

Bruce Byron Bedke
in care of: 42 East Basin Road
UNITED STATES POST OFFICE
Oakley, Idaho

Jared K. Bedke
in care of: 42 East Basin Road
UNITED STATES POST OFFICE
Oakley, Idaho

MAR 16 2005

RECEIVED

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Department of Water Resources

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

In Re SRBA	)	Subcases 45-12475, <i>et al.</i>
	)	(see list of 64 subcases attached)
Case No. 39576	)	
	)	OBJECTOR'S OPENING BRIEF
	)	
	)	
_____	)	

COMES NOW Bruce Byron Bedke and Jared K. Bedke, pro se litigants, and pursuant to the ORDER GRANTING PERMISSIVE REVIEW OF SPECIAL MASTER'S ORDER DENYING MOTION TO FILE LATE OBJECTION of January 19, 2005, hereby make the following OBJECTOR'S OPENING BRIEF in the above named subcases.

PROCEEDURAL BACKGROUND

On April 7, 1999 Bruce and Jared Bedke lodged MOTIONS TO FILE LATE OBJECTIONS in the above named subcases. On July 2, 2001, Special Master Dolan issued an ORDER PARTIALLY STAYING SUBCASES in Basins 45 and 47, including

the above 64 subcases because of common issues. On January 5, 2005 Special Master Dolan issued an ORDER VACATING STAYS, ORDER DENYING MOTIONS TO FILE LATE OBJECTIONS and RECOMMENDATION OF PERMISSIVE REVIEW. On January 18, a hearing was held and on January 19, 2005 the court entered an ORDER GRANTING PERMISSIVE REVIEW OF SPECIAL MASTER'S ORDER DENYING MOTION TO FILE LATE OBJECTIONS; AO1 9.e.

Issue #1. Motions to File Late Objections

Objector's Motions to File Late Objections in the above named subcases, should have been granted.

Discussion

In his ORDER DENYING MOTION TO FILE LATE OBJECTION (Jan 5th Order) the Special Master makes reference to *an Order Vacating Stays and Order Denying Motions to File Late Objection* in subcases 47-16433 et al., and states that "the Bedke's motions to file late objection 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." (Jan 5th Order at 3)

The Special Master also continues to assert reasons why the Objectors declined to accept a settlement offer that other private parties have chosen to accept based on a status conference held on June 19, 2003 for some related and overlapping subcases in Basin 47. The Special Master then concludes "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." (Jan 5th Order at 6) We shall address each in turn.

The Standard for Granting Motions to File Late Objections

This court has directed that when dealing with motions to file late objections the standard for review is based on whether or not the subcases at issue have already been issued partial decrees. If the subcases have not gone to partial decree, the standard to be applied is that of IRCP Rule 55(c). If the subcases have already gone to partial decree, then the standard to be applied is IRCP 60(b) [Order on Motion to Set Aside Partial Decrees and File Late Objections: Order of Reference to Special Master Cushman (Subcases 65-07267 et al.) A.L. Cattle, Entered January 31, 2001]. None of the subcases at issue have been issued partial decrees, therefore the motions to file late objections should be reviewed based on the standard set by IRCP Rule 55(c).

The Idaho Supreme court has directed:

"[6] Rule 55(c) provides that for good cause shown a court "may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with rule 60(b)." Under Rule 60(b)(1), a court may relieve a party from a final judgment or order for "mistake, inadvertence, surprise, or excusable neglect" or for "any other reason justifying relief from the operation of the judgment." In addition to meeting the requirements of Rule 60(b)(1), the party moving to set aside a default judgment must plead facts which, if established, would constitute a defense to the action." *JOHNSON v. PIONEER TITLE CO. OF ADA COUNTY* (104 Idaho 727(App.), 732 (1983))

1. Good Cause**Background**

After having learned of the commencement of the Snake River Basin Adjudication, Bruce Bedke set out to file claims on all of his stockwater rights contained within his adjudicated grazing allotments in the spring of 1989. Not knowing exactly how to do so, he drove to the Twin Falls office of the IDWR and sought the aid of the IDWR in filing. He described the nature of his claims to the

staff in the office who determined that they were non-deminimus in nature, and provided Mr. Bedke with a pamphlet on how to file these claims. (Exhibit 1) Contained within this pamphlet, was a table for determining the quantity of water that was to be claimed as a diversion rate for his stockwater filings. (Exhibit 2) Mr. Bedke's filings were received and accepted by the IDWR in 1989.

Several years after Bruce Bedke filed, the United States filed stockwater claims for the waters on Mr. Bedke's adjudicated grazing allotments. The United States' filings however, were numerous and de-minimus in nature.

Subsequent to Bruce Bedke's filing of claims, the IDWR in an attempt to accelerate the adjudication process, with the consent of the SRBA court bifurcated the reporting process. The result of the bifurcation was that all claims of a de-minimus nature would be reported early, as they were numerous, but small in nature. The remainder of the claims, those with diversion rates greater than 0.02 cfs, would be reported as originally scheduled at a later date.

Some time after the initial Directors Reports for Basins 45 and 47, the Objectors became aware that the United States' claims had been reported on this earlier schedule. Contact was made with the IDWR to see what the private claimants needed to do with respect to the United States' claims, and were advised that if the claims conflicted with those of the private claimants, both would be reported to the court, and the court would determine who owned the water right. In the spring of 1999, Objectors learned that they indeed needed to file objections to the United States' claims, as their non-deminimus claims were not scheduled to be reported until a much later date, but the objection deadline

had passed. Objectors then made motion to file late objections in the above named subcases.

In a hearing on June 7, 1999, oral argument was made by the Bedke's and other claimants who filed motions to file late objections in the above named subcases (see Transcript of hearing 2:00 P.M. June 7, 1999 attached as Exhibit 3). At this hearing, the Bedke's, and others seeking objections, made arguments that the motions to file late objections should be allowed under rule 55(c) of the I.R.C.P. and also under rule 60(b) of the I.R.C.P. The movants explained in great detail the circumstances surrounding their confusion as to the process of whether or not objections had to be filed in what they perceived to be conflicting claims (see Exhibit 3). To further complicate the situation, it was not until a subsequent hearing in what the Special Master has deemed "related and overlapping" subcases in Basin 47 on July 1, 1999 that the Bedke's first became aware of the strict definition the Idaho Department of Water Resources (IDWR) used in determining conflicting claims (see Exhibit 4, page 53 beginning Line 5). The other parties involved in the 2:00 P.M. hearing have since withdrawn their motions to file late objections to the above named subcases, but the arguments they made at that hearing, and in subsequent briefings, still hold as valid.

A. Confusion

The Bedke's and other private claimants were confused by the advice they were given regarding the effects of the bifurcation of the water claims (Exhibit 1, page 78 et. seq.). At a hearing for the related and overlapping subcases in Basin 47 on July 1, 1999 at 2:15 P.M. Mr. Spencer of the IDWR explained what the bifurcation of the reporting

process actually did.

“I think that the proper perspective to apply here is that this bifurcation has not caused delay. What the bifurcation in effect has done has resulted in some of these rights being reported two years ahead of where they otherwise would have been.

And so it's not a matter that we are delaying the process through the bifurcation. It is a matter that we now have some rights that actually are way out in front of where they would have been had there not been a bifurcation.” (See Transcript of July 1, 1999 2:15 P.M. hearing attached as Exhibit 5, Page 37, beginning Line 17)

This acceleration of the subcases at issue, created much confusion, and distrust of the process with the Bedke's and others (private claimants). The IDWR advised the private claimants that they wouldn't necessarily have to object to the accelerated claims, because if these claims were in conflict with those of the private claimants, then both would be reported to the court as one water right and the court would then determine which party the water right belonged to (see Exhibit 1, page 80 et. seq.). The private claimants mistakenly interpreted this advice to mean where claims were based on the same water, same use, same cattle, that these water claims would be in direct conflict and therefore would be recommended to the court as one claim--the ownership of which would be determined at that point (see Exhibit 1). The private claimants acted as any reasonably prudent person would in their situation, and relied upon the advice given to them by the agency that they'd been dealing with throughout the process. At a 3:45 P.M. hearing on July 1, 1999, Roxanne Brown of the IDWR finally explained what the strict definition of conflicting claims that the IDWR used was: Claims identical to each other in all elements except the name (see Exhibit 4, Ms. Brown page 53 beginning at line 8).

The fact that the IDWR believed that the bifurcation could cause some confusion and difficulties (See Exhibit 3, Mr. Tuthill page 44 beginning Line 4) is undisputed. It is

also undisputed that the Bedke's were confused by the process as well (See Transcript of 9:00 A.M. hearing April 7, 1999, relevant pages attached as Exhibit 6, Mr. Bramer page 50 beginning Line 16, see also Exhibit 1, page 80 et. seq.).

In *Johnson v Pioneer Title Co. of Ada County* the Idaho Supreme Court ruled:

“[10,11] Undoubtedly, Pioneer's manager could have acted *more* prudently by delivering the summons and complaint immediately to Pioneer's attorneys. However, this does not compel a conclusion that he acted so imprudently that relief should be denied. In determining whether to set aside a default judgment, we must apply a standard of liberality rather than strictness and give the party moving to vacate the default the benefit of a genuine doubt. *Stoner b. Turner, supra*. In view of the confusion which existed, we cannot say that Pioneer was guilty of indifference or deliberate delay in failing to answer the complaint. We thus hold that Pioneer's failure to respond was excusable neglect under I.R.C.P. 60(b)(1).” [emphasis unchanged] *Johnson v. Pioneer (supra)*, 733

As with Pioneer, it has been argued that Objectors could have acted more prudently by objecting immediately to the water right claims at issue, but as the Idaho Supreme Court directed in *Johnson*, the facts in this case also do not compel a conclusion that Objectors acted so imprudently that relief should be denied.

B. Bedke's Acted Promptly in Requesting Relief

The Bedke's first became aware of the need to file objections to the United States' claims shortly before the April 7, 1999 hearing and immediately sought to identify the above named subcases in Basins 45 & 47 and filed their motions to file late objections as soon as they could (See Exhibit 1, page 83 Line 3 et. seq., also See *Schraufnagel v. Quinowski* 113 Idaho 753(App.), 755).

2. Meritorious Position

As with any motion under Rule 55(c) the party moving to set aside a default judgment must plead facts which, if established, would constitute a defense to the action.

A. The Type of Claim at Issue

The first question that arises in the subcases at issue, is whether or not the United States is claiming a reserved water right or acting merely in its proprietary capacity as a landowner and seeking a state law based water right. None of the water right claims at issue were filed alleging a reserved right, rather, all were filed under the basis of beneficial use. As this court pointed out in its *Order on Motion and Cross-Motion for Summary Judgment BLM Stockwater Claims in Basin 72 (issued on 2/6/98)*

“In addressing the agency issue, it is helpful to understand the United States’ status with respect to its role as a proprietor of land. When the United States is not claiming any reserved water rights, it exercises the right of any other ordinary proprietor under state law. “Where water is only valuable for a secondary use of the reservation . . . there arises the contrary inference that Congress intended, consistent with its other views, that the United States would acquire water in the same manner as any other public or private appropriator.” *United States v. New Mexico*, 438 U.S. 696, 702 (1978). “[T]he [federal] government has, with respect to its own lands, the rights of an ordinary proprietor, to maintain its possession and to prosecute trespassers. It may deal with such lands precisely as a private individual may deal with his farming property.” *Camfield v. United States*, 167 U.S. 518, 524 (1897); *In Re Water of Hallet Creek Stream System*, 749 P.2d 324, 329 (Cal. 1988). Since the United States acts as any other landowner with regard to possession of property, the United States may perfect a water right the same way as any other public or private landowner.

As any other landowner in a prior appropriation jurisdiction, possession of the land does not include possession of the water perfected on that land. *Jones v. McIntire*, 60 Idaho 338, 91 P.2d 373 (1939). ” (at page 3)

As with the cases in Basin 72 at issue before the court in its Order of 2/6/98, the subcases at issue before this court also allege no agency relationship as the basis of these claims.

