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

In Re SRBA	)	Subcases 47-16433, <i>et al.</i>
	)	See Attachment A
Case No. 39576	)	
	)	MEMORANDUM IN OPPOSITION TO
	)	BRUCE AND JARED BEDKE'S
	)	MOTION TO ALTER OR AMEND
	)	ORDER VACATING STAYS and
	)	ORDER DENYING MOTIONS TO
	)	FILE LATE OBJECTIONS

COMES NOW the United States of America, through and on behalf of the USDA Forest Service ("United States"), and submits its Response to the "Motion to Alter or Amend Order

Vacating Stays and Order Denying Motions to File Late Objections” (“*Motion*”) filed on July 22, 2003, by Bruce and Jared Bedke (“Movants”).

1. The Motion is not a Motion to Alter or Amend, as described by SRBA Administrative Order 1.

As a preliminary matter, the United States notes that SRBA Administrative Order 1 (“AO1”) provides for particular procedures with regards to Motions to Alter or Amend. *See* AO1 § 13. However, as described by AO1, a Motion to Alter or Amend is filed only in response to a Special Master’s Recommendation. *See* AO1 § 13(a). Because the Movants are challenging an Order issued by the Special Master rather than the Special Master’s Recommendation, SRBA procedure related to Motions to Alter or Amend does not apply in this instance.

2. The Special Master’s denial of the Bedke’s Motions to File Late Objections was appropriate.¹

In his *Order Vacating Stays and Order Denying Motions to File Late Objections* (“*Order*”), the Special Master correctly noted that the facts in these subcases are no different than those underlying the Idaho Supreme Court’s decision in *LU Ranching Co. v. United States*, ___ Idaho ___, 67 P.2d 85 (2003). The Movants argue that the *LU Ranching* decision is factually distinguishable, see *Motion*, p. 3-5, but that simply is not the case. In *LU Ranching*, the Supreme Court based its decision on the following factors: LU Ranching was aware of the commencement of the SRBA, LU Ranching was aware that its rights and the rights of others would be adjudicated, and LU Ranching received notice of the Director’s report, the nature of

¹ The United States previously has presented its arguments for why the Motions to File Late Objections should be denied. *See Memorandum in Opposition to Motions To File Late Objections*, filed on June 29, 1999, and *Supplemental Memorandum in Opposition to Motions To File Late Objections*, filed on June 1, 2001.

that report, its location, and the way to access the report. *See Lu Ranching*, 67 P.3d at 89. The exact same facts are present in these subcases. *See United States Memorandum in Opposition to Motions To File Late Objections*, filed in these subcases on June 29, 1999, at pp. 2-5 (Movants are SRBA claimants and received notice of the Basin 47 Director's Report informing them: that the Director's Report contained recommendations for all recommended domestic and stock water rights, the location of the Director's Report, and how they could access the Report).

Movants attempt to distinguish LU Ranching by arguing that they were "procedural victims of the bifurcated reporting process." *Motion*, p. 4. However, this is a distinction without a difference; SRBA Presiding Judge Burdick has clearly rejected reliance on the bifurcated reporting process as a basis for relief of this nature. *See, e.g., Order on Motion for Reconsideration; I.R.C.P. 59(e)*, subcase nos 65-07267 et al., dated July 27, 2001, at pp. 5-13 (Section IV B, entitled: "The responsibility for any alleged confusion rests with [the Movants], not IDWR's reporting procedure"].

Movants next argue that they should be held to a lesser standard than LU Ranching because they are *pro se*. *Motion*, p. 4-5. The Special Master notes in his *Order Setting Hearing on Motion to Alter or Amend*, n. 1, that the Presiding Judge has found that the general rule in Idaho is that *pro se* litigants are held to the same standard as those represented by attorneys. *See also Ade v. Batten*, 126 Idaho 114, 118, 878 P.2d 813, 817 (Ct. App. 1994).

Finally, the Movants argue that the Special Master improperly relied upon a "settlement discussion" in his *Order*. *Motion*, p. 5. However, during the status conference on June 19, the Movants stated that they could not agree to the "terms of the settlement" referenced by the Special Master. *See transcript at pp. 18-19 (attached as Exhibit 1)*. Regardless, the Special

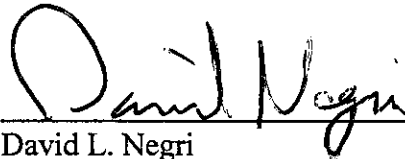
Master's *Order* clearly notes that the law of the SRBA and the *LU Ranching* decision provide sufficient basis alone to support his conclusion. *Order*, p. 6.

CONCLUSION

For the reasons stated above, as well as the reasons stated in the Special Master's Order, the *Motion* should be denied.

DATED this 20th day of August, 2003.

UNITED STATES OF AMERICA

A handwritten signature in black ink, reading "David L. Negri", is written over a horizontal line.

