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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	)	Subcase Numbers 55-10288B, 55-10289B,
	)	55-10290B, 55-10292B, 55-10293B,
	)	55-10295, 55-10296, 55-10297B,
	)	55-10298, 55-10299B, 55-10300,
	)	55-10303B, and 55-13451
Case No. 39576	)	
	)	MEMORANDUM IN OPPOSITION OF
	)	LU RANCHING CO.'S OPENING
	)	CHALLENGE

I. INTRODUCTION

On July 30, 2004, LU Ranching Co. (hereinafter "LU") filed a document captioned "LU Ranching Co.'s Opening Challenge." LU Ranching Co.'s Opening Challenge, In Re SRBA, Case 39576, Subcases 55-10288B, et al., dated July 30, 2004 (hereinafter "LU's Memo). The

purpose of this Memorandum is to oppose LU's challenge of the Special Master's Reports and Recommendations for Water Right Numbers 55-10296 and 510-297B by responding to LU's arguments in LU's Memo.

II. ARGUMENT

A. Standard of Review

LU states that the Snake River Basin Adjudication District Court (hereinafter "District Court") must accept the Special Master's findings of fact unless "clearly erroneous," but the District Court may, if necessary, correct the findings of fact. LU's Memo, p. 2. This statement of the standard of review is overly simplistic. The correct standard of review of a Special Master's findings of fact in a non-jury action, such as the findings of fact at issue here, is provided under IDAHO R. CIV. P. 53(e)(2). That standard was well explained by the District Court in its Memorandum Decision and Order on Challenge; and Order of Partial Decree (Wood V. Troutt), In Re SRBA, Case No. 39576, Subcase 65-05663B (hereinafter "Troutt"), pp. 5-8. The District Court recognized that it is "required to adopt a special master's findings of fact unless they are clearly erroneous." Troutt, p. 5. However, "a district court's standard for reviewing a special master's findings of fact is to determine whether they are supported by substantial, although perhaps conflicting, evidence." Troutt, p. 6 (footnote omitted). "A reviewing court may regard a finding as clearly erroneous only if the finding is without adequate evidentiary support or was induced by an erroneous view of the law." Troutt, p. 6. Furthermore, "[t]he party challenging the findings of fact has the burden of showing error, and a reviewing court will review the evidence in the light most favorable to the prevailing party." Troutt, p. 7. Thus, only "findings of fact supported by competent and substantial evidence, and conclusions of

law correctly applying legal principles to the facts found will be sustained on challenge or review.” Troutt, p. 7.^{1/}

As demonstrated below, LU erred in failing to claim the places of use it now seeks to add to Water Right Claims 55-10296 and 55-10297B, in failing to file timely objections to its own claims, and in failing to file a timely motion for leave to file amended notices of claim before trial on the merits. Therefore, the District Court should deny LU’s Challenge of the Special Master’s Reports and Recommendations.

B. Unclaimed Places Of Use Should Not Be Added To Water Right Claims

LU argues that the trial evidence supports adding T5S, R6W, Section 23, NWNE (hereinafter “NWNE”) as a place of use to Water Right 55-10296 and T5S, R6W, Section 13, SWSW (hereinafter “SWSW”) as a place of use to Water Right 55-10297B. LU’s Memo, pp. 3-4. There is no evidence that LU claimed the NWNE and SWSW as places of use. There is no evidence that the Idaho Department of Water Resources (hereinafter “IDWR”) recommended the NWNE and SWSW as places of use. United States’ Trial Exhibit 22 does not identify the NWNE and SWSW as places of use. LU fails to identify any trial evidence that remotely suggests that LU claimed these legal descriptions as places of use, or that IDWR erroneously omitted the legal descriptions as places of use. “The party challenging the findings of fact has the burden of showing error, and a reviewing court will review the evidence in the light most

^{1/} LU also attempts to equate the standard of review of the Special Master’s findings of fact under IDAHO R. CIV. P. 53(e)(2) with the District Court’s power under IDAHO R. CIV. P. 60(a) to correct clerical errors in judgements, orders, or other parts of the record, either on the Court’s own initiative, or by motion of any party. LU’s Memo, p. 2. However, IDAHO R. CIV. P. 53(e)(2) is the correct rule of civil procedure to be employed by the District Court here. See Troutt, pp. 5-8.

favorable to the prevailing party.” Troutt, p. 7 (citing Ernst v. Hemenway and Moser Co., Inc., 895 P.2d 581, 588 (Idaho Ct. App. 1995) and Zanotti v. Cook, 922 P.2d 1077, 1079 (Idaho Ct. App. 1996)). LU did not point to any specific evidence in the record showing the Special Master’s “finding is without adequate evidentiary support or was induced by an erroneous view of the law.” Troutt, p. 6 (citation omitted). Thus, LU has not satisfied its burden of “showing error” Troutt, p. 7.

LU had the same opportunity as all other parties in the SRBA to file objections to water right recommendations in Basin 55. Memorandum Decision and Order on Motion to Set Aside Partial Decrees, In Re SRBA, Case No. 39576, Subcases 55-02373 et al. The record is void of evidence that LU filed timely objections to IDWR’s recommendations of 55-10296 and 55-10297.

The Special Master gave LU ample opportunity to amend its claims before trial. Trial Scheduling Order, In Re SRBA, Case 39576, Subcases 55-10288B, et al., dated June 29, 2000. LU should have filed a motion for leave to file amended notices of claim for Water Right Claims 55-10296 and 55-10297B not later than August 18, 2000. Id. LU did not file a timely motion for leave to file amended notices of claim.

LU had full and fair opportunity to review IDWR’s recommendations of 55-10296 and 55-10297 and either object to IDWR’s recommendations or file a motion to for leave to amended notices of claim well before trial on the merits. The District Court should not now allow untimely amendment to recommendations for 55-10296 and 55-10297B by adding places of use that were never claimed.

III. CONCLUSION

For the above-stated reasons, the District Court should not designate the NWNE and SWSW as places of use. Thus, the District Court should deny LU's challenge of the Special Master's Reports and Recommendations in 55-10296 and 55-10297B.

DATED this 30th day of August, 2004.

Respectfully submitted,

UNITED STATES OF AMERICA

A handwritten signature in cursive script, appearing to read "Larry A. Brown", is written over a horizontal line.

Larry A. Brown
Of Attorneys for the United States

CERTIFICATE OF SERVICE

I certify that on Aug. 30, 2004, that I served a true and correct copy of foregoing **UNITED STATES' MEMORANDUM IN OPPOSITION OF LU RANCHING CO.'S OPENING CHALLENGE; SUBCASES 55-10288B ET AL.** upon the following individuals by placing the document in the United States Mail in Washington D.C., postage paid, and addressed as follows:

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