B. Nature of Property in Water

Currently in Idaho, a water right “shall not be considered as being a property right in itself, but such right shall become the complement of, or one of the appurtenances of, the land or other thing to which, through necessity, said water is being applied”. (IC

42-101) All of the subcases at issue deal with stockwater rights, so the question arises, to what thing does the right become appurtenant? In dealing with this question the court must look to the Idaho Code and to previous rulings made by courts with competent subject matter jurisdiction of such an issue. In IC 42-101, the phrase “the land or other thing to which, through necessity, said water is being applied” gives a clear and unambiguous test as to determine just exactly what the water is appurtenant to. In the case of a stockwater right, the livestock puts the water to beneficial use and the court has held:

“...the point of use for the water is the cow’s head, which is an extension of the base ranch.” (FINAL OPINION: FINDINGS OF FACT, HAGE V. US, ___ Fed. Cl. ___, at 25 (2002))

As the court has determined the facts that 1.) the cow is the point of use and 2.) it is an extension of the base ranch, any use made by that cow is a use by the base ranch or the owner of the livestock. Any beneficial use claim for stockwater, therefore, must also be based on the consumption of water by livestock, whose use directly vests in the base ranch or owner of the livestock.

C. Whose Livestock put the Water to Beneficial Use?

The United States in its proprietary capacity must meet all the requirements of any other citizen of the State in order to secure a stockwater right. (*Camfield v. United States, supra.*) The first of these requirements is that the livestock diverting the water must be owned by the party claiming the stockwater right.

To determine the ownership of livestock in the State of Idaho, one must look to the Idaho State Code. Idaho Code 25-1140 states in part:

“USE OF BRANDS RESTRICTED. Every stock grower in this state must use a brand for cattle, and a brand for horses, mules and asses, which brand must be placed in a conspicuous place on the animal. It shall be unlawful for any person to use any brand as herein provided, unless such brand be designated in the application for the recording of the brand and the brand be recorded with the state brand inspector.”

The United States has never recorded a brand in the State of Idaho. (See Exhibit 7). This court also makes note of a Judicial Admission by the United States in its Order of 2/6/98:

“Here, the United States admits that it is not the party that actually appropriated the water with its own stock (Tr., p. 35, ll. 10-15)” (*at 7, see Order, supra*)

And finally concludes with:

“If the United States does not claim a reserved right, appropriate its own water right, purchase or otherwise negotiate for a water right, adversely possess a water right, or obtain a right through the efforts of an agent who actually appropriated the water on behalf of the United States, the United States does not own a water right. Absent one of these ownership theories, the United States does not own a water right simply because it manages the public domain.” (*at 11, 2/6/98 Order, supra*)

It is, and always has been, the Bedke’s position that the original use of the water in the subcases at issue was made by the Bedke’s predecessors in interest prior to the establishment of the Forest Reserves and Bureau of Land Management, and that the United States has never put the water to any beneficial use, as the only way stockwater could be put to use is by livestock (See Exhibit 1). If the Bedke’s motions to file late objections are granted, through evidence, witnesses, and testimony they will be able to prove the IDWR did little or no investigation of the United States claims at issue (Exhibit 8), that the United States did not ever put the water to beneficial use, the only use of the water at issue was by and for the benefit of private individuals, and therefore the United

States should not have the subcases at issue recommended as valid water rights.

The Bedke's will also rely on precedent case law such as the United States Supreme Court opinion in *United States v. New Mexico* 438 U.S. 696 (1978) where the court held "The New Mexico courts disagreed and held that any stockwatering rights must be allocated under state law to individual stockwaterers. We agree." (at 716)

D. Prejudice to the Parties Involved

If the motions to file late objections are allowed, the entire burden of overcoming the prima facie weight of the original recommendation would lay with the Bedke's therefore no undue prejudice to the United States would exist, as it has nothing further to prove.

If the Motions to File Late Objections are not allowed, the Objectors will be unable to proceed to trial and prove that the claims at issue are not based on facts nor state law and possibly deny Objectors remedy to their situation.

In correspondence recently discovered by objectors between the United States and Dave Tuthill, the United States clearly defined its' position on stockwater claims (Exhibits 8, 9). One of these letters states, "IDWR is on record in the Joyce Livestock subcases as agreeing with the United States' that there cannot be more than one water right for the same beneficial use. To be consistent, IDWR should acknowledge that any two water rights claimed to serve the same stock are in direct competition, regardless of the claimed priority date. Where both the United States and a private rancher have claimed a stockwater right from the same source to serve the same cattle, there can be only one water right." (See

Exhibit 9) Clearly, if the Objector's motions are denied, they will suffer undue prejudice as the United States will argue against Objector's SRBA claims from the position of one use, one water right, and that the water right has already been decreed to the United States.

3. Special Master Misapplied Law to the Facts

In addition to Objectors demonstrating good cause and a meritorious position, the Special Masters decisions should be overturned because the Special Master misapplied the law with respect to the facts in this case.

LU Ranching Co.

In the LU Ranching Co. decision the Idaho Supreme Court only dealt with LU Ranch's motion to allow motions to file late objections on subcases that had already gone to partial decree, and were subject to the higher 60(b) standard. (*LU Ranching Co. v. United States*, 138 Idaho 606, 67 P.3d 85) As the subcases at issue haven't gone to partial decree, the LU Ranching Decision is off point and misapplied by Special Master Dolan.

Secondly, LU Ranching Co. filed several domestic/de minimus water right claims. (*LU Ranching, supra*). As these claims were de minimus in nature, they were included in the Director's first Domestic and Stockwater report for their reporting basins, and LU Ranching Co. was not a procedural victim of the bifurcated reporting process. The record clearly shows that Objector's water claims weren't included in the Director's first Domestic and Stockwater report for basin 45, and as such, Objectors are in a different factual situation than LU Ranching Co, therefore reliance on the LU Ranching decision is further off point and misapplied by Special Master Dolan.

Finally, in his Jan 5th Order, the Special Master states “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.” This is not accurate. The Objectors have never argued that they were not given adequate notice of the United States’ claims, rather that they were confused by the advice that they received from the IDWR regarding conflicting claims, and how these claims would be handled within the adjudication. (Exhibit 1, pg 83 line 19 et seq.)

4. Special Masters Conclusion Not Based on Facts of Record

In addition to the arguments set out above, relief should be granted to Objectors because the Special Master reached conclusions that were not based on facts contained in the record in the subcases at issue.

In the Jan 5th Order, the Special Master continues to assert reasons why the Objectors declined to accept a settlement offer that other private parties have chosen to accept based on a status conference held on June 19, 2003 for some related and overlapping subcases in Basin 47. The Special Master then concludes “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.” (Jan 5th Order at 6)

A careful review of all transcripts in the trial record of the related and overlapping subcases, show that the only reference made by the Bedkes to any written settlement proposal, occurred during the 11:00 AM Status Conference Hearing on June 19, 2003:

“SPECIAL MASTER DOLAN: Sure. Well, what are the odds of you settling your case as a lot of the other private claimants have done?

MR. BEDKE: Well, I couldn’t agree with some of the terms in the settlement, so that was why we didn’t opt to settle at that time.

SPECIAL MASTER DOLAN: But you've actually seen all of the terms and –

MR. BEDKE: Yes.

SPECIAL MASTER DOLAN: -- you've had a chance to discuss settlement?

Okay. And for, for now at least, you –

MR. BEDKE: So we always entertain settlement, but the devil's in the details, as they say." (Exhibit 10)

Where the Special Master divined the reasons for Objectors declining the proposed offer of settlement from, is a question that only he can answer. The record in those subcases, however, clearly shows no such reasons are of record. Furthermore, it is not the position of the Special Master to decide whether or not someone should accept a settlement proposal, and that fact should have no bearing on any decision he makes. As his decisions appear to be tainted by these conclusions based on facts not of record, they should be overturned and any bias placed in its proper context within those rulings.

Issue #2. Special Masters Report and Recommendation

In these instant cases, the Director of the Idaho Department of Water Resources' recommendations in the Director's Report, Domestic and Stock, Reporting area 10 (IDWR Basin 45) are contrary to State Law and well established Case Law on the underlying merits of the claims made in the above mentioned subcases.

The Courts discretion regarding uncontested water rights in the SRBA

The first question to be determined is what discretion this court has regarding uncontested water rights in the SRBA. In its *Order Conditionally Granting Motion to Set Aside Partial Decrees (Subcases 37-07454 and 37-07602, Hubsmith)(Issued 12/3/2003)*, this court states:

"Director's reports that are uncontested are typically decreed as reported. I.C. § 42-1411(4). Although this is normally what occurs, the SRBA Court retains discretion to apply law to the facts and render its own conclusion regarding uncontested water rights.

State v. Higginson, 128 Idaho 246, 258, 912 P.2d 614, 626 (1995). The district court can also delay entry of a partial decree for the uncontested portions of the director's report if the court determines the unobjected claim may be affected by the outcome of a pending contested matter. I.C. § 42-1412(7). Ultimately, the claim is subject to a final review by the court prior to the entry of the partial decree.

Therefore, although there is a preference for having a case decided on its merits, an uncontested water right that proceeds to partial decree is subject to more scrutiny than in a typical non-SRBA case where a default judgment is ultimately entered. In the SRBA, "deciding a case on the merits" must be placed in the proper context." (at page 9)

The Type of Claim at Issue

The next question that arises in the subcases at issue, is whether or not the United States is claiming a reserved water right or acting merely in its proprietary capacity as a landowner and seeking a state law based water right. The record shows none of the water right claims at issue were filed alleging a reserved right, rather all were filed under the basis of beneficial use. As this court held in its *Order on Motion and Cross-Motion for Summary Judgment BLM Stockwater Claims in Basin 72 (issued on 2/6/98)*

"In addressing the agency issue, it is helpful to understand the United States' status with respect to its role as a proprietor of land. When the United States is not claiming any reserved water rights, it exercises the right of any other ordinary proprietor under state law. "Where water is only valuable for a secondary use of the reservation . . . there arises the contrary inference that Congress intended, consistent with its other views, that the United States would acquire water in the same manner as any other public or private appropriator." *United States v. New Mexico*, 438 U.S. 696, 702 (1978). "[T]he [federal] government has, with respect to its own lands, the rights of an ordinary proprietor, to maintain its possession and to prosecute trespassers. It may deal with such lands precisely as a private individual may deal with his farming property." *Camfield v. United States*, 167 U.S. 518, 524 (1897); *In Re Water of Hallet Creek Stream System*, 749 P.2d 324, 329 (Cal. 1988). Since the United States acts as any other landowner with regard to possession of property, 2 the United States may perfect a water right the same way as any other public or private landowner.

As any other landowner in a prior appropriation jurisdiction, possession of the land does not include possession of the water perfected on that land. *Jones v. McIntire*, 60 Idaho 338, 91 P.2d 373 (1939). " (at page 3)

As with the cases in Basin 72 at issue before the court in its Order of 2/6/98, the subcases at issue before this court also allege no agency relationship as the basis of these claims.

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Currently in Idaho, a water right “shall not be considered as being a property right in itself, but such right shall become the complement of, or one of the appurtenances of, the land or other thing to which, through necessity, said water is being applied”. (IC 42-101) All of the subcases at issue deal with stockwater rights, so the question arises, to what thing does the right become appurtenant? In dealing with this question the court must look to the Idaho Code and to previous rulings made by courts with competent subject matter jurisdiction of such an issue. In IC 42-101, the phrase “the land or other thing to which, through necessity, said water is being applied” gives a clear and unambiguous test as to determine just exactly what the water is appurtenant to. In the case of a stockwater right, the livestock puts the water to beneficial use and the court has held

“...the point of use for the water is the cow’s head, which is an extension of the base ranch.” (FINAL OPINION: FINDINGS OF FACT, HAGE V. US, ___ Fed. Cl. ___, at 25 (2002))

As the court has determined the facts that 1) the cow is the point of use and 2) it is an extension of the base ranch, any use made by that cow is a use by the base ranch or the owner of the livestock. Any beneficial use claim for stockwater, therefore, must also be based on the consumption of water by livestock, whose use directly vests in the base ranch or owner of the livestock.

Whose Livestock put the Water to Beneficial Use?

The United States in its proprietary capacity must meet all the requirements of any other citizen of the State in order to secure a stockwater right. (*Camfield v. United States, supra.*) The first of these requirements is that the livestock diverting the water must be owned by the party claiming the stockwater right.

