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Department of Water Resources

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

) Subcases 47-16433, *et al.*
) (see list of 26 subcases attached)
) (USDA/FS)
)
) ORDER VACATING STAYS and
) ORDER DENYING MOTIONS
) TO FILE LATE OBJECTIONS

PROCEDURAL BACKGROUND

Claims and Director's Report

The Director of the Idaho Department of Water Resources filed his *Director's Report for Domestic and Stockwater, Reporting Area 12 (IDWR Basin 47)* on August 14, 1998. The Director recommended the above 26 claims to the United States of America, Department of Agriculture, Forest Service ("USDA/FS"), 550 W. Fort Street, MSC 033, Boise, Idaho, 83724, for *de minimis* amounts of water (.02 cfs) from various springs, creeks and a gulch for stockwater use in Cassia County for various periods of use and with priority dates of May 1 or June 1, 1875, all based on beneficial use.

Motions to File Late Objections

Bruce and Jared Bedke filed motions to file late objections in the above 26 subcases on June 4, 1999, alleging the water rights should not exist. They both wrote:

At this time I am filing a motion to file a late objection. I only recently became aware that the United States had filed claims to water that I had claimed. I have been following the status of my claims through the Internet, and was not aware of the Government's conflicting claims due to the extreme number of government filings and the fact that all claims are listed by subcase rather than a legal

description. I am filing my objection now so that the govt. claims will not show up as unobjected to and be partially decreed as a matter of course.¹

United States Opposition

The USDA/FS filed its *Memorandum in Opposition to Motions To File Late Objections* on June 29, 1999. It argued that the Bruce and Jared Bedke's motions to file late objections should be denied because they were filed over 3 months after the deadline to file objections (February 12, 1999) and the Bedkes should have been aware of the USDA/FS claims when they were personally served with IDWR's *Notice of Filing Director's Report*.² The USDA/FS also argued that the movants failed to show good cause for late filing and that granting their motions would impede the proper and efficient administration of the adjudication process. On June 1, 2001, the United States lodged its *Supplemental Memorandum in Support of United States' Opposition to Motions to Set Aside Partial Decrees and Motions to File Late Objections*.³

Orders Staying Subcases

On August 6, 1999, the Special Master entered an *Order Partially Staying Subcases*: "[F]urther proceedings, *except* settlement negotiations, in the twenty-six (26) subcases are **stayed** until the remaining stock water claims in Basin 47 are reported by IDWR." The stay was entered because IDWR's bifurcated process of reporting domestic and stockwater claims in Basin 47 was deemed to be unfair to the claimant (USDA/FS), the late objectors and the SRBA

¹ Scott Bedke filed a motion to file late objections in 15 of the above 26 subcases on April 28, 1999, alleging the water rights should not exist. On June 4, 1999, he filed an amended motion to file late objections adding the remaining 11 subcases. Michael and Gary Poulton both filed motions to file late objections in the 26 subcases on June 7, 1999. Scott Bedke and the Poultons later joined with the United States and filed a *Stipulation and Joint Motion for Order Approving Stipulation* ("Stipulation") on August 29, 2002, to dismiss their objections and responses. On June 17, 2003, Scott Bedke and the Poultons filed a *Notice of Withdrawal of Motions to File Late Objections* in the 26 subcases and on June 20, 2003, the Special Master entered an *Order Granting Motion to Withdraw Motions to File Late Objections*. For these reasons, and because Bruce and Jared Bedke did not file any other documents after filing their motions to file late objections, the present *Order Vacating Stays and Order Denying Motions to File Late Objections* will address only the motions filed by Bruce and Jared Bedke.

² The *Notice* was mailed to claimants on August 13, 1998. The same date, copies of the *Notice* and the complete *Director's Report* were mailed or hand-delivered to IDWR's regional offices, the Cassia and Owyhee County district court clerks, the U.S. Department of Justice and the State of Idaho. See Donald V. Shaff's *Affidavit of Service*, filed August 31, 1998, *In Re SRBA Case No. 39576*, and I.C. § 42-1411(6).

³ The *Supplemental Memorandum*, filed by the United States (USDA/FS and the United States of America, Department of Interior, Bureau of Land Management, "USDI/BLM"), argued further against Bruce and Jared Bedke's motions to file late objections, as well as motions to set aside partial decrees not now before the Special Master.

