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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	) Subcases 45-12475, <i>et al.</i>
	) (see list of 64 subcases attached)
Case No. 39576	) (USDI/BLM)
	)
	) ORDER VACATING STAY,
	) ORDER DENYING MOTIONS
	) TO FILE LATE OBJECTIONS
	) and RECOMMENDATION OF
_____	) PERMISSIVE REVIEW

PROCEDURAL BACKGROUND

Director's Report

The Director of the Idaho Department of Water Resources filed his *Director's Report, Domestic and Stock, Reporting Area 10 (IDWR Basin 45)* on March 2, 1998. The Director recommended the above 64 claims to the United States of America, Department of the Interior, Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho, 83709-1657 ("BLM") for *de minimis* amounts of water (.02 or .03 cfs) from various springs, creeks, unnamed streams and gulches in Cassia County for various periods of use, all with a priority date of January 1, 1873, based on beneficial use. Under priority date for each claim, the Director noted:

4/17/1926 Claimed under federal reserved water right.

This water right is also claimed based in federal law with an April 17, 1926, date of priority pursuant to an Executive Order signed the same date and known as Public Water Reserve 107.

Bruce and Jared Bedke's Motions to File Late Objections

On April 7, 1999, Bruce Bedke filed a motion to file late objections in 26 of the above 64 claims. In the attached *Objection*, Bruce Bedke objected to priority date, purpose of use and alleged the water right should not exist stating: "Cannot establish 1873 priority date; cannot

claim stockwater under Idaho statute (Idaho Code Section 42-114).” The same date, Bruce and Jared Bedke each filed identical motions to file late objections in 62 of the 64 claims stating: “Priority date discrepancy; cannot claim stockwater under Idaho statute (42-114); license’s issued on prior appropriated waters.”

In their motions, Bruce and Jared Bedke both wrote:

After having been informed in 1987 that all water rights in the Snake River Basin had to be filed upon for the new adjudication, I did so on May 24, 1989. I filed according to the directions set forth at that time. It has recently come to my attention that since my filing, the IDWR changed the format. Since my filings were filed under the original format, they were set aside and did not make the current directors report. I have been assured by the IDWR that my filings will be included in a subsequent directors report when the irrigation claims are decided for my basin (45). The Federal Government’s claims to the same waters were, however, included on the current directors report. I feel that this doesn’t place me on equal footing with the Federal Government, since their filings will have been partially decreed before mine have even been presented to the court. At this time I am requesting permission to file late objections to these disputed claims in order to show the court that these Federal claims are disputed and should not be decreed as a matter of course.

On June 18, 1999, Jared Bedke filed a revised objection list to include all 40 of the United States’ spring claims and deleting the 24 claims whose sources are creeks, unnamed streams and gulches. Bruce Bedke filed no similar revised list.

United States Opposition

The United States filed its *Memorandum in Opposition to Motions To File Late Objections* on June 29, 1999, in related overlapping subcases. It argued that the Bruce and Jared Bedke’s motions to file late objections should be denied because they were filed well after the deadline to file objections and the Bedkes should have been aware of the United States’ claims when they were personally served with IDWR’s *Notice of Filing Director’s Report*.¹ The United States also argued that the Bedkes failed to show good cause for late filing and that granting their motions would impede the proper and efficient administration of the adjudication process.

¹ The *Notice* was mailed to claimants on March 2, 1998. The same date, copies of the *Notice* and the complete *Director’s Report* were mailed or hand-delivered to IDWR’s regional offices, the Cassia, Power, Oneida and Twin Falls County district court clerks, the U.S. Department of Justice and the State of Idaho. See David R. Tuthill, Jr.’s *Affidavit of Service*, filed March 23, 1998, *In Re SRBA Case No. 39576*, and I.C. § 42-1411(6). The deadline to file objections was July 3, 1998.

Order Staying Subcases

On July 2, 2001, the Special Master entered an *Order Staying Subcases* in multiple subcases in Basins 45 and 47, including the above 64 subcases, because of common issues. This second stay was “until the remaining stockwater claims in Basins 45 and 47 are reported by IDWR.”

Order in Companion Subcases

On July 3, 2003, the Special Master entered an *Order Vacating Stays and Order Denying Motions to File Late Objections* in subcases 47-16433, *et al.*, which addressed virtually the identical issues presented here. In that *Order*, the Bedkes’ motions to file late objections were denied based on the Idaho Supreme Court’s ruling in *LU Ranching Co. v. United States*, 138 Idaho 606, 67 P.3d 85 (2003), and the Bedkes’ failure to show good cause to file late objections.² The same reasoning applies in the present 64 subcases.