To determine the ownership of livestock in the State of Idaho, one must look to the Idaho State Code. Idaho Code 25-1140 states in part:

“USE OF BRANDS RESTRICTED. Every stock grower in this state must use a brand for cattle, and a brand for horses, mules and asses, which brand must be placed in a conspicuous place on the animal. It shall be unlawful for any person to use any brand as herein provided, unless such brand be designated in the application for the recording of the brand and the brand be recorded with the state brand inspector.”

The United States has never recorded a brand in the State of Idaho. (See Exhibit 7). This court also makes note of a Judicial Admission by the United States in its Order of 2/6/98:

“Here, the United States admits that it is not the party that actually appropriated the water with its own stock (Tr., p. 35, ll. 10-15)” (*at 7, see Order, supra*)

And finally concludes with:

“If the United States does not claim a reserved right, appropriate its own water right, purchase or otherwise negotiate for a water right, adversely possess a water right, or obtain a right through the efforts of an agent who actually appropriated the water on behalf of the United States, the United States does not own a water right. Absent one of these ownership theories, the United States does not own a water right simply because it manages the public domain.” (*at 11, 2/6/98 Order, supra*)

Here, as with the subcases in Basin 72, the United States does not claim a reserved right, has not appropriated its own stockwater right with its own livestock, purchased or otherwise negotiated for a stockwater right, adversely possessed a

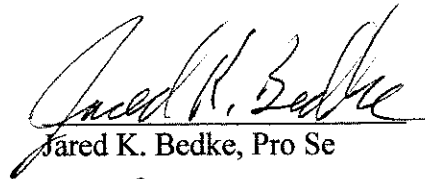
stockwater right, or obtained it through the efforts of an agent. Therefore the court should not grant the water rights at issue to the United States simply because it manages the public domain.

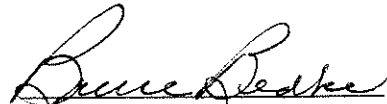
CONCLUSION

For the reasons stated above, as well as all of the Objector's previous pleadings, this court should grant relief to the Objectors by:

- 1.) Granting the Objector's Motions to File Late Objections in the above named subcases because they have fully met the conditions imposed by IRCP Rule 55(c) in this matter;
- 2.) Granting the Objector's Motions to File Late Objections in the above named subcases because the Special Master misapplied the law to the facts;
- 3.) Granting the Objector's Motions to File Late Objections in the above named subcases because the Special Master made key conclusions based on facts not of record;
- 4.) Or in the alternative, exercising the discretion that the Court has with respect to uncontested water rights in the SRBA, and overturn the Director's recommendations for the subcases at issue as they are contrary to State Law and well established case law.

Dated this 15th day of March, 2005.


Jared K. Bedke, Pro Se


Bruce Byron Bedke, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2005 I served a true and correct copy of the foregoing OBJECTOR'S OPENING BRIEF upon the following individuals by placing the document in the United States Mail, postage prepaid, addressed as follows:

GARY R. POULTON
MICHAEL A. POULTON
SCOTT C. BEDKE

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~~USDA FOREST SERVICE~~

~~Represented by:~~

~~US DEPARTMENT OF JUSTICE~~

~~ENVIRONMENT & NAT'L RESOURCES~~

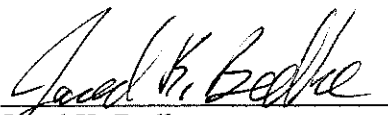
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Jared K. Bedke

ATTACHMENT 1

Subcase Nos:

45-12475	45-12795
45-12493	45-12796
45-12495	45-12797
45-12499	45-12801
45-12515	45-12802
45-12571	45-12803
45-12522	45-12804
45-12523	45-12807
45-12524	45-12808
45-12525	45-12809
45-12526	45-12810
45-12527	45-12811
45-12549	45-12813
45-12550	45-12814
45-12551	45-12819
45-12557	45-12820
45-12558	45-12821
45-12559	45-12822
45-12560	45-12823
45-12561	45-12827
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45-12790	
45-12794	

**INSTRUCTIONS FOR FILING
NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW
IN THE GENERAL ADJUDICATION OF RIGHTS TO THE USE OF
WATER FROM THE SNAKE RIVER BASIN WATER SYSTEM.**

PLEASE TYPE OR PRINT CLEARLY

WATER RIGHT

A water right allows the private use of Idaho's public water. When properly recorded, a water right gives you the right to divert a specific amount of water from its source for a beneficial purpose. (Some examples are: irrigation, domestic, stockwater, industrial, or power production). There are many other beneficial uses of water also recognized by Idaho law.

CLAIMANT

A claimant is any person or organization that has diverted water for beneficial use from a location within the adjudication boundaries of the Snake River Basin. This includes streams, springs, lakes, ground water, developed water, waste water, or any other source of water within the boundaries of the Snake River Basin in Idaho.

PERMIT REQUIREMENTS

The permit system for establishing a water right became mandatory for uses developed from ground water after March 25, 1963 (except for single family domestic or stockwater uses that do not exceed 13,000 gallons per day) and for uses developed from surface water after May 20, 1971 (except for watering stock directly from streams). If your water use began after

TABLE 1, RECOMMENDED DIVERSION RATES FOR STOCKWATER

In cubic feet per second (cfs)

No. of head	Dairy cows	Other cattle, horses & mules	Hogs	Sheep & goats
0 - 25	0.02	0.02	0.02	0.02
26 - 50	0.04	0.02	0.02	0.02
51 - 100	0.07	0.03	0.02	0.02
101 - 200	0.13	0.05	0.02	0.02
201 - 300	0.20	0.07	0.02	0.02
301 - 400	0.26	0.09	0.03	0.02
401 - 500	0.33	0.12	0.04	0.02
501 - 600	0.39	0.14	0.05	0.03
601 - 700	0.46	0.16	0.05	0.03
701 - 800	0.52	0.19	0.06	0.03
801 - 900	0.58	0.20	0.07	0.04
901 - 1000	0.65	0.23	0.08	0.04

For chickens, round to the next highest 100 and multiply this number by 0.0000018.

For turkeys, round to the next highest 100 and multiply this number by 0.0000033.

If you have more than 1000 head of stock (other than poultry), round the number of head to the next highest 100, and multiply this number by one of the following factors:

For dairy cows, multiply by 0.00065

For other cattle, horses, or mules, multiply by 0.00022

For hogs, multiply by 0.000074

For sheep or goats, multiply by 0.000037

Round the amount you calculate to the nearest 0.01 cfs and enter this amount in the appropriate space on your claim. You may claim 0.01 cfs even if your calculated amount is less than 0.01 cfs.

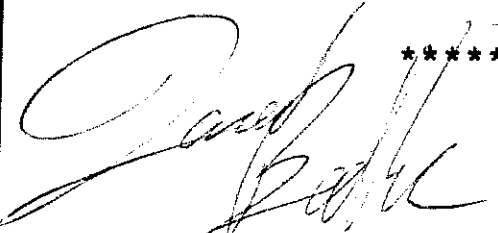
TOTAL QUANTITY CLAIMED

Item 7: Enter the total amount of water diverted for all the uses shown in Item 6. The total quantity claimed should not exceed the diversion capacity of the system, nor the total of all the uses.

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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) REPORTER'S TRANSCRIPT
Case No. 39576) Subcase No. 45-02769,
_____) et al



RECEIVED
JUN 11 1999
FBI/DOJ

D-a-t-e: Monday, June 7, 1999

T-i-m-e: 2:00 P.M.

P-l-a-c-e: SRBA Courthouse, Twin Falls, Idaho

B-e-f-o-r-e: TERRENCE DOLAN, Special Master

H-e-a-r-i-n-g: Joint Motion for Meeting with IDWR;
Motions to File Late Objection

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1 COURTROOM OF THE DISTRICT COURT, SNAKE RIVER
2 BASIN ADJUDICATION COURTHOUSE, 253 Third
3 Avenue North, Twin Falls, Idaho, Monday,
4 June 7, 1999, 2:00 P.M.

5 *****

6 THE COURT: Counsel, ladies and gentlemen,
7 we're now on the record. This is the date and time set
8 for a motion to file late objection and a joint motion
9 for meeting with IDWR in Subcase -- I'll just start
10 with the one subcase number -- 45-02769 and a whole
11 bunch of others.

12 In court this afternoon we have Larry Brown and
13 Randall Bramer. And one or the other or both will be
14 speaking for the United States' position. And we've
15 got Norman Semanko, counsel for Scott Bedke.

16 Mr. Semanko, will you be speaking for anyone
17 else?

18 MR. SEMANKO: Not today, Your Honor.

19 THE COURT: Okay. Now, we have some other
20 parties in the courtroom today. I'd appreciate it if
21 you could introduce yourselves and whether you're
22 representing yourself or whether you have an attorney
23 represent you.

24 JARED BEDKE: I'm Jared Bedke. I'm
25 representing myself.

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1 BRUCE BEDKE: My name is Bruce Bedke. I'm
2 the father of Jared, and I'm representing myself as
3 well.

4 THE COURT: Thank you. Let's see, do we
5 have Gary Poulton?

6 G. POULTON: Yes.

7 THE COURT: Oh, Mr. Poulton.

8 G. POULTON: Gary Poulton, representing
9 myself.

10 THE COURT: Good. And Michael Poulton?

11 M. POULTON: Yes.

12 THE COURT: You'll be speaking for
13 yourself, Mr. Poulton?

14 M. POULTON: Yes, sir.

15 THE COURT: Okay. And on the telephone,
16 for the record, we have, attorney for IDWR,
17 Nick Spencer. And also on the phone we have
18 Dave Tuthill, adjudication bureau chief for IDWR, and
19 Roxanne Brown, senior water right agent.

20 If anyone says anything for the record today, I'd
21 appreciate it if you could introduce yourself since we
22 have so many different parties and people. And if we
23 have to do a transcript of this, it will be helpful if
24 you say: My name is Jones, and here's what I want to
25 say. That way -- it's almost impossible to do a

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1 transcript without that kind of introduction.

2 Let's see. Mr. Spencer, I think you wanted to
3 have the court address the joint motion for meeting
4 with IDWR first because Mr. Tuthill had some other
5 matters to take care of this afternoon?

6 MR. SPENCER: That is correct, Your Honor.
7 Mr. Tuthill has another meeting at 2:30.

8 And I believe that with the number of parties
9 present and the number of objections at issue, I
10 anticipate probably oral argument on the hearing on the
11 motions for late objections will probably take a
12 reasonable amount of time. I believe, on the other
13 hand, that we can address the joint motion for order
14 for hearing probably in just a very few minutes; and so
15 I would request that we take that motion up first.

16 THE COURT: Do you have any preference on
17 how we handle that joint motion?

18 MR. SPENCER: Well, Your Honor, I would
19 suggest, if the other parties and counsel are okay with
20 this, that I can probably give the court what I hope
21 will be a brief summation of where we are regarding the
22 issues that were raised by the joint motion.

23 THE COURT: Counsel, do you think that
24 would be all right?

25 MR. SEMANKO: I don't mind a summary from

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1 counsel as long as we get to argue the motion.

2 THE COURT: For the record, the court was
3 given a copy of a letter addressed to Randall Bramer
4 dated May 6, 1999 signed by Dave Tuthill.

5 Does everybody have a copy of that?

6 MR. BRAMER: Your Honor, we do. Is this
7 microphone going through to the microphonic
8 participants?

9 MR. SPENCER: Yes. It's going through well.
10 Thank you.

11 MR. BRAMER: We have no objection to a brief
12 summary by the department. We did receive that letter,
13 Your Honor.

14 THE COURT: And for those in the audience
15 who didn't get a copy of this, we can run off copies so
16 you can take it with you home, if you want to. We want
17 to make sure everybody has copies of all the
18 documentation that the court has to take a look at so
19 there won't be any surprises.

