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UNITED STATES OF AMERICA

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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

Case No. 39576

) Subcases 47-16433, *et al.*

) See Attachment A

)

) **MEMORANDUM IN OPPOSITION TO**

) **BRUCE AND JARED BEDKE'S**

) **MOTION TO ALTER OR AMEND**

) **SPECIAL MASTER'S REPORT**

)

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 Special

Master's Report ("*Motion*") filed on February 27, 2004, by Bruce and Jared Bedke ("Movants").

The Special Master's denial of the Bedke's Motions to File Late Objections was appropriate and his report and recommendations should not be altered.¹

The Movants, in their *Memorandum in Support of Motion to Alter or Amend Special Master's Report* ("Memo."), raise the same arguments in support of their position that have previously been considered and rejected by the Special Master. *See Order Vacating Stays and Order Denying Motions to File Late Objections* (July 3, 2003) ("*Initial Order*"); *Order Denying the Bedke's Motion to Reconsider* (January 7, 2004). The Special Master correctly held that the Idaho Supreme Court's decision in *LU Ranching v. United States*, 238 Idaho 606, 67 P.3d 85 (Idaho 2003) ("*LU Ranching*") and the SRBA Presiding Judge's *Order on Motion for Reconsideration* (subcases 65-07267, *et al.*, July 27, 2001) ("*AL Cattle II*") dispose of the Movants' complaints that their failure to file timely objections was caused by the SRBA's bifurcation procedure.

Movants attempt to distinguish *LU Ranching* and *AL Cattle II* because those decisions involved subcases which had proceeded to partial decree. Memo. at 6-7. As noted by the United States in previous briefings and the Special Master in his Orders, the facts underlying *LU Ranching* and these subcases are remarkably similar: the parties were aware of the commencement of the SRBA, were aware that their rights and the rights of others would be adjudicated, and received notice of the Director's report, the nature of that report, its location,

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.

and the way to access the report. *See Lu Ranching*, 67 P.3d at 89; United States *Memorandum in Opposition to Motions To File Late Objections*, filed in these subcases on June 29, 1999, at pp. 2-5.²

Furthermore, the *AL Cattle* subcases included not only subcases which had proceeded to decree, but also subcases which had not yet been decreed. *See, e.g., AL Cattle II* at p. 1. In addition, the Special Master applied a "good cause" standard in ruling on the late objections, *see*, the same standard considered by the Presiding Judge in *AL Cattle. Compare Initial Order* at pp. 5-6 with *Order on Motion to Set Aside Partial Decrees and File Late Objections* (subcases 65-07267 *et al.*, January 31, 2001) (*AL Cattle I*), at pp. 6-7.

The Movants' assertion that they filed their late objection motions "as soon as they could," and that they acted "promptly" in requesting relief, Memo. at 4-5, is not supported by the record in these subcases. *See Memorandum in Opposition to Motions To File Late Objections*, filed by the United States in these subcases on June 29, 1999, at pp. 2-7, 11-16.

² The Movants' assertion that Jared Bedke received no notice of the Director's Report, constructive or otherwise, Memo. at 4, should not be considered by this Court. The United States objects to any consideration of prior unsworn statements made by the Movants. *See, e.g., IRE* 801, 802, 603, 602, 601. As with a factual allegation made by an attorney which is not supported by evidence, the Movants' assertion is without evidentiary basis.

In addition, the United States has previously noted that Jared Bedke is the son of Bruce Bedke, that he has stated in court that he "intends to be the successor in interest of Bruce Bedke," transcript of June 7, 1999, hearing at p. 80, and that he has been intimately involved in the prosecution of his father's water right claims, as demonstrated by his involvement and presentation of argument at all of the court hearings held in these subcases.

In any event, the record demonstrates that Jared Bedke has not established good cause for his late filings. *See Memorandum in Opposition to Motions To File Late Objections*, filed by the United States in these subcases on June 29, 1999, at pp. 2-7, 11-16.

Similarly, the Movants' assertions at Memo, pp. 3-4, regarding confusion purportedly caused by the bifurcation process is without evidentiary support in the record.

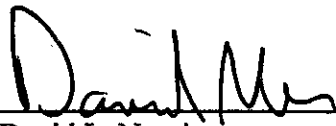
Finally, Movants' assertion that they have established a meritorious position in these subcases is belied by the Presiding Judge's *AL Cattle* decisions. See *AL Cattle II* at 14-15.

Conclusion

In their *Memorandum in Support of Motion to Alter or Amend Special Master's Report*, Movants again complain that the SRBA's bifurcation process led to their failure to file timely objections in these subcases. The argument has been rejected by the Idaho Supreme Court in *LU Ranching*, the SRBA Presiding Judge in *AL Cattle*, and the Special Master in his previous Orders. The Special Master's Report and his recommendations in these subcases are based on proper application of SRBA rules and relevant court decisions. Accordingly, the *Motion* should be denied.

DATED this 15th day of March, 2004.

UNITED STATES OF AMERICA



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of March, 2004, 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:

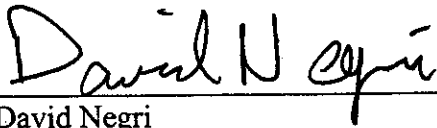
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Attachment A

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