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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO

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 DENYING THE BEDKE'S
) MOTION TO RECONSIDER
)

BACKGROUND

On July 3, 2003, the Special Master entered an *Order Vacating Stays and Order Denying Motions to File Late Objections* in the above subcases. In the *Orders*, the Special Master first vacated stays entered in 1999 and 2001, which essentially put on hold motions to file late objections filed by Bruce and Jared Bedke to USDA / Forest Service "*de minimis*" stockwater claims in Basin 47 until the Bedkes' "*de maximus*" claims are reported by IDWR.¹ The Special Master then denied the Bedkes' motions to file late objections because according to the Idaho Supreme Court's reasoning in *LU Ranching Co. v. United States*, 138 Idaho 606, 67 P.3d 85 (2003), the Bedkes 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. Finally, the Special Master denied the Bedkes' motions because they failed to plead a meritorious defense and thereby cannot show "good cause" to file late objections.

On July 22, 2003, the Bedkes filed a *Motion to Alter or Amend Order Vacating Stays and Order Denying Motions to File Late Objections*, later amended by the Bedkes to be termed a *Motion to Reconsider*. In their *Motion*, the Bedkes argued because they are representing

¹ The primary reason for the stays was because the Special Master deemed IDWR's bifurcated process of reporting domestic and stockwater claims in Basin 47 (where *de minimis* stockwater claims were reported separately and before *de maximus* stockwater claims were reported) to be unfair to the claimant, the prospective late objectors and the SRBA Court. For a complete discussion of the bifurcated process, see former Presiding Judge Roger S. Burdick's *Order on Motion for Reconsideration*, dated July 27, 2001, subcases 65-07267, *et al.*, at 5-13 (A.L. Cattle, Inc.).

themselves in the matter, the court should “look to the substance of the pleadings rather than the form.” The Bedkes then asked the court to consider not only their filings, but also a particular memorandum lodged by counsel for other parties in similar subcases.² The Forest Service lodged its *Memorandum in Opposition* on August 21, 2003.

A hearing on the Bedkes’ *Motion* was held on September 4, 2003. David L. Negri appeared for the Forest Service; Bruce and Jared Bedke appeared *pro se*; Travis L. Thompson appeared for Winslow Whiteley, Ray and Scott Bedke and Michael and Gary Poulton; and Nicholas B. Spencer appeared by telephone for IDWR. At the conclusion of the hearing, the Forest Service requested additional time in which to lodge a written response regarding alleged factual statements or testimony (as opposed to legal argument) made by Jared Bedke, and the Bedkes requested the opportunity to respond.

The Forest Service lodged its *Response to Factual Assertions Presented at Hearing* on October 24, 2003, and the Bedkes lodged their *Reply* on November 14, 2003. According to the Forest Service, the central issues were whether the Forest Service, “at a hearing held on April 7, 1999, assented to the filing of late objections to Forest Service stockwater claims in Basins 45 and 47” and whether IDWR’s bifurcated reporting process was responsible for the Bedkes’ failure to file timely objections. Forest Service *Response*, at 2-3.

DISCUSSION

The Bedkes have not presented any compelling reasons for reversal of the Special Master’s *Order Vacating Stays and Order Denying Motions to File Late Objections*. First, the record is clear that the Forest Service did not agree that it would not oppose late objections (including the Bedkes’ late objections) to all of its stockwater claims in Basin 45 and 47 – only claim 45-07446.

Second, the Bedkes cannot reasonably argue that the bifurcated process of reporting *de minimis* and *de maximus* stockwater claims somehow avoids the requirement to file timely objections. The Forest Service correctly pointed out that former-Presiding Judge Roger S. Burdick has already fully reviewed that issue in his *Order on Motion for Reconsideration*, dated July 27, 2001, subcases 65-07267, *et al.*, involving A.L. Cattle, Inc. Judge Burdick’s language in that *Order* would just as well apply here:

² A document entitled, *Response to Memorandum in Opposition to Motions to File Late Objections*, was lodged on June 17, 1999, in 156 subcases (45-02769, *et al.*) by counsel for Scott C. Bedke. It is likely the document referred to by the Bedkes in their *Motion*.

With respect to the claims at issue, the United States followed established SRBA procedures for filing its claims. The United States' claims were also reported in accordance with established procedure. Any deviation from standard procedures and erroneous assumptions therefrom came as a result of the manner in which some grazing allottees have filed their claims, not as a result of an infirmity in the SRBA notice procedure, IDWR's reporting procedure or some bad-faith conduct on behalf of the United States. **At a minimum if there was uncertainty over the reporting of the claims in light of the novel manner in which they were claimed, the onus should have been on the allottee to resolve any uncertainties as to how the claims would be reported** [footnote omitted, emphasis added].

Judge Burdick's *Order on Motion for Reconsideration*, at 12.

The Bedkes have not shown why *LU Ranching* is not dispositive of their motions to file late objections. As in that case, the Bedkes were aware of the commencement of the SRBA, they knew their claims and the claims of others would be adjudicated and they received notice of the filing of the *Director's Report for Domestic and Stockwater, Reporting Area 12 (IDWR Basin 47)*. As the Forest Service pointed out, five of Bruce Bedke's stockwater claims on federal land (47-14923A, B, C, D and E) were, in fact, included in the same *Director's Report* that reported the 26 Forest Service claims at issue here.³

CONCLUSIONS OF LAW

The record in these subcases and the law of the SRBA Court support the conclusions that the Bedkes 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. Further, the Bedkes failed to plead a meritorious defense and thereby cannot show "good cause" to file late objections because the issues they seek to pursue with their late objections are beyond the jurisdiction of the SRBA Court.

ORDER

THEREFORE, IT IS ORDERED that the Bedkes' *Motion to Reconsider* is **denied**.

³ Bruce Bedke is Jared Bedke's father.

DATED January 7, 2004.


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
47-16442
47-16443
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47-16470
47-16471
47-16474

(Subcase list: 16433 ETAL)

CERTIFICATE OF MAILING

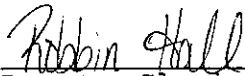
I certify that a true and correct copy of the ORDER DENYING THE BEDKE'S MOTION TO RECONSIDER was mailed on January 07, 2004, with sufficient first-class postage to the following:

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