20 Okay, Mr. Spencer. If you want to present your
21 summary.

22 MR. SPENCER: All right. Thank you,
23 Your Honor.

24 I'm glad you brought up the May 6th letter by
25 Mr. Tuthill, which the letter crossed in the mail but

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1 was in response to the issues raised by the joint
2 motion. And based upon that letter IDWR, the
3 Forest Service, BLM, and counsel for Mr. Bedke met on
4 the 3rd of June to discuss those issues. In that
5 letter, if you note, Mr. Tuthill laid out three reasons
6 why IDWR would oppose any request for the court to
7 enter an order directing IDWR to investigate and
8 recommend Mr. Bedke's claims out of order.

9 In a nutshell the three reasons that Mr. Tuthill
10 identifies in that letter essentially are, one, that
11 the effort involved in investigating and recommending
12 those claims out of order would in effect blow IDWR's
13 present investigation and reporting plan out of the
14 water. And parenthetically in that regard I would note
15 that the investigation and reporting schedules and time
16 lines were developed by IDWR in conjunction with and
17 with the approval of the court; and that messing with
18 those schedules now would impact not only the
19 department's work plan and workload, but also that of
20 the SRBA court.

21 The second reason identified by Mr. Tuthill was
22 that he did not see that there was any urgency in
23 addressing these water right claims out of their given
24 order.

25 And the third reason, and the one I believe most

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1 important to me as a lawyer, is that grave
2 constitutional concerns arise as to whether the SRBA
3 court has jurisdiction to order the department to
4 investigate and recommend water rights outside of
5 IDWR's own investigation and reporting schedule.

6 And so with those reasons on the table, the
7 department really did not want to go forward to have to
8 address these. And the United States Forest Service,
9 the BLM and legal counsel for Mr. Bedke showed, I
10 thought, great sensitivity to those concerns.

11 We had a meeting, then, last week to discuss the
12 issues. And in preparation for that meeting,
13 Roxanne Brown prepared a report to show the extent of
14 the overlap between the Forest Service and Mr. Bedke's
15 claims. She subsequently has put together a similar
16 report showing the extent of overlap between the BLM
17 and Mr. Bedke's claims.

18 The report showed for the Forest Service that
19 there are four complex private claims that have been
20 filed by Goose Creek Cattle and Horse Association and
21 by Pickett Ranch and Sheep Company which overlap
22 completely or partially on about 50 Forest Service and
23 12 BLM claims. But the report shows that there are 21
24 Forest Service claims and, I believe also now, 8 BLM
25 claims that have been objected to by Mr. Bedke, but

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1 that have no overlapping claims by him.

2 THE COURT: When you say "Mr. Bedke," does
3 that mean Scott Bedke?

4 MR. SPENCER: Roxanne, can you address that?

5 MS. BROWN: This is Roxanne Brown,
6 Your Honor. In fact it becomes a little scrambled.

7 The objections are placed by Mr. Scott Bedke.
8 The rights that show overlap are in the names of
9 private parties, although I don't believe that
10 Mr. Scott Bedke is a claimant to any of those
11 overlapping claims.

12 MR. SPENCER: Those claims, Your Honor, were
13 filed in the name of Goose Creek Cattle and Horse
14 Association and Pickett Ranch and Sheep Company.

15 MS. BROWN: I do have the names of the
16 private parties, Your Honor, if you'd like me to recite
17 them for the record.

18 THE COURT: Please.

19 MS. BROWN: The claimants of record are
20 Ray Bedke who, I understand, is now deceased;
21 Gary Russell Poulton; Winslow Whiteley; Bruce Bedke;
22 R. O. Jones; Don Bedke; and Matthews Brothers.

23 MR. SPENCER: And at our meeting last week,
24 Your Honor, there was discussion. Apparently there
25 have been some additional changes in the configuration

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1 of these two organizations. And I believe Mr. Semanko
2 would be able to give the court an update of who the
3 claimants are at this point.

4 THE COURT: Okay. Go ahead. But whenever
5 you address "Bedke," I'd appreciate it if you know the
6 person's first name to use that to avoid confusion.
7 And the same thing with the Poultons, too.

8 MR. SPENCER: Well, anyway, Your Honor, just
9 to complete the summary, a verbal agreement, to my
10 understanding, was reached at the meeting last week
11 regarding how to move forward on claims and yet, on the
12 other hand, meet the needs of the department and all
13 the parties.

14 And regarding the 21 non-overlapping
15 Forest Service claims and the 8 non-overlapping BLM
16 claims, it appears that the objections to those claims
17 basically raise a legal issue as to the legitimacy, if
18 you will, of the federal ownership of those water
19 rights. To the participants in the meeting, that was a
20 pretty clean issue that could be addressed now without
21 the need of the department moving forward to
22 investigate and recommend the private claims.

23 On the other hand, the participants at the
24 meeting felt that it would be necessary for the
25 department to complete its investigation and

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1 recommendation of the overlapping claims so that the
2 court basically had the universe of overlapping claims
3 before it before it addressed the ownership issues
4 arising out of that situation.
5 And so it is my understanding that the
6 Forest Service, the BLM, and Mr. Semanko are all in
7 agreement that we can presently move forward to address
8 the issues raised in the non-overlapping claims, but
9 that the issues raised by the objections to the
10 overlapping claims, that those overlapping claims,
11 those objections will be stayed pending the
12 department's investigation and recommendation of the
13 private-party rights as part of its basin 45 report,
14 which I understand is presently scheduled to be filed
15 with the court at some point next year.

16 So that, Your Honor, in a nutshell, is my
17 understanding as to where we are at this time.

18 THE COURT: From your position,
19 Mr. Spencer, you think the non-overlapping claims can
20 be dealt with now without waiting for the director's
21 report for basin 45?

22 MR. SPENCER: I believe so, Your Honor.

23 THE COURT: Okay. And it's only the
24 overlapping claims where we should consider them all
25 together after the director's report for basin 45

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1 irrigation water rights are filed?

2 MR. SPENCER: That is correct, Your Honor.

3 THE COURT: Okay. Who is next?

4 MR. BRAMER: If I may, Your Honor?

5 THE COURT: Do you want to use the
6 microphone there or --

7 MR. BRAMER: That's fine.

8 THE COURT: Okay.

9 MR. BRAMER: I've been sitting in a vehicle
10 for too long. Your Honor, may it please the court, my
11 name is Randy Bramer. I'm here on behalf of the
12 United States.

13 Generally we agree with Mr. Spencer's comments
14 here. And I just want to take exception with one of
15 those comments, and that was his comments that there
16 were 21 Forest Service claims and 8 BLM claims that
17 raise a legal issue as to legitimacy of water, and that
18 that was a pretty clear issue.

19 Our discussions last Thursday accumulated in a
20 concern that the unopposed claims should move forward.
21 And we agree that they should since there isn't a
22 competing claim. It would make no sense to stay those
23 claims at this point, unlike the other claims before
24 the court filed by Mr. Bedke.

25 However, we did not discuss what that legal issue

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1 was; and we have not defined that legal issue clearly
2 at this point. As this court may remember, the same
3 issue of United States' ownership was in fact raised
4 before Judge Hurlbutt back in 1994 when he concluded
5 that it was a factually-dependent issue. And so before
6 we will come to this court and say we have a clear
7 issue, we would like to formulate that issue and work
8 with Mr. Semanko, if he's representing Mr. Bedke and
9 the claimants, to make sure we know exactly what issue
10 we're talking about here.

11 But to the extent that Mr. Spencer has
12 represented that we would agree to a stay at this point
13 on those claims that the claimants have competing
14 claims, we would agree to do that consistent with the
15 position we took with this court the last time we were
16 before it with these claimants. But we would, however,
17 recommend that on those claims where there's not a
18 competing claim, but merely an objection, there's no
19 reason for the court to wait on those; and we could
20 move forward.

21 We would further suggest, Your Honor, with
22 respect to that group of claims, that the court set a
23 date for a scheduling conference, and that perhaps we
24 can get together with the claimants and their attorneys
25 and work with them on a schedule that would be mutual

Page

1 agreeable to both parties, and present that to the
2 court and hopefully minimize the amount of time the
3 court has to spend on this matter. I think we can
4 probably agree to a schedule, and then have the court
5 review that and ask us any questions.

6 That's all I have, Your Honor.

7 THE COURT: Mr. Bramer, when you say "a
8 competing claim," do you mean an overlapping claim?

9 MR. BRAMER: These are claims, Your Honor,
10 where Mr. Bedke and, I believe, three other parties
11 have filed a claim in 1989 that directly overlap with a
12 claim that the Forest Service or the BLM has filed.
13 These are what were identified in the documents
14 prepared by Miss Brown both for the BLM and for the
15 Forest Service.

16 There are, I believe, 21 Forest Service claims
17 and 8 BLM claims where Mr. Bedke, who filed objection
18 back in July, filed an objection but it does not appear
19 filed a competing claim to those sources, but rather
20 merely filed an objection. Those are the ones we're
21 talking about moving forward on.

22 THE COURT: Okay. Good. Thank you.

23 MR. BRAMER: Thank you, Your Honor.

24 MR. SPENCER: Your Honor, this is
25 Nick Spencer. And I apologize. I believe I misspoke.

Page

1 When I said that the issue was clean, I was
2 referencing only the fact that it does not appear at
3 this time that there is any necessity for further
4 investigation or recommendation by IDWR; that this is
5 basically a legal issue. It may well be a fact-
6 dependent legal issue, but that there is not any
7 preliminary additional work that the department would
8 need do before we could go forward and frame the
9 issue.

10 I did not in any way intend to suggest that the
11 issue was simple. I expect it will turn out to be
12 quite complex. But nonetheless it's one that, to my
13 understanding, we are in agreement we can presently
14 move forward to address.

15 THE COURT: Thank you, Mr. Spencer. Let's
16 see. Mr. Semanko.

17 MR. BRAMER: Norm Semanko, Your Honor, for
18 Scott Bedke, objector in this matter and claimant of
19 other water rights.

20 I wanted to first give the court and the parties
21 some background on my involvement, because there's some
22 confusion as to who I'm representing and who I'm not
23 representing; and I want the record to be very clear
24 about that. And then I'd like to address the motion
25 that has been made, the joint motion by Mr. Bedke and

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1 the United States, including discussion of the meeting
2 that we had with the United States and the department,
3 and more importantly the discussion that I've had with
4 my client and others since that meeting.

5 First of all, Scott Bedke asked me to get
6 involved in these matters a short time ago. At that
7 time there was a draft motion, a joint motion that had
8 been prepared by the United States for Mr. Bedke's
9 review. And he was generally in agreement that we
10 should bring the issue before the court with regard to
11 the fact that some of the basin 45 stock water claims
12 are before us and others, which are actually competing
13 claims, are not before us. And it perhaps is worth the
14 court's time to talk about that a little bit.

15 The way the basin 45 and a number of the basin 47
16 stock water claims were prepared by the private parties
17 was they looked at it as an allotment. They didn't
18 look at it merely as a source. They looked at all the
19 sources within the allotment; and they attempted with
20 as few claims as possible to claim all the waters in
21 the allotment, the grazing allotment that they thought
22 they had used and relied upon.

23 So their claims are much more comprehensive, the
24 private claims that is, than the United States claims.
25 You'll see claims for 5 cfs or 2 cfs, certainly more

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1 than a de minimis amount.

2 On the other hand, with the United States claims,
3 to the extent I can fairly characterize those, they
4 have been filed as de minimis claims. They are not for
5 the larger amounts of water. They may cover the same
6 sources as the private claimants claim; but they're
7 broken out much more specifically by source. And so
8 you have the smaller amounts on each specific source.

9 And as I think you'll hear from the folks
10 involved in filing the late objections later, it was
11 fully expected by the private parties that the private
12 claims and the United States claims, to the extent they
13 conflicted, would be reported together, considered
14 together, and resolved together. That has not
15 happened.

16 And I think the best characterization I've heard
17 of it to date, and I'm glad Mr. Tuthill is on the
18 phone, was at our meeting last week where Mr. Tuthill
19 said: When we bifurcated the adjudication and
20 Judge Hurlbutt agreed to doing that, we recognized that
21 there were going to be potentially some problems with
22 doing that; and that when we got to those problems we
23 would figure out a way to resolve them, recognizing
24 that the speed that we gained by resolving the majority
25 of the domestic and stock water claims made it worth

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1 going through that little bit of pain.

