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Department of Water Resources

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

In Re SRBA	)	Subcases 47-16433, <i>et al.</i>
	)	(see list of 26 subcases attached)
Case No. 39576	)	(USDA/FS)
	)	
	)	RESPONSE TO UNITED STATES'
	)	OBJECTION AND MOTION TO STRIKE
	)	ASSEVERATIONS
	)	
	)	
	)	

This is the response of Bruce Byron Bedke and Jared K. Bedke, pro se litigants, to the UNITED STATES' OBJECTION TO AND MOTION TO STRIKE BRUCE AND JARED BEDKE'S ASSEVERATIONS in the above named subcases.

The UNITED STATES' motion should not be granted because all facts contained within the afore mentioned asseverations are already a part of the trial record and can be found in numerous transcripts, and briefs. Therefore, no new facts have been brought before the court with the asseverations. In order to clarify the locations of these facts, each of the facts in the asseverations are specifically located as follows:
RESPONSE TO UNITED STATES' OBJECTION TO AND MOTION TO STRIKE
BRUCE AND JARED BEDKE'S ASSEVERATIONS

1. On May 24, 1989, Bruce Byron Bedke filed claims on all of his water rights in Basin 45, and Basin 47. (See Transcript, 3:45 P.M. Thursday, July 1, 1999, page 26 beginning line 8, see also Transcript of 2:00 P.M. hearing Monday, June 7, 1999 page 80 beginning line 18)
2. Bruce Bedke filed in Twin Falls, Idaho. (See Transcript of 2:00 P.M. hearing Monday, June 7, 1999 page 81 beginning line 8)
3. Bruce Bedke filed at the IDWR offices. (See Transcript of 2:00 P.M. hearing Monday, June 7, 1999 page 81 beginning line 8)
4. Bruce Bedke filed with the aid of an employee of the IDWR. (See Transcript of 2:00 P.M. hearing Monday, June 7, 1999 page 80 beginning line 7)
5. Bruce Bedke was instructed by the IDWR employee on how to file. (See Transcript of 2:00 P.M. hearing Monday, June 7, 1999 page 80 beginning line 7)
6. Bruce Bedke was given a pamphlet entitled "Instructions for Form No. 42-1409(2)a Revised May, 1988" which further instructed him how to file. (See Transcript of 2:00 P.M. hearing Monday, June 7, 1999 page 80 beginning line 25)
7. In 1998, Bruce Bedke and Jared Bedke relied upon the advice of the IDWR when they were told that conflicting claims would be submitted to the court together to let the court determine the ownership of the water right and that objections would not be necessary. (See Transcript, 3:45 P.M. Thursday, July 1, 1999, page 26 beginning line 15)
8. Bruce Bedke and Jared Bedke understood the term conflicting claim to mean a claim based upon the same use, at the same location, of the same water. (See Transcript, 3:45 P.M. Thursday, July 1, 1999, page 28 beginning line 14)
9. Bruce Bedke and Jared Bedke sought to file objections when they realized the United States' claims in Basin 45 and Basin 47 had been reported and were not considered by the IDWR as competing claims to the private claims. (See Transcript, 3:45 P.M. Thursday, July 1, 1999, page 29 beginning line 2)
10. At the 3:45 P.M. hearing on July 1, 1999, Bruce Bedke and Jared Bedke were first informed that the strict definition of "conflicting claim" the IDWR used was: two claims that were "completely identical as to priority date, as to source, as to place of use, point of

**RESPONSE TO UNITED STATES' OBJECTION TO AND MOTION TO STRIKE
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diversion” (See Transcript, 3:45 P.M. Thursday, July 1, 1999, page 53 beginning line 11)

11. At the 3:45 P.M. hearing on July 1, 1999, Bruce Bedke and Jared Bedke were first informed that the IDWR’s position was that “If there is any discrepancy between one claim and another, [IDWR] would assume that these claims are indeed different claims, two different water rights.” (See Transcript, 3:45 P.M. Thursday, July 1, 1999, page 53 beginning line 11)
12. Jared Bedke was unaware of the Bifurcated Reporting Process (see Transcript of 2:00 P.M. hearing Monday, June 7, 1999 page 81 beginning line 16)
13. Jared Bedke never received notice of the issuance of the Directors Report for Basin 45, and Basin 47. (See Transcript, 3:45 P.M. Thursday, July 1, 1999, page 62 beginning line 4)

The UNITED STATES also cites a slip opinion dated December 29, 1999 in support of their argument. However, since all the facts contained within the asseverations are found within the record before the court, and the asseverations do not seek to introduce new or additional evidence (the issue of evidence before this court was addressed by Jared Bedke in the April 8, 2004 hearing in these subcases), this citation is off point and out of context. The UNITED STATES then goes on to admit that the elements “contained in the Asseverations were available during the pendency of this case...” (see Objection and Motion to Strike page 2). If, as the UNITED STATES admits, the elements contained within the Asseverations were available during the pendency of the case, then they are already a part of the trial record and as such, should be considered by the Special Master.

CONCLUSION

Because the Asseverations contain only facts that are already a part of the trial record and seek to enter no new evidence, they should be considered by the Special

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Master and should not be stricken from the record.

Dated this 26th day of April, 2004.


Jared K. Bedke, Pro Se


Bruce Byron Bedke, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April, 2004 I served a true and correct copy of the foregoing ASSEVERATIONS IN SUPPORT OF MOTION TO ALTER OR AMEND SPECIAL MASTERS REPORT upon the following individuals by placing the document in the United States Mail, postage prepaid, addressed as follows:

USDA FOREST SERVICE

Represented by:

US DEPARTMENT OF JUSTICE

ENVIRONMENT & NATL' RESOURCES

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BOISE, ID 83724

DIRECTOR OF IDWR

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Jared K. Bedke

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

ATTACHMENT 1

Subcase Nos:

47-16433
47-16434
47-16435
47-16437
47-16438
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