authorized to correct under FRCP 60(a). *Harwick v. United States*, No. 79-1710 JF, 2014 WL
6 1006576, at *4-5 (N.D. Cal. Mar. 7, 2014), *aff’d sub nom, Nisenan Tribe of the Nev. City*
7 *Rancheria v. Jewell*, 650 F. Appx. 497 (9th Cir. 2016) (applying Rule 60(a) to correct a
8 Stipulation For Entry Of Judgment that inadvertently failed to mention a rancheria); *see also*
9 *Cunningham v. Frymire*, 180 Cal. App. 2d 891, 893-94 (1960) (affirming trial court’s order
10 granting motion to amend order to insert inadvertently omitted description of a home).

11 Alco contends no error was made by the Title Company, Judge Fogel, or the Receiver
12 because the Bill of Sale accurately described the parcels at issue by APNs. Nevertheless, it is
13 clear with the benefit of hindsight that the Bill of Sale and the Condition of Title reports were
14 insufficient to carry out Judge Fogel’s intent. The March 4, 2008 Order expressed Judge Fogel’s
15 intent to authorize and confirm the sale of the Moss Landing and NORCO water systems to
16 PSMCSD. The Judge’s intent was not carried out; the two parcels at issue were purportedly sold
17 without PSMCSD’s authorization.

18 Alco next argues that PSMCSD should not be able to seek relief under Rule 60(a) because
19 the only error here is PSMCSD’s “persistent and intransigent failure to take the steps to file a Bill
20 of Sale or Deed with actual [l]egal description while it had the opportunity and knowledge to
21 easily do so.” Dkt. No. 1005 at 10 (Alco’s Opp’n). Alco’s argument is unpersuasive. The issue
22 is whether the March 4, 2008 order contains a clerical error that requires correcting under Rule
23 60(a). In each of the cases relied upon by Alco, the court denied Rule 60(a) relief because there
24 was no clerical error.³ For example, in *Lee v. Joseph E. Seagram & Sons*, 592 F.2d 39 (2nd Cir.
25 1979), plaintiffs filed a Rule 60(a) motion seeking to add prejudgment interest to a judgment

26
27 ³ *James Blackstone Memorial Ass’n v. Gulf, M.&O. R. Co.*, 28 F.R.D. 385 (D. Conn. 1961);
Ferraro v. Arthur M. Rosenberg Co. of New Haven, 156 F.2d 212, 214 (2nd Cir. 1946).

1 entered in their favor. The court denied the motion, reasoning that (a) the judgment accurately
2 reflected the jury’s verdict, (b) the plaintiffs had not requested prejudgment interest in their
3 complaint or during the course of trial, and (c) that it was plaintiffs’ failure to bring their statutory
4 entitlement to prejudgment interest to the attention of the court in a timely manner that “created
5 their problem, not any clerical oversight or error.” *Id.* at 42. Unlike *Lee*, the March 4, 2008 Order
6 contains a clerical error not of PSMCSD’s making. At most, PSMCSD’s actions or inactions may
7 have exacerbated the effects of the clerical errors, and *Lee* does not foreclose PSMCSD from
8 seeking relief to correct the clerical errors.

9 Citing *Matter of West Texas Mktg. Corp.*, 12 F.3d 497, 504-505 (5th Cir. 1994), Alco
10 further contends that the errors PSMCSD now seeks to correct are not merely clerical errors, but
11 rather errors requiring “substantive judicial intrusion to amend or correct” that are beyond the
12 scope of Rule 60(a). Dkt. No. 1005 at 11 (Alco’s Opp’n). The *West Texas Mktg.* case supports
13 PSMCSD’s position, not Alco’s. In *West Texas Mktg.*, the Fifth Circuit Court of Appeals
14 instructed as follows regarding applicability of Rule 60(a):

15 whether the change affects substantive rights of the parties and is
16 therefore beyond the scope of Rule 60(a) or is instead a clerical
17 error, a copying or computational mistake, which is correctable
18 under the Rule. As long as the intentions of the parties are clearly
19 defined and all the court need do is employ the judicial eraser to
20 obliterate a mechanical or mathematical mistake, the modification
21 will be allowed. If, on the other hand, cerebration or research into
22 the law or planetary excursions into facts is required, Rule 60(a)
23 will not be available to salvage the government’s blunders. Let it be
24 clearly understood that Rule 60(a) is not a perpetual right to apply
25 different legal rules or different factual analyses to a case. It is only
26 mindless and mechanistic mistakes, minor shifting of facts, and no
27 new additional legal perambulations which are reachable through
28 Rule 60(a).

