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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: See attached Exhibit A
	)	
Case No. 39576	)	MEMORANDUM IN OPPOSITION TO
	)	BRACKETTS' MOTION ON
_____	)	CHALLENGE

I. INTRODUCTION.

The United States of America (hereinafter "United States"), through the United States Department of the Interior, Bureau of Land Management (hereinafter "BLM") filed the above-captioned water right claims. The water right claims were uncontested and received partial decrees.

On November 9, 1999, Brackett Livestock, Inc. and C.E. Brackett Cattle Co.^{1/} (hereinafter “Bracketts”) filed Motions to Set Aside Partial Decree in Subcase Numbers 51-02283, 51-12376, 51-12451, and 51-12452; on February 2, 2000, C.E. Brackett Cattle Co. filed Motions to Set-Aside Partial Decree pursuant to I.C.R.P. § 60(b) in Subcase Numbers 51-02289, 51-02326, 51-02356, 51-02358, 51-02360, 51-02393, 51-04062, 51-04063, 51-04064, 51-04067, 51-04068, 51-04070, 51-11901, 51-11903, 51-11904, 51-11905, 51-11920, 51-11953, 51-11954, 51-11958, 51-12094, and 51-12097; and on February 3, 2000, Brackett Ranches, Ltd. and Brackett Livestock, Inc.^{2/} filed Motions to Set-Aside Partial Decree Pursuant to I.C.R.P. § 60(b) (hereinafter collectively “Motions”) in the remainder of the above-captioned Subcase Numbers. Special Master Cushman denied Bracketts’ Motions, and denied Bracketts’ Motion to Alter or Amend. Bracketts timely filed a Notice of Challenge. The purpose of this memorandum is to oppose Bracketts’ “Motion on Challenge” dated May 30, 2002.

The Special Master correctly denied Bracketts’ Motions under the District Court’s Memorandum Decision and Order on Motion to Set Aside Partial Decrees, In Re SRBA. Subcases 55-02373 *et al.* (hereinafter “LU Ranching”). Special Master’s Recommendation Denying Motions to Set Aside Partial Decrees, In Re SRBA, Subcase Numbers 51-02283 *et al.* (hereinafter “SMR”), pp. 9-11. The District Court should, therefore, accept the Special Master’s findings of fact and

^{1/}Brackett Livestock Inc., by and through Bert Brackett, filed Motions to Set Aside Partial Decrees for Subcase Numbers 51-02283, 51-12376, and 51-12451. C.E. Brackett Cattle Co., by and through Chester E. Brackett, filed a Motion to Set Aside Partial Decree for Subcase Number 51-12452.

^{2/}C.E. Brackett Cattle Co., Brackett Ranches, Ltd., and Brackett Livestock, Inc. are hereinafter collectively referred to as “Bracketts.”

conclusions of law, and deny Bracketts' Motion on Challenge. Memorandum Decision and Order on Challenge; and, Order of Partial Decree, In Re SRBA, Subcase 65-05663B (Wood v. Troutt), pp. 5-8 (special master's findings of fact should be adopted by the district court unless clearly erroneous; special master's conclusions of law should be adopted by the district court to the extent they correctly state the law).

II. ARGUMENT.

A. Partial Decrees Did Not Violate I.R.C.P. 55(b)(2), And Are Not Voidable.

Bracketts argue for the first time that even if they are parties to the SRBA, the partial decrees at issue here were entered against the Bracketts in violation of Idaho R. Civ. P. 55(b)(2). Motion on Challenge, pp. 10-14. The argument lacks a basis in law and fact.

The SRBA statutes, Idaho Rules of Civil Procedure, and Administrative Order #1 (hereinafter "AO 1") govern SRBA procedures. Actual notice through personal service of the Notice of Director's Report ensures that each claimant receives notice of publication of Director's Reports, notice of the requirement to file timely objections, and notice that uncontested water rights will be decreed following a hearing. Notice of SRBA proceedings is also provided to claimants through Docket Sheet procedures. AO 1, 6.a. ("The Docket Sheet Procedure shall be used to give notice to parties in the adjudication about matters not a part of a subcase . . ."). The Docket Sheet Procedure is "[t]he procedure established to give notice of proceedings on nonsubcase matters to SRBA claimants and parties." AO 1, 2.h.