2 Well, we're in that little bit of pain right
3 now. These private folks, unbeknownst to them, the
4 United States claims have gone forward. They've been
5 reported. Some of them perhaps have even been
6 decreed.

7 The private claims in the meantime have -- I
8 don't want to say languished, but they haven't been
9 reported yet. And the reason is obvious to those that
10 have been involved in the adjudication. Those are not
11 de minimis claims. The United States' are de minimis
12 claims. But they are directly competing claims.

13 The adjudication in Idaho seems to be about a lot
14 of things, but it certainly should be about what an
15 adjudication is supposed to be about, and that is
16 resolving competing claims to the same waters.

17 THE COURT: Mr. Semanko, the U.S. claims
18 were reported by IDWR first because they were
19 de minimis?

20 MR. SEMANKO: That's my understanding,
21 Your Honor.

22 THE COURT: In other words, if they had
23 been claimed for a larger amount, they would have been
24 reported at the same time as your client's claims.

25 MR. SEMANKO: That's my understanding,

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1 Your Honor.

2 THE COURT: Okay.

3 MR. SEMANKO: And as I was saying, an
4 adjudication should at least be about resolving
5 contested claims to the same water at the same time and
6 the same place with the same procedure and the same
7 laws and the same facts. And right now we don't have
8 that process.

9 And so my goal in representing Scott Bedke and
10 asking along with Randy Bramer for a meeting with the
11 department to discuss this last week was: Okay,
12 department, if we can't change your reporting schedule
13 to bring the private claims in tomorrow with the U.S.
14 claims, what can we do. One option that had been
15 thrown out was let's stay the claims that have been
16 objected to that the United States has claimed and let
17 the basin 45 private claims catch up with those. And
18 that's an option that appeals to us.

19 I asked at the meeting, though -- and this is
20 where post-meeting matters come in. I asked at the
21 meeting to the department and the others: Are there
22 other options that we haven't discussed? It was the
23 first question asked at the meeting.

24 And it occurred to me in meeting with my clients
25 the next day or later in the week, perhaps last Friday,

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1 that there is another option that at least should be
2 discussed and considered. And that is recommitting all
3 of the United States claims that are conflicting, and I
4 mean conflicting with private claims that have been
5 filed, back to the department.

6 They should all be reported perhaps together so
7 that we don't have the mess, the parade, the circus
8 that we're going to have later this afternoon and that
9 we're going to have, frankly, next month and perhaps
10 longer with private parties coming in and suddenly
11 discovering that not only were their claims not
12 reported with the United States' claims, but the United
13 States' claims are out in front, have not been objected
14 to because, frankly, people did not have reasonable
15 notice -- and we'll have a discussion about that, I'm
16 sure, later. But the United States' claims had been
17 reported, and that the private claims were set back.

18 These folks have been told, as you'll hear from
19 them, that they didn't need to worry about it. As long
20 as they just waited for their private claim to be
21 recommended, the issue as to whether the United States
22 owns it or the private party owns it would be resolved
23 at that time; and they need not worry about it.

24 And they are finding out now, and we're finding
25 out on behalf of Scott Bedke, that that's simply not

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1 the case. Every water right stands on its own, I've
2 been told several times in the last week. And if these
3 folks aren't here to contest the ownership and the fact
4 that the United States has claimed water rights in the
5 adjudication, they're going to have lost a substantial
6 part in this process.

7 The point is: We can wait until the private
8 claims are reported to handle these all together or, I
9 think more comprehensively and more reasonably,
10 recommit the whole thing back to the department. This
11 thing has been one of the messes that we knew might
12 happen when we bifurcated the process. And it is just
13 not fair the way that it has created itself.

14 Now, what am I getting at by saying it would be
15 better to recommit perhaps than staying the cases? The
16 analysis that Roxanne Brown did is very helpful for
17 us. And we don't quite agree with it in looking at it
18 because we think that there are conflicting claims
19 where perhaps they, the department, did not identify
20 conflicting claims. And more importantly, these folks,
21 and certainly my client, intended to file on all water
22 in their allotment. And if they didn't do that, they
23 will be filing claims to make sure they cover all
24 waters within that allotment.

25 So simply saying some look to be conflicting and

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1 some don't, I don't think is -- and try to split them
2 at this point isn't going to get us where we need to
3 be. They will all in one form or another be contested
4 if they are stock water sources within the private
5 grazing allotment on federal land.

6 THE COURT: Well, Mr. Semanko, the court --
7 and I think you've been provided with copies of this,
8 the two partial summaries of claims in basin 45. One
9 of them dated June 7th, 1999 is the caption BLM and
10 private parties. And the one dated June 3, 1999 is
11 captioned U.S. Forest Service, USFS, and private
12 parties.

13 And what you're saying is you don't agree with
14 this summary as to what is overlapping and what's not
15 overlapping, or conflicting or non-conflicting.

16 MR. SEMANKO: I don't want to misrepresent to
17 the court what occurred at our meeting last week. I
18 think I was the first one to suggest that if there are
19 truly not overlapping claims, that maybe they need to
20 be treated separately.

21 What I told the parties at the meeting was,
22 though, that I needed to go back and consult with my
23 clients and see if these truly were non-contested; and
24 even if they were, if they simply missed them and would
25 mean to file on them but didn't do that, and as perhaps

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1 as de minimis claims this time so we don't have the
2 procedural problem we had before. But in meeting with
3 the clients after that meeting with the department and
4 the federal government, it is clear that they meant to
5 file on all the water within the grazing allotment.

6 So some of these may end up still being
7 uncontested; but the majority of them, if they're
8 waters within that grazing allotment, the clients meant
9 to either have filed on and don't agree with the
10 department's interpretation or they will file late
11 claims, or attempt to file late claims to cover the
12 sources that are in their allotment that they didn't
13 file on previously.

14 And I may be mischaracterizing that. I don't
15 know if someone else, Jared or someone, may want to
16 address that when they argue on their motion.

17 But I have not had time at all to look at the BLM
18 report. It just arrived as I came out the door. And I
19 appreciate the department putting it together; but I
20 haven't had time to review it, let alone go over it
21 with my clients.

22 So I think it's fair to say that if the water
23 source is in the grazing allotment and is used for
24 stock water purposes, our client, our client and I'm
25 sure the others, intended to file on it. And if they

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1 did not, they will. If they did and don't agree with
2 the department's interpretation, we'll try to make it
3 clear where we think there is an overlap where maybe
4 the department didn't identify one.

5 THE COURT: Well, Mr. Semanko, the claims
6 reported by Miss Brown in these two summaries, are all
7 of them, all of those claims within allotments either
8 on BLM or on Forest Service land?

9 MR. SEMANKO: I can't speak to the BLM
10 because we haven't had time to look at it. But I might
11 ask -- if I could have a moment to confer?

12 THE COURT: Well, what I'm getting at is:
13 If there are claims outside of the BLM-Forest Service,
14 then obviously those could be treated separately. And
15 then we're only talking about the ones on federal land,
16 I think is what Mr. Bedke and some of the people have
17 called it, without breaking down whether it's
18 Forest Service or BLM.

19 MR. SEMANKO: Well, I think for us to be
20 interested in it, it has to be a federal claim that's
21 in our grazing allotment. So if that helps you. If
22 there are, for some reason, objections that don't
23 involve the grazing allotments that we're interested
24 in, I imagine we wouldn't care about those. But that
25 has not been shown to me with any particularity that I

1 could say: Yeah, this water right and this water
2 right, we simply don't care about.

3 I guess what I'm saying is we just got this
4 report last week. I've just started talking about it
5 with our clients and looking at maps, haven't had time
6 to even look at the BLM one.

7 And I think this is added reason why the whole
8 thing should be sent back. What you've got -- and what
9 I was starting to say is that Roxanne Brown's report is
10 very helpful to identify where there's an overlap
11 between the claims that Scott Bedke has objected to and
12 the claims of the United States.

13 But what it doesn't tell you and what you're
14 going to find if you don't consider the recommitment
15 issue is that this report does not address the people
16 who will come in later as they find out that: Hey, my
17 claim hasn't been reported yet; but the United States
18 has. I thought we were going to resolve these
19 together.

20 They're going to come into this court and they're
21 going to say: I want to file a late objection. I want
22 to overturn decrees, because I was told by the
23 department at some level that these would be resolved
24 together; and they're not. They're not being resolved
25 together. Mine hasn't even been reported yet.

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1 This report does not tell you where there is an
2 overlap between the 500 claims that the United States
3 has filed in basin 45 and the private claims that have
4 been filed in basin 45. That would be a very
5 meaningful report. Then you would know where there are
6 truly conflicting claims and the ones that would need
7 to be resolved together either through a stay or
8 through a re-reporting of all the stock water claims
9 together.

10 But this process has become so convoluted and so
11 difficult even for the diligent stockwater man to
12 understand. And that's who is here before you today.
13 There are neighbors that are just beginning to
14 understand this process and the fact that when I didn't
15 get something in the mail a year ago, when I got
16 something in the mail a year ago and it didn't identify
17 my stock water claims, they thought that meant that the
18 issue was going to be resolved later.

19 And I would be remiss if I didn't give to the
20 court -- my client asked me to do that; and I'll
21 provide a copy to counsel -- a copy of a letter to
22 Scott Bedke from Don Shaff, the manager for the
23 adjudication section, which is dated June 29th, 1998.
24 And what this letter does is it clearly sets forth to
25 Scott, in response to his inquiries about where are my

1 basin 45 and 47 claims, as he began to understand that
2 the United States' claims had been reported. This is
3 the type of notice and information that should have
4 went to all the claimants of stock water that are
5 private parties.

6 It very clearly says: We thought that this
7 process would work; we found out it was more
8 complicated; that the United States' claims got
9 recommended first; and yours would get recommended
10 later. He says: Figuratively speaking, the department
11 used a rake for the D&S claims, but will use a scraper
12 to get to the remaining claims of all kinds for the
13 second report in a basin.

14 So it was made clear to Scott at that time, but
15 to no one else, that these things were on a bifurcated
16 track. No one else reasonably even knew that the
17 United States claims were out in front and that the
18 private claims were still sitting back there. They
19 knew their claims hadn't been reported.

20 Meeting a couple weeks ago with one of the, with
21 some of the private claimants, it was characterized to
22 me -- and I had to spend a half an hour explaining to
23 this gentleman that his claim had not been lost by the
24 department; it simply hadn't been reported yet.
25 Because when he heard the U.S. claims had been reported

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1 for the cows that he had grazing on the federal land,
2 he couldn't believe that his hadn't been lost. It must
3 have been lost. Why would they report the United
4 States' claim and not his.

5 So I think we've got a problem that is much more
6 significant and much bigger than simply the issue of
7 should Scott Bedke's private claims be reported out
8 under some kind of order that demands the department to
9 do that. I think we've got -- to the extent there are
10 overlapping claims of private parties and the
11 United States, BLM and Forest Service in basin 45 and
12 probably basin 47 and they're on separate tracks, it's
13 one of the messes or whatever the word was that
14 Dave Tuthill used at the meeting last week that we need
15 to figure out a way to get around.

16 And at this point I'm thinking that perhaps the
17 best way to do it is to recommit the whole mess back to
18 the department to be re-reported when the basin 45 and
19 basin 47 irrigation and other reports get issued, which
20 our claimants, well, our client's claims and other
21 people's here claims and the people who aren't here and
22 barely know about these claims are included, that's
23 when the United States' claims should have been
24 reported. And maybe we're too far down the track
25 procedurally to get it fixed that way; but that would

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1 be the preferred option.

2 After that, certainly staying the U.S. objected
3 to claims so that we could have them on par with the
4 private claims when they get reported makes a lot of
5 sense.

6 The other thing I need to address, a question was
7 left unanswered at the meeting last week as to whether
8 my client would be willing to have the unobjected -- or
9 the uncontested or not overlapping claims litigated
10 separately on this big legal question. That big legal
11 question will be before the court when the conflicting
12 claims are against each other. And it doesn't make a
13 lot of sense -- maybe it did to a lawyer at a meeting;
14 but to my client it doesn't make a lot of sense to
15 litigate that legal issue in a vacuum first and then
16 come back and have to litigate it again and pay for
17 that twice so -- to the extent there even are any that
18 are not overlapping when we get done looking at the
19 issue.