Court.⁴ The issues of whether the motions to file late objections were timely and whether good cause had been shown was not decided. An *Amended Order Partially Staying Subcases* was entered on August 9, 1999, to correct typo errors. On July 2, 2001, the Special Master entered an *Order Staying Subcases* in multiple subcases in Basins 45 and 47, including the above 26 subcases, because of common issues. This second stay was “until the remaining stockwater claims in Basins 45 and 47 are reported by IDWR.”⁵

Status Conference

A status conference concerning the above 26 subcases (plus 47-14923A, 47-14923B, 47-14923C, 47-14923D and 47-14923E claimed by Bruce and Ray Bedke, Gary Poulton and Winslow Whiteley) was held on June 19, 2003. David Negri appeared for the USDA/FS; Travis Thompson appeared for Mr. Whiteley and objectors Ray and Scott Bedke and Michael and Gay Poulton; Bruce and Jared Bedke appeared *pro se*; and Roxanne Brown spoke by telephone for IDWR.

All the parties urged a ruling on Bruce and Jared Bedke’s motions to file late objections in the above 26 subcases. The USDA/FS wanted a ruling because, depending on the outcome, it will allow the parties to the August 29, 2002 *Stipulation* to proceed with implementing their agreement. The Bedkes wanted a ruling simply because the issue needs to be finally resolved. Neither side submitted additional written arguments.

Recent Developments

LU Ranching Decision

There have been two major developments in the SRBA since the Special Master entered the orders staying the above 26 subcases in 1999 and 2001. First, the Idaho Supreme Court

⁴ In the bifurcated process, IDWR reported the USDA/FS “*de minimis*” claims for individual sources separately and ahead of the late objectors’ larger “*de maximus*” claims for multiple sources filed by allotment. IDWR has yet to report the late objectors’ claims in Basin 47. All of the late objectors’ unreported “*de maximus*” claims were settled in the August 29, 2002 *Stipulation*, except for Bruce and Jared Bedke’s claims. For a more complete discussion of IDWR’s bifurcated process, see the Special Master’s *Amended Order Partially Staying Subcases*, subcases 47-16433, *et al.*, dated August 9, 1999.

⁵ IDWR does not expect to report the “*de maximus*” claims in Basin 47 until the fall of 2004.

entered its decision in *LU Ranching Co. v. United States*, ___ Idaho ___, 67 P.3d 85 (2003). In that case, on appeal from the SRBA Court, the Idaho Supreme Court was asked to decide the constitutionality of procedures giving notice to claimants in the SRBA. LU Ranching was not informed of any actual conflict to its water claims, except as it would if it reviewed the *Director's Report*, and it failed to timely object to overlapping USDI/BLM claims. LU Ranching argued that partial decrees awarding stockwater rights to the USDI/BLM, without objection, should be set aside on the basis of mistake, inadvertence, surprise and / or excusable neglect and on the basis that the notice LU Ranching received did not meet the minimum requirements of due process.

The Idaho Supreme Court said that cases like the SRBA concern notice of the commencement when a party of the action must be alerted to the fact of a lawsuit. It then noted that, "the United States Supreme Court has insisted on less exacting standards for notice of subsequent procedures and actions when parties know proceedings may affect their rights [citation omitted]." *LU Ranching*, ___ Idaho, at ___, 67 P.3d, at 88. The Idaho Supreme Court agreed with the SRBA District Court decision that LU Ranching did not act as would a reasonably prudent person under the circumstances and that LU Ranching failed to show excusable neglect or mistake in failing to file timely objections:

[T]here is no doubt that LU Ranching was aware of the commencement of the SRBA and aware that action concerning its claimed rights and the rights of others in the region would be adjudicated. It received notice of the Director's report, the nature of that report, its location, and the way to access the report, as well as the offer of technical assistance if necessary. . . . The method of notice given was reasonably calculated to give LU Ranching and all other claimants the information to pursue and protect their rights. In fact, LU Ranching found the information when it examined the Director's report. Requiring personal service of all potentially adverse claims could well involve a flood of paper that would do no more than what is done by existing procedures.

LU Ranching, ___ Idaho, at ___, 67 P.3d, at 89.

Stipulation

The second major development since the stay orders were entered was the August 29, 2002 *Stipulation* signed by the USDA/FS and all the private parties, except Bruce and Jared Bedke. In the *Stipulation*, the parties resolved their conflicting stockwater claims and agreed that the private parties would receive senior stockwater rights:

For claims on lands administered by the Forest Service, the United States shall receive a water right with a priority date which is the later of a) the claimed priority date or b) the date of the federal reservation of such lands. On Forest Service lands, the federal reservation date for claims on what is presently the Sawtooth National Forest is June 12, 1905. . . . The overlapping or competing claims of the Private Parties shall have a priority date that is one-day senior to the United States' priority date, unless the Private Parties can provide a patent or deed for their "base property," . . . that precedes this date, in which case the Private Parties shall receive a priority date that is this more senior date [emphasis added].