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CERTIFICATE OF SERVICE

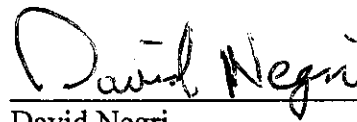
I HEREBY CERTIFY that on this 20th day of August 2003, I served a true and correct copy of the foregoing **MEMORANDUM IN OPPOSITION TO MOTION TO ALTER AND AMEND** by depositing a copy thereof in the U.S. mail, postage prepaid, or by other service where indicated, upon the following:

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Attachment A

47-16433
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1 SPECIAL MASTER DOLAN: Mr. Bedke, do you
2 think we can, we can go ahead and rule on your
3 motion to file late objections now without waiting
4 for the, your de maximus claims on Basin 45 to be
5 reported?

6 MR. BEDKE: Well, again, like I say, it's
7 just, it's just a procedural deal, as far as we were
8 concerned. We didn't want to have to argue the same
9 case twice.

10 SPECIAL MASTER DOLAN: Okay.

11 MR. BEDKE: And so we thought -- well,
12 that's -- this was before the stipulation and all
13 and the settlement came about. This was all --
14 everybody was on the same page back then as far as
15 stockwater users were concerned.

16 SPECIAL MASTER DOLAN: Sure.

17 MR. BEDKE: And so that was -- that was
18 the best procedure we had at the time for this
19 court, was that everything was stayed pending the
20 report, when we could look at everything together,
21 because they are competing claims.

22 SPECIAL MASTER DOLAN: Sure. Well, what
23 are the odds of you settling your case as a lot of
24 the other private claimants have done?

25 MR. BEDKE: Well, I couldn't agree with

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1 for -- it's claimed by Bruce Bedke, Gary Poulton,
2 Winslow Whiteley and Greg Bedke, and it is for one
3 spring called Cabin Spring, so that, that would be
4 the one -- that would be -- that would be the only
5 claim in this, in this group that we are waiting for
6 to come out in the Basin 47 irrigation and other
7 director's report.

8 SPECIAL MASTER DOLAN: Well, I know that
9 since we did those stays way back when, a lot of
10 developments have happened, and I'm aware that Judge
11 Burdick wants a lot of these cases to move along,
12 and stays are not favored any more. So my guess is,
13 I'm going to have to take a look at that motion and
14 rule on it so that we can move these cases along.
15 Because it looks like to me, at least in the
16 drive-by discussion we've had this morning, that
17 there's no reason for not, for us not to go ahead
18 with this motion, even though some of your other
19 claims haven't been reported, because while it may
20 not be efficient for you to argue the same matters
21 twice, if we do decide the matters at this point,
22 that might solve the problems later on when your de
23 maximus claims are reported, and maybe you won't
24 have to argue the same things twice.

25 MR. BEDKE: There is that possibility, but

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1 some of the terms in the settlement, so that was why
2 we didn't opt to settle at that time.

3 SPECIAL MASTER DOLAN: But you've actually
4 seen all of the terms and --

5 MR. BEDKE: Yes.

6 SPECIAL MASTER DOLAN: -- you've had a
7 chance to discuss settlement? Okay. And for, for
8 now at least, you --

9 MR. BEDKE: So we always entertain
10 settlement, but the devil's in the details, as they
11 say.

12 SPECIAL MASTER DOLAN: Sure. But for now
13 you want to pursue your claims that 14923, A through
14 E, and -- or I'm sorry. You want to pursue your
15 objections --

16 MR. BEDKE: Motions to file late
17 objection.

18 SPECIAL MASTER DOLAN: Okay.

19 MR. BEDKE: Yes.

20 SPECIAL MASTER DOLAN: Mr. Negri, anything
21 further?

22 MR. NEGRI: Just one clarification I do
23 have. The IDWR adjudication claim report for
24 47-14924, which is the -- which is the one
25 unreported claim involved in this group, and it is

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1 it still does not stop us from, what -- what it
2 boils down to, just procedurally, if the late
3 objection, the motion to file late objections are
4 granted, then we will be debating not our water
5 rights per se but whether or not the federal
6 government's water rights should proceed.

7 SPECIAL MASTER DOLAN: Sure.

8 MR. BEDKE: And then later on, when ours
9 get reported out, they will have the chance to get
10 to object to theirs, and we will have to resolve
11 their objections to ours.

12 SPECIAL MASTER DOLAN: Sure.

13 MR. BEDKE: So we decided way back when
14 that it would be best to say, hey, okay, you don't
15 like ours, we don't like yours, let's resolve them
16 both at once. So that was the reason for the stay
17 originally. Whether or not that's still pertinent,
18 I guess is up to you, because the court will have to
19 decide when that is, which would be the best use.

20 It's a, it's a, it's a big can of worms
21 here, because it can go -- there's all kinds of
22 things that go on and this, that and the other.

23 SPECIAL MASTER DOLAN: Well, is there
24 anything the court can do to, to aid in the
25 settlement of these Basin 47 subcases that we have