20 But that's where we're at. I guess what I'm
21 struggling with is we filed a motion that I think was a
22 good motion because it brought the issue before the
23 court; but the relief we're asking for arguably there,
24 we're not asking for anymore. That is to order the
25 department to issue the basin 45 report for the private

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1 claimants right now.

2 I think we're struggling with what is the best
3 way to resolve this procedurally. And I have two in
4 mind. One is to recommit the federal claims to be
5 re-reported with the private claims. And the second
6 one would be to stay all of the United States claims
7 until we sort this out and figure out where the truly
8 contested claims are, and resolve the matter that way.

9 I've taken much more time than I intended. And
10 let me provide, if I can approach, a copy of the letter
11 to Scott Bedke from Don Shaff. And I'll provide a copy
12 to counsel.

13 THE COURT: Please. But I have a couple
14 questions when you're done.

15 Mr. Spencer, Mr. Semanko handed me a letter from
16 Don Shaff addressed to Scott Bedke dated June 29,
17 1998. And I'll ask Mr. Semanko to mail a copy of that
18 to you.

19 MR. SPENCER: All right. Thank you,
20 Your Honor.

21 MR. SEMANKO: Your Honor, before you ask a
22 question, I'll be remiss if I forget something. I
23 think Nick Spencer characterized the claims, some of
24 the claims that have been filed as being filed in the
25 name of an association. And that's a neat way to

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1 collectively refer to this group of people.

2 But the claims were actually filed by four
3 individual people. They weren't filed by this grazing
4 association. So I wanted to clarify that. And those
5 are listed in the basin 45 report for the
6 Forest Service that Roxanne Brown prepared. And we had
7 a discussion about that.

8 But you can see clearly on the printouts that the
9 names of Winslow Whiteley -- whose interests, by the
10 way, have been purchased by Carl Bedke. And Carl will
11 be filing a change of ownership form shortly. He is
12 now Winslow Whiteley. Gary Poulton, of course, is
13 here. Ray Bedke is deceased and now Scott. And we're
14 trying to figure out whether and how to file a change
15 of ownership to reflect that. And then, of course,
16 Bruce Bedke is here with his son Jared.

17 So just to clarify who the actual interested
18 parties are --

19 THE COURT: Does the grazing association
20 have any legal standing?

21 MR. SEMANKO: How do you mean?

22 THE COURT: Is it properly incorporated, or
23 is it just a we happen to call ourselves the North 45?

24 MR. SEMANKO: I'm not aware, Your Honor. And
25 in looking at the client responding that they are

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1 incorporated, there are some incorporations that are
2 involved with the grazing rights; but this is not one
3 of them.

4 And more importantly, it's a moot issue because
5 the claims have not been filed in the name of any
6 association. So they won't be representing the
7 claims. It will be the private parties, the four
8 parties.

9 And just to let you know on those particular
10 claims, the four parties, Scott Bedke has already filed
11 late objections on the ones that we're going to be
12 talking about later. Bruce Bedke is trying to. Carl
13 would like to; but I've just been retained by him; and
14 we're deciding how to get him involved, if at all.
15 Well, not if at all, but how to get him involved. And
16 then, of course, the others, Poultons are here, too.

17 So those people are all represented here in subcases
18 that already exist because of Scott's objections, so --

19 THE COURT: So we won't be seeing anybody
20 coming in representing the grazing association?

21 MR. SEMANKO: Not that grazing association
22 that I'm aware of, no. There may be another
23 association out there that I'm not aware of filing. I
24 know there have been some claims filed in the
25 adjudication in the name of associations; but this is

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1 not one of those associations.

2 THE COURT: Okay. Now, the two questions I
3 have are -- you're saying that if all of the claims
4 summarized by Miss Brown -- and we need to thank her
5 for helping doing this, to help us focus here.

6 But in those two reports of BLM and
7 Forest Service claims, assuming they are all within
8 allotments, either BLM or Forest Service allotments,
9 you're saying your clients intended to object to every
10 one of those --

11 MR. SEMANKO: That's correct, Your Honor.

12 THE COURT: -- because they were within
13 allotments in which your clients may have some
14 interests as permittees?

15 MR. SEMANKO: For one of two reasons. One is
16 because they claimed or intended to claim the water if
17 it's actually used by stock. If they don't use it -- I
18 shouldn't say that. If they don't think it's a source
19 that they use, it's probably because they think it
20 doesn't exist or it's never been sufficient to be. And
21 they would still want to object to that to try to get
22 the facts before the court as to, you know, is there
23 really a stock water right there.

24 So if it's within those boundaries, certainly
25 they mean to take it as an issue. And it would be more

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1 neatly framed if all the private claims were before
2 us. But they do intend to be involved in anything
3 that's within their grazing allotment, certainly. And
4 there's more than one grazing allotment out there as
5 you'll find out as we go through the late objection
6 motions, I think.

7 THE COURT: The other question I had was:
8 You know, you can't speak for all of the people because
9 you only represent Scott Bedke at this time; but did
10 Scott Bedke anticipate that even though his -- I'm
11 sorry, even though the Forest Service claims were
12 reported out, that his would be considered
13 simultaneously with them?

14 MR. SEMANKO: At what point in time?

15 THE COURT: Well, for instance, he may
16 have -- did he think that mine are reported out now;
17 that's fine; but nothing needs to be done on them until
18 the Forest Service and BLM claims are -- or until his
19 own are reported out; and then they'll be considered
20 together by the court? Or did he think that they could
21 be considered separately? We could adjudicate BLM and
22 Forest Service claims separately from those water
23 rights.

24 MR. SEMANKO: The expectation was that they
25 were inextricably entwined and that they would be

1 adjudicated together.

2 Now, I wasn't present during the portion of, I
3 believe, the April 7th hearing where it was discussed
4 before the court by Mr. Bedke and by counsel for the
5 Forest Service; but my understanding of that discussion
6 was that we would figure out a way to make sure that
7 they were considered together, at least the Scott Bedke
8 objections and the Forest Service claims. Now, I don't
9 know about BLM; but — and that's what led to the
10 crafting of the joint motion to try to get the
11 department's attention about potentially filing a
12 supplemental report to include Mr. Bedke's.

13 So I think, and Scott can correct me if I'm
14 wrong, it's always been his understanding and intention
15 that they needed to be considered together. Because
16 that's what an adjudication is about — that the water
17 rights that are competing would be considered
18 together. You got common facts; you got common
19 questions of law. And that was certainly the
20 expectation.

21 Now, whether that has to actually happen or not,
22 I suppose, is up to the court. With the current
23 posture we have, I don't think it was the department's
24 intent — and I'd be happy to hear from them. But I
25 don't think it was the department's intent to issue

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1 competing claims separately. That happened as a matter
2 of fact because we bifurcated each of the basins.

3 But I think in Mr. Shaff's letter it even says
4 basically that we thought that this wasn't going to be
5 a problem. And it turned out to be a huge problem
6 because we used a rake, and now we're going to have to
7 use a scraper later to get the rest of them in.

8 But it doesn't deal with the procedural issue of
9 what do you do now that they aren't grouped together.
10 Do you stay them? Do you issue a supplemental report?
11 Do you recommit all of them that are conflicting back
12 to the department and have them reinvestigate?

13 The other issue I've got that's a major concern,
14 my understanding of the adjudication and the
15 bifurcation process is that domestic and stock water
16 claims, the small ones, the de minimis ones are not
17 field tested. They're not investigated. They're not
18 really looked at. They're investigated, but not out in
19 the field. While the large claims, the irrigation and
20 other claims, which these private claimants are now
21 lumped into, they will be investigated.

22 And what sense does it make to go out and
23 investigate the private parties' claims when you
24 haven't looked at the United States' claims? They
25 involve the same water holes, the same springs, the

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1 same everything. Another argument to recommit. They
2 should all be looked at together and determined whether
3 they should be recommended or not.

4 THE COURT: Is there a chance that the
5 parties could agree on what can be separated out and
6 what can't be, what's an overlapping or conflicting
7 claim?

8 MR. SEMANKO: Yeah.

9 THE COURT: You said that there was a
10 possibility that there may be some of those.

11 MR. SEMANKO: Yeah, we can do that. It would
12 take us some time to sit down and figure out which ones
13 are conflicting and which ones are not.

14 MS. BROWN: Your Honor, if I may clarify —
15 this is Roxanne Brown.

16 THE COURT: Go ahead, Miss Brown.

17 MS. BROWN: One of the problems that arises
18 when you're looking at if they have been recommended
19 and comparing them to claims that haven't been
20 recommended — and it shows up in the two reports that
21 I summarized for the court and for others. One of the
22 problems that arises is that it's very difficult to see
23 from a claim a precise overlap. A claimant may call a
24 source by a different name. A claimant may decide that
25 the source is in a slightly different location. And

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1 the only evidence that the department has to go on to
2 find overlap is to compare the claims, which I did in
3 the summary.

4 I agree with Mr. Semanko. After talking to his
5 client and to others who are seeking to be late
6 objectors, I agree that the folks involved seem to have
7 intended to claim many of the sources that the federal
8 government had claimed. However, the claims are
9 different.

10 That kind of information comes out of
11 investigation. To investigate to that extent and come
12 up with a list of things that can move ahead and things
13 that can't, that level of investigation would result in
14 a recommendation of all of the claims involved. In
15 other words, we would be right back to where we started
16 questioning whether or not the department should move
17 outside of its recommended dates. That level of
18 investigation truly deciding and precisely what is
19 overlapping, the level of investigation involved with
20 that is a whole, it's a whole deal more complicated
21 than the summary I've provided.

22 THE COURT: Well, Miss Brown, if
23 Norm Semanko's preferred recommendation is that all of
24 them be recommitted to IDWR, would that require the
25 same level of re-investigation? In other words, you

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1 wouldn't report them out together -- or you would
2 report them together, but in the normal course of your
3 director's report in 2000.

4 MS. BROWN: Well, if I understand it,
5 Your Honor, there's no reason to recommit all of those,
6 the ones we have recommended because the claims in the
7 names of the private parties, whether they're
8 overlapping or not, we would recommend those also in
9 that it is the department's policy, when there are two
10 conflicting claims as to the ownership of water rights,
11 we recommend both of them so that the court may decide
12 the issue of ownership.

13 THE COURT: From your view, then, it
14 doesn't make any sense to recommit these Forest
15 Service-BLM claims for re-investigation or for further
16 investigation.

17 MS. BROWN: I don't believe, Your Honor,
18 that the Forest Service or BLM claims need to be
19 reinvestigated. I believe that those recommendations
20 should stand as we have presented them. Perhaps it
21 does make sense to stay at this time the proceedings on
22 those so that the others can be allowed to catch up.

23 MR. SEMANKO: I'm going to have to object,
24 Your Honor. This is getting into legal argument.

25 And I was remiss in not stating that I did talk

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1 doesn't really matter.

2 What I'm saying, though, is that there is a
3 fundamental fairness problem with the claims having
4 already been reported for the United States and not for
5 the private parties. And it's quite up to the court, I
6 think, as to whether they want to hear additional late-
7 claim or late-objection motions which will no doubt
8 come before the court, and no doubt motions to set
9 aside partial decrees, which will be fun to do -- the
10 United States writes great briefs, and we'll have great
11 arguments over good cause and all those kinds of
12 things -- where the other choice is to recommit the
13 whole matter back, understanding and recognizing that
14 the reason for granting the late objections is the very
15 reason that the thing should be remanded.

16 Nobody knew what was going on. It's a mess. It
17 was bifurcated without regard necessarily to how it
18 would have caused the problem. And once the problem
19 was discovered, we have to rectify it by putting them
20 all on the same procedural track. That involves
21 recommendation, objection, and resolution of subcases
22 in my mind.

23 And I am frankly upset that when we had the
24 meeting last week this issue was not brought to the
25 fore. And other reasons that I don't need to discuss

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1 about this with Mr. Anderson, the attorney for the
2 department, on Friday. And he told me that they would
3 not have any problem with recommitting. He's not going
4 to take a position on it. But he didn't have any
5 problem with the cases, the claims being remanded to
6 the department so they could be reported later.

