

**Name of Party Serving Document:**

UNITED STATES OF AMERICA

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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  
)  
) **MOTION TO STRIKE**  
) **ASSEVERATIONS AND EXHIBITS**  
) **ATTACHED TO OPENING BRIEF**  
) **AND SUPPORTING MEMORANDUM**  
)

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

**MOTION TO STRIKE ASSEVERATIONS AND EXHIBITS ATTACHED TO OPENING BRIEF  
AND SUPPORTING MEMORANDUM**

exhibits attached to the Opening Brief in Support of Notice of Challenge of Special Masters Report and Recommendation” (“Opening Brief”), filed by Bruce and Jared Bedke (“Bedkes”) in these subcases on December 21, 2004.

### MEMORANDUM

Attached to the Bedkes’ Opening Brief are two “Asseverations” in which the Bedkes make certain factual assertions. Also attached as Exhibits 6 and 7 are two documents, one purporting to “recommend” diversion rates for stockwater and one purporting to be a letter from the State of Idaho Brand Board. All of these documents should be stricken from the Court record.

The motion to alter or amend stage of the proceedings is not the proper time for developing the factual record and litigating the merits of the claim. *Memorandum Decision and Order on Challenge (Scope of PWR 107 Reserved Rights)*, subcase nos. 23-10872 *et al.* (December 28, 2001), at 7 (citing *Order on Challenge (Consolidated Issues)* of “Facility Volume Issue and “Additional Evidence” Issue, subcase nos. 36-02708 *et al.* (December 29, 1999). Evidence submitted in conjunction with a challenge are similarly untimely. *Id.* at 7-8. Although Rule 53(e)(2) allows a court to supplement the record, the Rule does not give a party *carte blanche* to introduce additional evidence on challenge. *Id.* at 8.

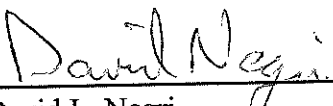
In addition, the Asseverations were not properly sworn and should be stricken for this reason. See IRE 603 (proper oath or affirmation required for testimony), I.C. § 51-109 (oath or affirmation requires a certification by notary public); *Evans v. Twin Falls County*, 796 P.2d 87 (1990) (written statements not subscribed and sworn to as an oath or affirmation by notary public

are not under oath as required).

Finally, because Exhibits 6 and 7 are hearsay, not within any hearsay exception, and have not been properly authenticated, they should be stricken. *See* IRE 801 – 804, 901, 902.<sup>1</sup>

Respectfully submitted, this 12<sup>th</sup> day of January, 2005.

UNITED STATES OF AMERICA

  
\_\_\_\_\_  
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<sup>1</sup> The Bedkes filed similar “Asseverations in Support of Motion to Alter or Amend Special Masters Report” on April 6, 2004. The United States moved to strike these asseverations on April 13, 2004. The Special Master did not reach this issue because he denied the underlying motion. *See Order Denying Motion to Alter or Amend* at 7. For the reasons stated above and the reasons stated in the United States’ April 13, 2004, motion, these asseverations should also be stricken.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12<sup>th</sup> day of January, 2005, I served a true and correct copy of the foregoing MOTION TO STRIKE ASSEVERATIONS AND EXHIBITS ATTACHED TO OPENING BRIEF AND SUPPORTING MEMORANDUM 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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David Negri

## Attachment A

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