AO 1 and SRBA statutes provide ample opportunity for any SRBA party to participate in a subcase proceeding. For example, a claimant may file a timely objection to a water right claim. An

objection “must be **received** by the court by the deadline specified” in the Director’s Report. AO 1, 4.d.(1)(d) (emphasis in original). A party who does not file an objection “waives the right to be a party to the subcase.” AO 1, 10.k. Where a party to a subcase is dissatisfied with a partial decree, that party can seek relief under Rule 60 and AO 1, 14.d., or can file a timely appeal. If a water right claim is uncontested, the water right is normally decreed as reported by IDWR. I.C. § 42-1411(4). There is no SRBA statute or SRBA District Court Order that requires the claimant of an uncontested water right to serve a written notice of taking default under Idaho R. Civ. P. 55(b)(2) before a partial decree is entered by operation of I.C. § 42-1411(4).^{3/}

SRBA statutes and AO 1 embody a common sense approach to determine the relative rights to the use of water in the Snake River Basin. *See* LU Ranching, pp. 18-19; *see* LU Ranching, p. 28 (“argument that the United States should have personally served LU with its claims because LU was a known adverse party ignores the realities of the SRBA. All parties on a particular stream are potentially adverse to one another.”). Bracketts did not file timely objections, thus there was no party to the subcase “against whom judgment by default [was] sought” Idaho R. Civ. P. 55(b)(2). Bracketts were provided notice that uncontested water rights would be decreed after hearing by the Notice of Director’s Report and by the Docket Sheet. Under the circumstances, SRBA statutes and

^{3/}*See* LU Ranching, pp. 22-24, and 30. *See* Order on Motion to Set Aside Partial Decrees and File Late Objections, In Re SRBA, Subcase Numbers 65-07267 *et al.* dated January 31, 2001, pp. 8-9. The District Court is obviously intimately familiar with SRBA statutory procedures and AO 1. The Bracketts were generally aware of SRBA procedures and the BLM’s claims. Affidavit of Bert Brackett dated March 15, 2000, pp. 2-3. The Bracketts now expect the District Court to establish new procedures simply because they disregarded their burden “to determine whether or not they [were] adverse to a particular claim.” LU Ranching, p. 28.

AO 1 provide adequate notice to all SRBA parties that uncontested water rights receive partial decrees after hearing.^{4/} Thus, Bracketts' argument is unfounded in fact and law, and should be rejected.

B. Bracketts Are Not Entitled To Have Partial Decrees Set Aside
Based Upon The Deferral Order And Reliance On IDWR's Statements.

The Bracketts assert that this Court's LU Ranching decision is not applicable to the facts in the subcases at issue here; and the Deferral Order, and certain representations by IDWR, "provide an independent basis for setting aside the partial decrees at issue." Motion on Challenge, p. 16. This Court considered and rejected similar arguments in LU Ranching, pp. 26-30, and in its Order on Motion for Reconsideration; I.R.C.P. 59(e), In Re SRBA, Subcase Numbers 65-07267 *et al.* (hereinafter "A.L. Cattle"). This Court should follow LU Ranching and A.L. Cattle, and reject Bracketts' argument in the subcases at issue here. Memorandum Decision and Order on Challenge; and, Order of Partial Decree, In Re SRBA, Subcase 65-05663B (Wood v. Troutt), pp. 8-11.