7 And I'm not suggesting that the United States
8 claims necessarily need to be investigated any
9 further. Because they are de minimis, and I expect
10 they'll be treated just like all de minimis claims.

11 What I'm saying is that where there's a claim
12 No. 1 filed by a private party and a claim No. 2 filed
13 by the United States, where the claim No. 1 is not a
14 de minimis claim, it will be investigated. It's my
15 understanding there will be a claim verification
16 report. There will be facts that we can have brought
17 before the court without having to do a supplemental
18 report on what the facts were. And in resolving No. 1
19 and No. 2 at the same time, that would be very helpful
20 to have.

21 That's all I'm suggesting, is that whatever
22 factual inquiry goes into the second report for
23 basin 45, it will be very helpful for resolving the
24 claims that have already been recommended. So whether
25 that's done through a stay or through a re-reporting

1 right now after the meeting is why I'm further
2 distressed that we didn't discuss that as a potential
3 solution to this problem.

4 And I'll leave it at that. If you have any other
5 questions, I'll be happy to answer them. I know the
6 United States is itching to respond to my proposal.

7 THE COURT: No, I didn't have any further
8 questions. But in the meantime -- thank you,
9 Mr. Semanko -- we have some other people representing
10 themselves who may want to address the matter.

11 In no particular order, just the way they're
12 listed here, Mr. Poulton, do you have anything to add?
13 Michael Poulton?

14 M. POULTON: Not, not right now.

15 THE COURT: Okay. Mr. Poulton has nothing
16 further.

17 Now, Gary Russell Poulton?

18 G. POULTON: Not at the present time,
19 Your Honor.

20 THE COURT: Let's see. Next would be
21 Jared Bedke. Anything you wanted to add?

22 JARED BEDKE: No, sir, Your Honor.

23 THE COURT: How about Bruce Bedke?

24 BRUCE BEDKE: I'll defer to later. Thank
25 you.

1 THE COURT: Okay. Thank you. Is there
2 anyone else here who wanted to speak on the motions
3 before we go back to hear from the United States?

4 MR. TUTHILL: Your Honor, this is
5 Dave Tuthill. Could I say some words, please?

6 THE COURT: Well, let's see, Mr. Tuthill,
7 we're going to have to kind of walk carefully here.
8 AO1 and rules of civil procedure prevent any sort of
9 testimony by telephone. I suppose you'd be free to
10 make a statement in support of the letter you sent.

11 MR. TUTHILL: This would be in the form of
12 just an administrative consideration relative to how
13 we're looking at our process on this, Your Honor.

14 THE COURT: Oh, from a pure administrative
15 matter.

16 MR. TUTHILL: That's the way I'm looking at
17 it.

18 THE COURT: Does counsel have any objection
19 to that sort of statement?

20 MR. SEMANKO: No.

21 MR. BRAMER: No objection, Your Honor.

22 THE COURT: Nothing from the United States
23 or from Mr. Semanko.

24 Any of the private parties have any objection to
25 Mr. Tuthill making a statement here?

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1 (NO RESPONSE)

2 THE COURT: No objection. Go ahead,
3 Mr. Tuthill. We're glad to hear from you.

4 MR. TUTHILL: Thank you, Your Honor. As
5 Norm Semanko said, we anticipated as we bifurcated this
6 process that there would be some problem areas that
7 could arise. And I can say that in the bifurcation
8 process in most basins it's worked quite well. We have
9 found here in basin 45 and perhaps basin 47 that
10 there's a concern.

11 Initially -- and I did speak with Mr. Scott Bedke
12 some time ago where he raised the objection to the
13 Forest Service rights. And he actually filed the late
14 motion which I spoke in behalf of when it came before
15 the court. Because from our perspective, I had
16 mentioned to him that it would be very appropriate to
17 look at both the Forest Service rights and his claims
18 in one forum.

19 So from my standpoint from the git-go in this
20 situation where we've reported some of the claims, the
21 Forest Service claims, and where other claims that
22 might be overlapping and influencing those in some way
23 have not been reported, from my standpoint it's been
24 very appropriate to stay the action in the earlier ones
25 waiting for the others to catch up.

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1 Now, Mr. Semanko suggested another alternative
2 today that, on the remand, that from my standpoint
3 sounds like a reasonable alternative. Mr. Semanko
4 questioned why we didn't discuss it last week. I don't
5 know that it really came up then in our discussion. I
6 think that's been new since then.

7 So from my standpoint, from the department's
8 perspective, either a stay for the Forest Service,
9 action on the Forest Service claims or a remand of some
10 kind back to the department would be fine and very
11 appropriate to allow a review of both of the rights at
12 once. And when I say "a review," it's a review by the
13 parties of both of the rights at once as they go
14 through the objection period. So we would have no
15 problem with that, Your Honor.

16 THE COURT: Well, Mr. Tuthill, I know that
17 you made some gargantuan efforts here to move this SRBA
18 along; and I know you're looking for ways to help
19 matters proceed. And I don't think for a minute that
20 your idea of reporting these separately had any
21 nefarious purposes; and I don't think any of the
22 parties here are suggesting that. I think just that
23 the choice was made back in the old days, and we've had
24 some unintended consequences here. And I guess now the
25 question is how do we resolve these differences of

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1 opinions of how we can best proceed.

2 And I appreciate your comments. Anything
3 further, Mr. Tuthill?

4 MR. TUTHILL: No. Thank you, Your Honor.

5 THE COURT: Thank you. Mr. Bramer or
6 Mr. Brown.

7 MR. BRAMER: Thank you, Your Honor. Just a
8 quick question for Mr. Tuthill.

9 I have in front of me a June 29th, 1998 letter by
10 Mr. Shaff. And Mr. Tuthill had referred to
11 conversations with Mr. Bedke, Scott Bedke, that is.

12 Mr. Tuthill, at any time when you talked to
13 Scott Bedke did he mention the name of any of the other
14 claimants to these water rights in either basin 45 or
15 47 who had similar concerns?

16 MR. SEMANKO: I'm going to object. It's -- I
17 didn't know he was on the stand.

18 THE COURT: Let's see. Mr. Bramer, I know
19 you're in a tough spot being a lawyer --

20 MR. BRAMER: Your Honor, if I may. My
21 bottom line point is this: This letter -- you asked a
22 question did Mr. Bedke expect to come in to this
23 courtroom with these claims all being handled
24 together. Certainly as of June 29th, 1998, after
25 talking with the department, he must have had some

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1 concerns.

2 If you look at the late objection, it's
3 Scott Bedke, and Scott Bedke only, filed. He's the
4 sole signatory to that objection, not the four people
5 that filed the original claims in 1989. It was on
6 July 13th, 1998, approximately two weeks after this
7 letter, which would suggest, Your Honor, the parties
8 came in here fully aware of what was at issue.

9 Second, Your Honor, I am -- how do I put this?
10 Mr. Semanko is outraged? I am outraged and
11 embarrassed.

12 We joined in this motion to try to be fair to
13 Mr. Bedke to get his claims in front of this court. My
14 understanding was the position we were taking is that
15 the department should take these claims and report them
16 out. That was my understanding and the position we
17 were taking.

18 We went into a meeting. I was informed: No; if
19 it's going to be a problem for the department, we
20 rather stay the litigation. --

21 We would just as soon as moved forward and not
22 dealt with that issue at all; taken our claims, taken
23 our objection and gone forward with what we had when we
24 were here on April 7th. Rather, we went out of our way
25 to assist the claimants in getting a fair hearing by

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1 reporting out his claims, coming to this court with a
2 motion to ask the department to report those claims
3 out.

4 And what am I hearing today for the first time
5 from Mr. Semanko? Take the whole thing back; let us
6 file objections. First, let us file claims, claims to
7 sources that were filed 10 years ago by the same
8 claimants who are going to come into this adjudication
9 and come into these subcase hearings and say, and I
10 quote, we've been on this land since 1889; we know it
11 better than the Forest Service; but, however, we have
12 overlooked a bunch of sources; we have no reason for
13 saying why we did that; but rather we want to come in
14 now; and we want you to allow us to file these late
15 claims; and we also want you to file late objections.
16 And they're nine months late; we know that, Your Honor;
17 plus there's a bunch coming because we didn't know
18 because of this convoluted process.

19 What is convoluted here? Has anybody stood up
20 and said they didn't get the director's report? Has
21 anybody stood up and said they didn't read the section
22 that said what if I disagree with this water right?
23 Has anybody given us any reason for not filing late
24 objections? Why didn't they file these claims?

25 The fact is you recommit this, what you're doing

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1 is opening the door to everybody to just ignore the
2 court procedures that this court and the statutes set
3 years ago. And quite frankly I am sitting here just
4 amazed that I'm put into this position.

5 I tried to be fair. I tried to give Mr. Bedke
6 his best shot. We're going to argue the late
7 objections.

8 But now I have an attorney in here arguing start
9 from scratch; start all over again. It is unfair. It
10 ignores the court procedures. It is unfair to every
11 other claimant who has been in this adjudication since
12 this thing was started. We have court procedures. We
13 have plain English notices. We have had nobody telling
14 us why they didn't understand.

15 Why is this so convoluted? Did people not get
16 notice? Did people not read notice?

17 Clearly Mr. Scott Bedke got it. He knew enough
18 to go down to IDWR and say report my claims out. They
19 said no. He came into the hearing. He understood.
20 Mr. Bramer, I don't think I'm being treated fairly; my
21 claims haven't been reported out.

22 Mr. Bedke, fine; let's take it to the court;
23 maybe -- and this is what I thought we were going to do
24 here today. The court would order the department to
25 comply with its statutory obligations to report out the

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1 claims and move these cases along.

2 Rather, now we're going to sit in a stay. But
3 not only are we going to sit in a stay, the attorney,
4 Mr. Semanko, wants to open the whole thing up to allow
5 everybody who, quote, forgot, for some reason don't
6 know, as is evidenced by the Poultons objections,
7 please find enclosed our motions for late objections
8 with no reason stated, no basis stated, nothing.
9 Simply put, Your Honor: We forgot; it was convoluted;
10 we didn't understand. No affidavits. Nothing to say
11 we were told we had to file these; we didn't; here's
12 why.

13 Your Honor, I would suggest right now -- I'm not
14 even going to reserve judgment on this recommitment
15 procedure. First time I heard it today. But I do know
16 one thing. It looks like a thinly veiled attempt to
17 allow people who failed to do their homework,
18 investigate their claims, to file against us even
19 though they've had 10 years.

20 It's been 10 years since those claims were
21 filed. And in 10 years they haven't discovered these
22 errors. Not until the department two days ago hands us
23 this list are all of a sudden people going: Oh, we
24 meant to file on everything; we might have missed
25 something. It has been nine months, Your Honor, on

1 these objections. No one said why they haven't filed.
2 Mr. Bedke did file. And if you ask Mr. Bedke, my
3 guess is, Mr. Scott Bedke, he will say: I filed these
4 objections because my claims weren't reported out; and
5 I felt it was necessary to protect my rights.

6 And quite frankly, Your Honor, given the
7 communication that's occurred in the Valley, I think
8 there were probably discussions about that. And I
9 can't say to this court whether a conscious decision
10 was not made to file objections.

11 And I do not oppose late objections or late
12 claims where there is good cause for those being
13 filed. I do, however, oppose throwing out the court
14 procedures and starting from scratch simply because
15 people come in and make the mere allegation it was
16 really convoluted and complex.

17 Your Honor, please remember that people have a
18 duty to comply with the court's rules. Pro ses
19 certainly shouldn't know the law. This is not the
20 law. This is a notice that was either received or not
21 received. It was either read or it was not read. A
22 decision was made to file an objection or to not file
23 an objection. A decision was made to file a claim or
24 not to file a claim.

25 Only now are these issues coming up. Only now

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1 that we've put this issue in front of the court are we
2 confronting the situation.

3 Your Honor, I apologize. I should have never
4 joined in the motion. I should have sat back and
5 said: Mr. Bedke, this is your concern; I'm sorry; we
6 don't need to be involved in this; if the department
7 doesn't want to do it, we don't want to get into a
8 fight with them about someone else's rights.