23 *Id.* As previously discussed, the intent of the Receiver, PSMCSD and Judge Fogel in the instant
24 action was clearly defined in the March 4, 2008 Order: to effectuate the sale of the Moss Landing,
25 NORMCO and three other water systems to PSMCSD. PSMCSD’s proposed correction will
26 ensure that this intent is carried out. No “new additional legal perambulations” are required to
27 determine the intent of the Receiver, PSMCSD and Judge Fogel.

1 Alco nevertheless points out that implementing the proposed correction is likely to lead to
2 “new legal perambulations” in the underlying state court proceedings. Alco anticipates that the
3 proposed correction will lead to issues regarding standing, intervention, the propriety of the tax
4 sales, disposition of the delinquent tax sale revenues, and the disposition of the excess tax swales
5 proceeds generated by the tax sales. These are issues that the state court is capable of resolving
6 should they arise; they have no bearing on whether the March 4, 2008 Order has clerical errors
7 requiring correction under Rule 60(a).

8 Because PSMCSD is seeking relief from a clerical error and such relief is properly sought
9 under Rule 60(a) and not 60(b), PSMCSD’s motion is not subject to the time limitations set forth
10 in Rule 60(b).

11 **C. Receiver’s Authority to Execute**

12 Alco contends that Judge Fogel terminated the Receiver’s authorities and duties over the
13 parcels at issue when he issued the March 4, 2008 Order, and therefore the Receiver exceeded his
14 court-appointed authorization when he executed the Addendum to Bill of Sale years later on
15 August 15, 2012. The court disagrees. Judge Fogel did not discharge the Receiver in the March
16 4, 2008 Order. Instead, he narrowed the scope of the Receiver’s duties because he reasonably
17 believed that the Receiver’s duties regarding the parcels at issue had been fulfilled. It was
18 unforeseeable (and beyond comprehension), that the County of Monterey would refuse to record
19 the transfer of title to all parcels comprising the Moss Landing and NORMCO water systems and
20 would later authorize the sale of those parcels. Judge Fogel ordered the transfer, based upon
21 evidence that Alco had repeatedly and intentionally violated the Clean Water Act Safe Drinking
22 Water Act, to help ensure a clean drinking water supply for Monterey County’s own residents.
23 When the Count of Monterey refused to record the transfer of title to all parcels, it was well within
24 Receiver’s authority to complete what amounted to a purely administrative function in order to
25 implement the court’s March 4, 2008 Order.

26 **D. Alco’s Request to Defer/Delay Ruling**

27 Alco accuses PSMCSD of using the proceedings in this court to obtain “evidence” it can

1 use in the state court quiet title action. To prevent this from happening, Alco suggests that the
2 court dismiss PSMCSD’s motion or defer ruling on the present motion until the quiet tile action is
3 resolved. The court declines to do so. This case was initiated in 1997 and litigated for over a
4 decade. The court is not interested in any further delays.

5 **V. CONCLUSION**

6 For the reasons set forth above, PSMCSD’s motion is GRANTED. The March 4, 2008
7 Order is hereby amended *nunc pro tunc* so that the sentence, “The Court hereby authorizes and
8 confirms the sale of the five systems to PSMCSD and directs the Receiver to execute and deliver
9 the Bill of Sale that has been presented to the Court,” is modified to read, “The Court hereby
10 authorizes and confirms the sale of the five systems to PSMCSD and directs the Receiver to
11 execute and deliver the Bill of Sale that has been presented to the Court as modified by the
12 Addendum to Bill of Sale, including attachments A and B thereto, executed by the Receiver on
13 August 15, 2012, and recorded in the Office of the Monterey County Recorder on September 19,
14 2002.”

15 **IT IS SO ORDERED.**

16 Dated: June 25, 2019

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18 
19 EDWARD J. DAVILA
United States District Judge