Bracketts cite the "Affidavit of Bert Brackett, filed March 15, 2000" in support of their contention that the Deferral Order gave Bracketts "no reason to believe that the United States was filing stockwater claims against them and, thus, no reason to monitor on a daily, weekly, or monthly basis the

^{4/} "The SRBA presents its own unique set of circumstances. In a non-SRBA case, the entry of default or default judgment typically occurs when a party fails to take some required action. Although AO1 incorporates the standards for setting aside a default and a default judgment and applies these standards by analogy, water right claims that proceed uncontested through the SRBA are not entirely analogous to a default situation. First, uncontested claims are prosecuted by claimants who are usually active in their subcase but face no objectors. Second, although uncontested, the claims are still in fact 'decided on the merits' Idaho's statutory scheme for the SRBA, together with AO1, set forth a comprehensive process for adjudicating both uncontested and contested state based claims. This process affords additional procedures and safeguards not otherwise present in non-SRBA cases. LU Ranching, pp. 10-11.

posted Director's Reports and docket sheet in order to determine whether the United States was filing stockwater claims because it was represented to them that such claims were being deferred." Motion on Challenge, p. 15. Mr. Brackett admitted that he was aware of the SRBA, he timely filed irrigation claims, and he waited to file stockwater claims. Affidavit of Bert Brackett, dated March 15, 2000 (hereinafter "Brackett Aff."). Moreover, the Special Master specifically found that Brackett Ranches, Ltd. and C.E. Brackett Cattle Co. were served with the Notice of Filing Director's Report for Small Domestic and Stock Water Rights, Basins 51, 55, and 61. SMR, p. 9. "[T]he Notice specifically stated that in the complete Director's Report 'are descriptions of the United States claims for domestic and stockwater under federal law.'" SMR, p. 9. The Docket Sheet, published on August 7, 1997, "informed all SRBA parties that the Director's Report for Reporting Area 6, Basins 51, 55 and 61 was filed with the SRBA Court on July 31, 1997." SMR, p. 9. The facts at issue here are remarkably similar to the facts the District Court considered in A.L. Cattle and LU Ranching.

Deferral was not mandatory. LU Ranching, p. 29. The Deferral Order did not "apply to filing objections to claims that had been filed and reported." LU Ranching, p. 29 (citing A.L. Cattle). "To the extent a claim was not deferred, it proceeds according to SRBA procedure." LU Ranching, p. 30 (citing A.L. Cattle, pp. 11-12). There is nothing in the Deferral Order that would lead a reasonable person to believe that the United States would choose to defer its water right claims. A.L. Cattle, p. 11 and n 15. Therefore, Bracketts, like A.L. Cattle and LU Ranching, needed to act reasonably and keep apprised of SRBA proceedings. LU Ranching, p. 30.

The District Court entered partial decrees for the uncontested water rights listed in attached Exhibit A under statutory procedures, AO 1, and the notice of hearing on uncontested water right

claims provided in the Notice of Director's Report and the docket sheet. Bracketts failed to review the Director's Report, failed to file timely objections, failed to become involved in any meaningful way, and only became involved by filing various motions to set aside partial decrees two years after the majority of the partial decrees were entered.⁵⁷ Bracketts excuse for not reviewing the Director's Report and filing timely objections is unavailing. *See* LU Ranching, pp. 28-29; A.L. Cattle, pp. 11-13. Accordingly, this Court should deny Bracketts' Motions to Set Aside Partial Decrees.

C. Bracketts' Received Notice Sufficient to Meet The Requirements Of Due Process.

The Bracketts argue that the partial decrees at issue are void because Bracketts are known adverse claimants to the water rights at issue here and did not receive proper or sufficient notice of the BLM's claims in violation of Bracketts' constitutional due process rights under the Fifth Amendment of the United States Constitution and Article I, Section 13 of the Idaho Constitution. Motion on Challenge, pp. 17-22. In a series of subcases with remarkably similar facts, this Court held that the SRBA's statutory notice requirements do not violate due process. LU Ranching, pp. 18-26. Therefore, the Court should follow the LU Ranching decision, and deny Bracketts' Motions to Set Aside Partial Decrees. Memorandum Decision and Order on Challenge; and, Order of Partial Decree, In Re SRBA, Subcase 65-05663B (Wood v. Troutt), pp. 8-11.

