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ISB# 6697

**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
)
) **UNITED STATES' OBJECTION TO**
) **AND MOTION TO STRIKE BRUCE**
) **AND JARED BEDKE'S**
) **ASSEVERATIONS**
)

COMES NOW the United States of America, through and on behalf of the USDA Forest Service ("United States"), and submits its Objection to And Motion to Strike the "Asseverations

**UNITED STATES' OBJECTION TO AND MOTION TO STRIKE BRUCE AND JARED BEDKE'S
ASSEVERATIONS**

Subcase nos. 47-16433, *et al.* - Page 1

in Support of Motion to Alter or Amend Special Masters Report” (“Asseverations”) filed on or about April 6, 2004, by Bruce and Jared Bedke. Although a hearing was held on the Motion to Alter or Amend on April 8, 2004, undersigned counsel did not personally receive a copy until April 8, after the hearing held on that day.

The SRBA Court has held on several occasions that, on a Motion to Alter or Amend, the Special Master is limited to the existing record and introduction of additional evidence is not appropriate. “Since a motion to alter or amend is limited to the record before the court (special master) and does not provide for the introduction of new or additional evidence, a party is limited in that regard.” Order on Challenge (Consolidated Issues) of “Facility Volume” Issue and “Additional Evidence” Issue, subcase nos. 36-07201 *et al.* (December 29, 1999) (“Facility Volume Order”), slip op. at 23. The Idaho Supreme Court, in *North Snake Ground Water District v. Gisler*, 40 P.3d 105, 109 (Id 2002), cited with approval the following language from the SRBA Court’s Facility Volume Order: “the Rule [AO 1 § 13(a)] does not provide a mechanism for advancing new legal theories and/or evidence that was discoverable during the pendency of the action.” The factual allegations contained in the Asseverations were available during the pendency of this case and, accordingly, come within the ruling of *North Snake Ground Water District* and should not be considered by the Special Master. *See also* Memorandum Decision and Order on Challenge, subcase nos. 36-00061 *et al.* (Sept. 27, 1999) (additional evidence not allowed in conjunction with a motion to alter or amend the findings of fact contained in a special master’s report).

Further, because the Asseverations were neither timely filed, *see* AO1 13(a) (motion to

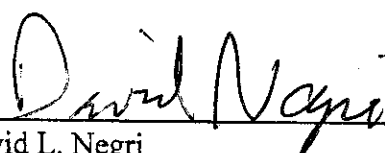
alter or amend must be filed within 21 days of the date the Special Master's Recommendation appears on the docket sheet), IRCP 6(d) (when a motion is supported by affidavit, the affidavit shall be served with the motion), *see also* IRCP 59(c) (when a motion for new trial is based upon affidavits they shall be served with the motion), nor properly sworn, *see, e.g.*, IRE 603 (proper oath or affirmation required for testimony), I.C. § 51-109 (oath or affirmation requires a certification by notary public); *Evans v. Twin Falls County*, 796 P.2d 87 (1990) (written statements not subscribed and sworn to as an oath or affirmation by notary public are not under oath as required).

Conclusion

Because the Special Master cannot consider new evidence on a motion to alter or amend, and because the Asseverations were neither timely filed nor in proper form, the Asseverations should not be considered by the Special Master and should be stricken from the record.

DATED this 20th day of April, 2004.

UNITED STATES OF AMERICA


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CERTIFICATE OF SERVICE

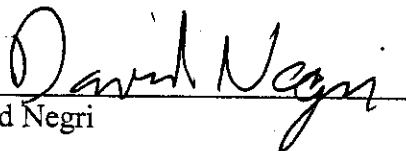
I HEREBY CERTIFY that on this 20th day of April, 2004, I served a true and correct copy of the foregoing UNITED STATES' OBJECTION TO AND MOTION TO STRIKE BRUCE AND JARED BEDKE'S ASSEVERATIONS by depositing a copy thereof in the U.S. mail, postage prepaid, or by other service where indicated, upon the following:

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Attachment A

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