Status Conference

A status conference concerning the above 40 spring claims was held on November 12, 2004. Larry A. Brown appeared by telephone for the United States; Travis L. Thompson appeared for Gary Poulton, *et al.*; Bruce and Jared Bedke appeared by telephone *pro se*; and Roxanne Brown spoke by telephone for IDWR.

The United States urged a ruling on the Bedkes’ motions to file late objections because, like the earlier ruling, it will allow parties to an August 29, 2002 *Stipulation* in related and overlapping subcases to proceed with implementing their agreement. The Bedkes wanted to delay a ruling to allow the Presiding Judge to hear their pending challenge on the same issues of filing late objections in related subcases. The Special Master held that the matter should be decided now so that all of the present subcases may be heard on challenge together with subcases 47-16433, *et al.*³ Neither side submitted additional written arguments.

LU Ranching Decision

There have been two major developments in the SRBA since the Special Master entered the order staying the above 64 subcases in 2001. First, the Idaho Supreme Court entered its decision in *LU Ranching Co. v. United States*, 138 Idaho 606, 67 P.3d 85 (2003). In that case, on

² On October 6, 2004, the Special Master entered an *Order Denying Motion to Alter or Amend* in the same subcases, 47-16433, *et al.*

³ The Bedkes’ challenge to Special Master’s *Reports and Recommendations* in subcases 47-16433, *et al.*, is set for hearing before the Presiding Judge on February 17, 2005. The issue there, as with these subcases, is the denial of their motions to file late objections.

appeal from the SRBA Court, the Idaho Supreme Court was asked to decide the constitutionality of procedures giving notice to claimants in the SRBA. LU Ranching was not informed of any actual conflict to its water claims, except as it would if it reviewed the *Director's Report*, and it failed to timely object to overlapping United States claims. LU Ranching argued that partial decrees awarding stockwater rights to the United States without objection, should be set aside on the basis of mistake, inadvertence, surprise and / or excusable neglect and on the basis that the notice LU Ranching received did not meet the minimum requirements of due process.

The Idaho Supreme Court said that cases like the SRBA concern notice of the commencement when a party of the action must be alerted to the fact of a lawsuit. It then noted that, "the United States Supreme Court has insisted on less exacting standards for notice of subsequent procedures and actions when parties know proceedings may affect their rights [citation omitted]." *LU Ranching*, 138 Idaho, at 609, 67 P.3d, at 88. The Idaho Supreme Court agreed with the SRBA District Court decision that LU Ranching did not act as would a reasonably prudent person under the circumstances and that LU Ranching failed to show excusable neglect or mistake in failing to file timely objections:

[T]here is no doubt that LU Ranching was aware of the commencement of the SRBA and aware that action concerning its claimed rights and the rights of others in the region would be adjudicated. It received notice of the Director's report, the nature of that report, its location, and the way to access the report, as well as the offer of technical assistance if necessary. . . . The method of notice given was reasonably calculated to give LU Ranching and all other claimants the information to pursue and protect their rights. In fact, LU Ranching found the information when it examined the Director's report. Requiring personal service of all potentially adverse claims could well involve a flood of paper that would do no more than what is done by existing procedures.

LU Ranching, 138 Idaho, at 610, 67 P.3d, at 89.

Stipulation

The second major development since the stay order was entered was the August 29, 2002 *Stipulation* signed by the United States and certain private parties, but not Bruce and Jared Bedke. In the *Stipulation*, the parties resolved their conflicting stockwater claims and agreed that the private parties would receive senior stockwater rights:

For claims on lands administered by the Bureau of Land Management, the United States shall receive a water right with a priority date which is the later of a) the claimed priority date or b) June 28, 1934. . . . **The overlapping or competing claims of the Private Parties shall have a priority date that is one-day senior**

to the United States' priority date, unless the Private Parties can provide a patent or deed for their "base property," . . . that precedes this date, in which case the Private Parties shall receive a priority date that is this more senior date [emphasis added].

Stipulation, at 4.

A later provision in the *Stipulation*, paragraph 7, entitled, "Grazing Permits and Management of Federal Lands," reads: "The Parties agree that the Water Rights listed on [Exhibit A, which includes some of the above 64 claims] . . . shall not alter the rights of a permittee under a valid grazing permit nor impede the authority of the United States to manage federal lands." *Stipulation*, at 6-7.

DISCUSSION

LU Ranching Case

The standards for granting motions to file late objections in the SRBA were discussed in the Special Master's *Amended Order Partially Staying Subcases*, subcases 47-16433, *et al.*, dated August 9, 1999. The general rule is that a party must show "good cause" and that means a party must 1) state a reason, 2) act in good faith, 3) exercise due diligence and 4) plead a meritorious defense. The facts reviewed by the Idaho Supreme Court in *LU Ranching* may not be identical to the circumstances presented in Bruce and Jared Bedke's motions to file late objections (i.e., a motion to set aside a partial decree versus a motion to file a late objection), but they are sufficiently analogous to guide this Court.