⁵⁷ On November 16, 1998, BLM Water Right Claims 51-02283, 51-12376, 51-12451, and 51-12452 received partial decrees by operation of SRBA statutes; Bracketts filed their Motions to Set Aside Partial Decrees on November 19, 1999, over one year after partial decrees were entered. On January 30, 1998, the remainder of the above-captioned water right claims received partial decrees; Bracketts filed their Motions to Set Aside Partial Decrees on February 2 and 3, 2000, over two years after partial decrees were entered.

Like LU Ranching, Bracketts do not argue that they were not served with the notice of commencement of the SRBA. Furthermore, Bracketts filed livestock watering claims in Basin 51, the same Basin as the water right claims at issue were filed by the BLM. SMR, p. 9. The BLM's claims were reported in IDWR's Director's Report for Domestic and Stock Water. SMR, p. 9. The Bracketts claims were reported in the same Director's Report. SMR, p. 9. Bracketts, in their Motion on Challenge, do not dispute these findings of fact. The SRBA notice process completely satisfies the minimum constitutional due process requirements generally. As applied to the Bracketts' circumstances, this Court should deny Bracketts' Motions to Set Aside Partial Decrees. LU Ranching, pp. 13-29.

Bracketts received actual notice and Docket Sheet notice informing them of the location of complete Director's Reports, and informing them of the time period to review United States' livestock watering claims. *See* United States' Exhibits 1, 2, 3, and 4; *see* State of Idaho's Exhibit E; SMR, pp. 5-8 and p. 9. Bracketts received actual and Docket Sheet notice of the deadlines for filing objections to United States' water right claims, and informing them of the procedure for filing objections. *See* United States' Exhibits 2, 3, and 4; *see* State of Idaho's Exhibit E; SMR, p. 9. Bracketts received actual notice and Docket Sheet notice that timely objections and/or responses to objections had to be filed in order to be involved in court cases on any water right. *See* United States' Exhibits 2, 3, and 4; *see* State of Idaho's Exhibit E; SMR, p. 9. Bracketts received actual notice and Docket Sheet notice that hearings would be held on uncontested recommendations and that partial decrees would be issued following the hearings. *See* United States' Exhibits 2, 3, and 4. There is no record of timely

objections, responses to objections, motions to intervene or participate, or appearance at the hearings on uncontested recommendations.

Bracketts, like LU Ranching, “should have reasonably understood that if the United States or any other claimant had filed claims for stockwater in Basin [51], they would be included in the *Director’s Report*.” LU Ranching, p. 27. A reasonable person would have reviewed the complete Director’s Reports and either filed timely objections or filed a motion for enlargement of time. Gro-Mor, Inc. v. Butts, 109 Idaho 1020, 1023, 712 P.2d 721, 724 (Ct.App. 1985). Merely seeking relief from time constraints in statutes and rules of civil procedure does not constitute excusable neglect. Ade v. Batten, 126 Idaho 114, 118, 878 P.2d 813, 817 (Ct. App. 1994).

The fact that Bracketts were not represented by legal counsel at the time objections had to be filed in the SRBA Court cannot constitute excusable neglect. *Pro se* litigants are held to the same standards and rules as parties represented by attorneys. Batten, 126 Idaho at 118, 878 P.2d at 817; *see also Golay v. Loomis*, 118 Idaho 387, 392, 797 P.2d 95, 100 (1990). The facts presented and circumstances surrounding the case show that Bracketts did not heed actual and docket sheet notice. Moreover, in March 1999, the BLM filed timely objections to several of Bracketts’ reported water right claims for livestock water with places of use on federal public land.⁶

⁶51-12891, 51-12894, 51-12895A & B, 51-12896 A & B, 51-12897 A & B, 51-12898 A & B.