Stipulation, at 4.

A later provision in the *Stipulation*, paragraph 7, entitled, "Grazing Permits and Management of Federal Lands," reads: "The Parties agree that the Water Rights listed on [Exhibit A, which includes the above 26 claims] . . . shall not alter the rights of a permittee under a valid grazing permit nor impede the authority of the United States to manage federal lands."

Stipulation, at 6-7.

DISCUSSION

LU Ranching Case

The standards for granting motions to file late objections in the SRBA were discussed in the Special Master's *Amended Order Partially Staying Subcases*, subcases 47-16433, *et al.*, dated August 9, 1999. The general rule is that a party must show "good cause" and that means a party must 1) state a reason, 2) act in good faith, 3) exercise due diligence and 4) plead a meritorious defense. The facts reviewed by the Idaho Supreme Court in *LU Ranching* may not be identical to the circumstances presented in Bruce and Jared Bedke's motions to file late objections (i.e., a motion to set aside a partial decree versus a motion to file a late objection), but they are sufficiently analogous to guide this Court.

LU Ranching argued they were not given adequate notice of the USDI/BLM claims. Here, the Bedkes essentially argued the same lack of notice because of IDWR's bifurcated process. But like LU Ranching, the Bedkes were aware of the commencement of the SRBA and they were aware that action concerning their claims and the rights of others in Basin 47 would be adjudicated. They also received notice of the *Director's Report*, the nature of that report, its location and the way to access the report. Hence, like LU Ranching, Bruce and Jared Bedke did

not act as would a reasonably prudent person under the circumstances and they failed to show excusable neglect or mistake in failing to file timely objections. In other words, they failed to show “good cause” for not filing objections in a timely manner. Therefore, their motions to file late objections must be denied.

Then, there is the matter of prejudice to the other parties caused by the stay orders. If further proceedings in the above 26 subcases were to remain stayed until the Basin 47 “*de maximus*” stockwater claims are reported in the fall of 2004, the stockwater rights of the remaining parties who signed the *Stipulation* would be put on hold. Now is the time to vacate the stays and deny Bruce and Jared Bedke’s motions to file late objections.

No Meritorious Defense

The law of the SRBA case and Idaho Supreme Court holding in *LU Ranching* alone are sufficient reasons to deny Bruce and Jared Bedke’s motions to file late objections. However, there is one other basis that leads to the same result – they failed to plead a meritorious defense and thereby cannot show “good cause” to file late objections.

In the status conference on June 19, 2003, the Bedkes said the reason they did not sign the *Stipulation* giving the private parties senior stockwater rights was because of the language in paragraph 7. That was the language stating the water rights “shall not alter the rights of a permittee under a valid grazing permit nor impede the authority of the United States to manage federal lands.”

It is apparent that Bruce and Jared Bedke are concerned less about stockwater rights than they are about conditions imposed on their grazing privileges and more broadly, the authority of the United States to manage federal lands. Both of those issues bear only a tenuous relationship, at best, to water rights and the role of the SRBA Court in adjudicating such rights. Viewed another way, the issues the Bedkes want to pursue with their late objections are beyond the jurisdiction of the SRBA Court. For that reason, the Bedkes failed to plead a meritorious defense and failed to show good cause to file late objections.

ORDERS

THEREFORE, IT IS ORDERED that:

1. The *Orders* staying the above 26 subcases are **vacated**, and
2. The motions to file late objections filed by Bruce and Jared Bedke in the above 26 subcases are **denied**.

DATED July 3, 2003.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

ATTACHMENT 1

Subcase Nos:

47-16433
47-16434
47-16435
47-16437
47-16438
47-16440
47-16441
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47-16474

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER VACATING STAYS AND ORDER DENYING MOTIONS TO FILE LATE OBJECTIONS was mailed on July 03, 2003, with sufficient first-class postage to the following:

GARY R POULTON
MICHAEL A POULTON
SCOTT C. BEDKE

Represented by:
TRAVIS L THOMPSON
233 - 2ND ST N, STE D
TWIN FALLS, ID 83301
Phone: 208-733-0700

USDA FOREST SERVICE
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

BRUCE BEDKE
JARED BEDKE
42 E BASIN RD
OAKLEY, ID 83346
Phone: 208-862-3679