LU Ranching argued they were not given adequate notice of the United States' claims. Here, the Bedkes essentially argued the same lack of notice because of IDWR's bifurcated process. But like LU Ranching, the Bedkes were aware of the commencement of the SRBA and they were aware that action concerning their claims and the rights of others in Basin 45 would be adjudicated. They also received notice of the *Director's Report*, the nature of that report, its location and the way to access the report. Hence, like LU Ranching, Bruce and Jared Bedke did not act as would a reasonably prudent person under the circumstances and they failed to show excusable neglect or mistake in failing to file timely objections. In other words, they failed to show "good cause" for not filing objections in a timely manner. Therefore, their motions to file late objections must be denied.

No Meritorious Defense

The law of the SRBA case and Idaho Supreme Court holding in *LU Ranching* alone are sufficient reasons to deny Bruce and Jared Bedke's motions to file late objections. However, there is one other basis that leads to the same result – they failed to plead a meritorious defense and thereby cannot show “good cause” to file late objections.

In a status conference held on June 19, 2003, in related and overlapping subcases, the Bedkes said the reason they did not sign the August 29, 2002 *Stipulation* giving the private parties senior stockwater rights was because of the language in paragraph 7. That was the language stating the water rights “shall not alter the rights of a permittee under a valid grazing permit nor impede the authority of the United States to manage federal lands.”

It is apparent that Bruce and Jared Bedke are concerned less about stockwater rights than they are about conditions imposed on their grazing privileges and more broadly, the authority of the United States to manage federal lands. Both of those issues bear only a tenuous relationship, at best, to water rights and the role of the SRBA Court in adjudicating such rights. Viewed another way, the issues the Bedkes want to pursue with their late objections are beyond the jurisdiction of the SRBA Court. For that reason, the Bedkes failed to plead a meritorious defense and failed to show good cause to file late objections.

ORDERS

THEREFORE, IT IS ORDERED that:

1. The **Order** staying the above 64 subcases is **vacated**, and
2. The motions to file late objections filed by Bruce and Jared Bedke in the above 64 subcases are **denied**.

RECOMMENDATION OF PERMISSIVE REVIEW

SRBA Administrative Order 1, Rules of Procedure, 9, e. states:

Permissive Review – A Special Master or any party to the subcase may seek permissive review by the Presiding Judge of the Special Master's interlocutory determination which involves a controlling question of law as to which there are substantial grounds for difference of opinion and on which immediate

consideration of the determination may advance the orderly resolution of the litigation following the procedure set forth in I.A.R. 12.

The present *Order Denying Motions to File Late Objections* meets the criteria for permissive review under *AO-1*. The Bedkes have already challenged Special Master's *Reports and Recommendations* in subcases 47-16433, *et al.*, and the matter is set for hearing before the Presiding Judge. The issues presented here are the same as those argued by the Bedkes in subcases 47-16433, *et al.*, and consideration of the Special Master's denial of the Bedkes' motions to file late objections in both sets of subcases would advance the orderly resolution of litigation in a significant number of similar subcases. Such course of action would avoid having the parties litigate a duplicate motion to alter or amend and challenge on the same issues raised in separate subcases.

THEREFORE, IT IS RECOMMENDED that the Presiding Judge simultaneously review the same issues determined in the present subcases as those currently set to be heard on challenge in subcases 47-16433, *et al.*.

DATED January 5, 2004.



TERRENCE A. DOLAN

Special Master

Snake River Basin Adjudication

Springs

45-12475
45-12493
45-12495
45-12499
45-12515
45-12517
45-12527
45-12549
45-12550
45-12551
45-12613
45-12615
45-12632
45-12636
45-12654
45-12656
45-12780
45-12781
45-12782
45-12783
45-12786
45-12787
45-12788
45-12790
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45-12822
45-12823
45-12827

Creeks, Unnamed Streams &
Gulches

45-12522
45-12523
45-12524
45-12525
45-12526
45-12557
45-12558
45-12559
45-12560
45-12561
45-12672
45-12677
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45-12682
45-12683
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45-12796
45-12804
45-12807

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER VACATING STAY, ORDER DENYING MOTIONS TO FILE LATE OBJECTIONS AND RECOMMENDATIONS OF PERMISSIVE REVIEW was mailed on January 05, 2005, with sufficient first-class postage to the following:

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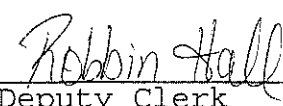
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ORDER

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