The fact that BLM filed objections to these claims in March, 1999, should have made Bracketts aware that BLM had filed livestock watering claims. Bracketts waited until November 19, 1999, February 2, 2000, and February 3, 2000 to file Motions to Set-Aside Partial Decrees that were entered on November 16, 1998 and January 30, 1998. In addition, Bert Brackett admitted he talked to two BLM employees in 1998 and discussed the possibility “of a shared or joint filing with a common priority date on the Jim Bob Creek; however, we were told ‘no way.’” Brackett Aff., p. 3.

This is not a doubtful case. The Director's Report was available for inspection at any one of several locations for a period of months prior to the deadline for filing objections. Bracketts did not file timely objections. Bracketts over two years after the majority of the partial decrees were entered to file their Motions to Set Aside Partial Decrees. *See* n 5, above. The Court should jealously protect the progress that has been made in this massive adjudication. Accordingly, this Court should follow the LU Ranching decision, and deny Bracketts' Motions to Set Aside Partial Decree.

D. Bracketts Have Not Alleged A Meritorious Defense.

As an after-thought, Bracketts state, "the Bracketts possess legitimate defenses to the United States' claims[.]" and support the statement in a footnote, arguing, the United States cannot put livestock water to a beneficial use because it owns no livestock. Motion on Challenge, p. 22. This Court has previously ruled that a general allegation of this nature "is the basis for a meritorious defense" for BLM's state law based beneficial use livestock watering claims. Order on Motion to Set Aside Partial Decrees and File Late Objections, In Re SRBA, Subcase Numbers 65-07267 *et al.* dated January 31, 2001, p. 14. However, if BLM's claims are based upon licenses, prior decrees, or Public Water Reserve 107 federal reserved rights, then the general allegation does not constitute a meritorious defense. Order on Motion to Set Aside Partial Decrees and File Late Objections, In Re SRBA, Subcase Numbers 65-07267 *et al.* dated January 31, 2001, pp. 13-14; LU Ranching, pp. 30-31.

Bracketts have not alleged a meritorious defense for the following water right claims because they are based upon licenses:

51-02283, 51-2289, 51-2299, 51-02300, 51-2301, 51-02302, 51-02313, 51-02317,
51-02318, 51-02326, 51-02328, 51-02356, 51-02358, 51-02360, 51-02393.

In the alternative, Bracketts' Motions to Set Aside Partial Decrees for water right claims based upon licenses should be denied because Bracketts failed to allege a meritorious defense. Order on Motion to Set Aside Partial Decrees and File Late Objections, In Re SRBA, Subcase Numbers 65-07267 *et al.* dated January 31, 2001, pp. 13-14; LU Ranching, pp. 30-31.

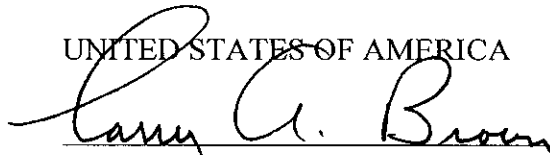
III. CONCLUSION.

For all of the above-stated reasons, Bracketts' Motions to Set Aside Partial Decree should be denied.

DATED this 17th day of June, 2002.

Respectfully submitted,

UNITED STATES OF AMERICA

A handwritten signature in black ink, 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 June 12, 2002, I served a true and correct copy of the foregoing **MEMORANDUM IN OPPOSITION TO BRACKETTS' MOTION ON CHALLENGE** 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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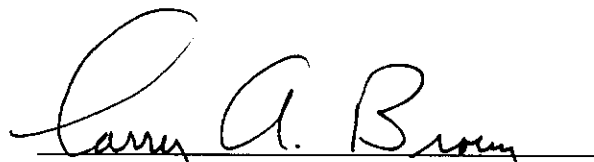

Signature of person mailing documents

EXHIBIT A

Subcase Numbers

51-02283	51-12167
51-02289	51-12376
51-02299	51-12451
51-02300	51-12452
51-02301	51-12834
51-02302	51-12835
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