9 I have nothing further, Your Honor.

10 THE COURT: Well, Mr. Bramer, if you'd take
11 a couple minutes and few deep breaths here, let me ask
12 you some questions. When you agreed and joined in the
13 motion, it was your understanding that the court might,
14 could, possibly would order IDWR to report out
15 Mr. Bedke's claims early; and then this matter would be
16 resolved?

17 MR. BRAMER: Your Honor, my thought and my
18 discussions with Mr. Bedke led me to conclude that we
19 both were in agreement that the ideal situation would
20 be for this court to order the department of water
21 resources to report out his claims in a two-to-
22 three-month period so that his claims and our claims
23 were handled by this court jointly; and we would not
24 have to go through two pieces of separate litigation
25 over the same piece of water.

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1 THE COURT: Did it occur to you that
2 another option might be just simply staying the federal
3 claims until we could consider federal claims along
4 with Mr. Bedke's?

5 MR. BRAMER: Your Honor, certainly that was
6 one option. But since we were before the court at this
7 point in time, we had a subcase, the court was hearing
8 this matter, it seemed more appropriate to move
9 forward, particularly given the schedules the court has
10 set.

11 THE COURT: Sure. And I agree that
12 obviously we want to move these cases forward. And
13 Judge Hurlbutt traditionally always thought that a stay
14 was the worst thing we could do in this case. We've
15 got to get it done. And I agree with that.

16 You started off, though, you were going to ask
17 Mr. Tuthill a question. And my concern now, not your
18 question, but the fact that you're asking a question as
19 if Mr. Tuthill were a witness. And he wasn't giving
20 testimony today.

21 Would you prefer to ask that question directly of
22 Mr. Bedke at this time, or --

23 MR. BRAMER: Your Honor, I don't. If the
24 court wishes to go through examination at this point,
25 it can. I do not believe that is necessary. I believe

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1 what is necessary for this court to decide is how to
2 move forward on these particular claims.

3 Now, I believe we have taken a good-faith step to
4 help this process by conceding that we would not
5 pressure this court into ordering the department to
6 report those claims out. That was a step, I thought,
7 we took as a good-faith showing that we'll put these
8 off until they're reported so everybody can have their
9 claims up.

10 Now what I'm hearing is we're not only going to
11 file all these late objections, but we're going to file
12 a bunch of late claims; and we want you to pull
13 everything back so the doors are wide open to do that
14 without showing any cause whatsoever.

15 THE COURT: And I appreciate your concern.
16 Obviously the court can't turn a blind eye to the fact
17 that a lot of proceedings have gone by; and we can't
18 just say let's go back to zero. We've wasted too much
19 time and money. We're going to have to go forward from
20 here.

21 But now the question is how do we best go forward
22 from here and solve everyone's concern about due
23 process and at the same time be fair to everybody,
24 including the United States. You put a mountain of
25 effort into getting these claims resolved. And you

1 made good-faith efforts here, and I applaud you for
2 that.
3 But let me ask you more of a generic question.
4 When the decision was made to report out de minimis
5 stock grazing water rights early and then report out
6 the -- and I like to call them de maximus, because I
7 don't know if anybody can define de minimis for me, to
8 differentiate between those two. Did it occur to you
9 or any of the parties you had discussions with that
10 these types of problems might occur?

11 MR. BRAMER: Your Honor, I don't believe --
12 we've been in this litigation now for six years. We've
13 not run into this situation before other than one or
14 two smaller claims.

15 The issue here is simply what I believe that
16 Mr. Bedke and the other three signers to the original
17 claims did is they bundled all these stock water claims
18 together onto one form and in several forms. These are
19 all de minimis stockwatering sources.

20 What we did is took each source where there were
21 cows drinking on the allotment and filed for that. It
22 was the classic de minimis domestic stock water claim.
23 There will be no Forest Service non-de minimis claim if
24 anybody goes back and looks at this.

25 It will be exactly what the department has

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1 contemplated. There's a source. We have our cattle
2 drinking out of it. It's a de minimis amount. It's
3 less than 13,000 gallons a day.
4 I think what you'll find what the department will
5 do if they report these claims out for the private
6 parties as they were filed in 1989 is they will break
7 them out into individual de minimis claims for the
8 competing sources. And they will be de minimis claims.
9 Again, 13,000 gallons a day is a lot of water for cows
10 on the allotment.

11 I don't believe there's any, quote,
12 non-de minimis claims here. I believe it was simply
13 the claimants, in a good-faith effort to comply with
14 the statute in 1989, thought they could group a whole
15 bunch of these together, which they did, de minimis
16 claims, and added them all up. And they were treated
17 as non-de minimis claims.

18 A rational or reasonable mistake. I think
19 they've said that we followed direction given to them
20 by IDWR. Probably true. I have no reason to think
21 they weren't doing that.

22 But the fact is there are no non-de minimis
23 claims here. These are stockwatering claims to small
24 sources of water.

25 THE COURT: So if they're reported in your

1 name or their names, or reported already or reported
2 later, they're really all the same.

3 MR. BRAMER: They're all -- well, to the
4 extent they're all the same claims with the same source
5 is claimed with our overlapping claims.

6 What I am hearing now is since the department
7 investigated the claims filed in 1989 and looked for
8 overlapping sources, they may have found some that the
9 claimants missed. So now the claimants are saying:
10 Well, we're going to go in and file on those, too.

11 The fact is, Your Honor, that at some point you
12 have to hold people to a reasonable duty to investigate
13 and know the facts of their claim whether they're
14 lawyers or pro se.

15 And, again, what we are going to hear when
16 they're in court with you arguing priority date is: We
17 know this better than the government; we know this land
18 better than the government; we've been here for a
19 hundred years. In the same breath what they're saying
20 to you today is: Oh, we missed those even though we
21 know the land that well; so let us file these late
22 claims.

23 THE COURT: Anything further?

24 MR. BRAMER: Nothing further, Your Honor.

25 THE COURT: Good. Well, counsel, let's --

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1 I think that wraps up the joint motion for meeting with
2 IDWR. I'll take the matter under advisement and issue
3 a decision here in due course.

4 And I think I've got this right. This was the
5 joint motion for meeting with IDWR that actually has
6 turned into a motion for an early reporting out or
7 resolution -- I'm not sure how to phrase this. I just
8 want to make sure I've got my handle on this thing
9 right.

10 MR. SEMANKO: Your Honor, I've not filed any
11 motion to date asking that this be remanded. I
12 suggested that as an alternative.

13 I guess the strange procedural posture we're in
14 is that the motion that was jointly filed suggested a
15 certain type of procedure, that is, let's order the
16 department -- or you order the department, the court
17 order the department to issue a supplemental report.
18 It became clear to us in the response letter that
19 Randy Bramer shared with me the department did not want
20 to do that. And so then we still got the problem, but
21 we don't have a solution.

22 So I asked again at the meeting last week what
23 possible solutions are there. The stay one came up,
24 but the other one did not.

25 And the reason I'm upset about it is because I

1 understand the department and the United States have
2 talked about the possibility of remanding. Now, maybe
3 that's not the case. But that's what I was told on
4 Friday. And I'm upset because the meeting we had on
5 Wednesday or Thursday or whenever it was, that wasn't
6 even discussed as a potential solution.

7 But when I talked about it with Peter Anderson on
8 Friday, it seemed to the department to not be a
9 terribly troublesome way to go. And certainly
10 Mr. Tuthill seemed to have just said that that wouldn't
11 be a problematic way to go.

12 So I have not filed a motion to say that that's
13 the way we should go. But what I'm saying is what you
14 can predict to have happen is that people will file
15 late objections. As they find out not only that their
16 claim wasn't reported, but that the United States
17 claims for the same water were reported, it is natural;
18 it is normal; and they will file motions for late
19 objections. They should be resolved on the standard of
20 good cause and whether they were within the standards
21 of the rule.

22 THE COURT: Well, Mr. Semanko, everyone was
23 required to file a claim for stock water by a certain
24 deadline. And if they've chosen not to file a claim
25 for that water right, why would they have a right now

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1 to come in and file a late claim?

2 MR. SEMANKO: Okay. Now, Mr. Bramer made a
3 lot of a small point I made; and that is that if we
4 find out -- and I didn't say we have found out. If we
5 find out that we didn't file on things that we intended
6 to file, we may file a late claim.

7 What I am more likely to find and what my client
8 is telling me and his neighbors are telling me is that
9 maybe Roxanne Brown's report is not -- and I think
10 Roxanne said this herself -- is not exactly on all
11 squares, all fours with the claims that we've filed.
12 In other words, maybe the source that she identified as
13 being in the southeast, we think it's in the
14 southwest. It wouldn't show up as an overlap; but in
15 true, true, truth, it is an overlap. We just had
16 different quarters identified.

17 And so those kinds of things are the things that
18 I think we need to identify to find out if they're
19 really overlapping or not. And the point I was getting
20 at is if you're going to trificate the process and say
21 okay, there are U.S. ones that we think can go forward
22 while the other ones are stayed, I'm saying it's not as
23 neat and tidy as Miss Brown's report. We need to look
24 at it further to decide whether the ones that she says
25 are not in conflict really are not in conflict. That's

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1 what I was trying to say.

2 And in the unlikely event that we haven't claimed
3 on what we intended, there's always the opportunity --
4 and I don't think we said we'd do it without having to
5 go through the process -- ask the court leave to file a
6 late motion or a late claim. I never said, I don't
7 think, that we would be able to do a free pass and not
8 have to meet the standard. So to the extent that was
9 what was interpreted, that's certainly not what I
10 meant.

11 THE COURT: Well, are you really saying
12 your clients may seek to file motions to amend their
13 claims as opposed to a late claim?

14 MR. SEMANKO: That could happen, too,
15 Your Honor. If we meet with the department further and
16 decide that it's really in the southwest and not the
17 southeast or something, we may amend it. But at this
18 point it's much too early. We just started looking at
19 the Forest Service report. The BLM report, we just got
20 minutes ago. So there are all kinds of possible
21 scenarios.

22 But we feel fairly confident with the
23 comprehensive claims that we have filed that we've
24 covered what we intended to cover. If we find some
25 mistakes with that, it isn't unusual to amend claims

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1 even after a trial has happened if there are some
2 mistakes. Maybe we don't agree with the department on
3 whether it's in the southwest or the southeast. We
4 wouldn't know that because our claims haven't been
5 reported yet.

6 THE COURT: Well, Mr. Semanko, I hope you
7 can appreciate the U.S.'s position that --

8 MR. SEMANKO: Well, I understand the United
9 States' position. I would be very upset, too, if water
10 rights that I had filed that I don't have to give one
11 shred of proof as to whether they exist or not, they're
12 recommended by the department for whatever reason and
13 nobody objected because they didn't know about it, that
14 those people would sooner or later find out and try to
15 upset the apple cart, I'd be upset, too, because I have
16 a lot of easy partial decrees that maybe aren't so easy
17 anymore, while the private claimants are going through
18 a living hell. Theirs haven't been reported. They're
19 going to have to provide proof. They're going to be
20 inspected.

21 I'd be upset, too, if I was the United States,
22 because they have a much easier walk through this
23 process than the private claimants have had to date.

24 THE COURT: Well, Mr. Semanko --

25 MR. SEMANKO: They need to be on the same

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1 par. That's all we're asking.

2 THE COURT: Sure. And I appreciate that.
3 But I think Mr. Bramer's point was we can't just ignore
4 the fact that we've already gone through years of this
5 already; and we can't start at zero again. That
6 doesn't make sense.

7 MR. SEMANKO: Well, I agree with regard to
8 late claims it should be a very strict scrutiny if
9 anybody does need to file late claims.

10 With regard to the objections, I have to take
11 issue with what Mr. Bramer said. If Bruce Bedke
12 received a notice that his domestic water right on his
13 farm had been reported, that does not give him notice,
14 especially if his claims for the water on the
15 United States property were not -- or on the grazing
16 allotment were not reported, that doesn't give him
17 notice that, oh, hey, the United States' claims on that
18 same water that I didn't get reported on were filed.

19 So I cannot agree with the United States that
20 getting a piece of paper with regard to a water right
21 that has nothing to do with the federal claims gives
22 these folks notice or gave them notice last year that,
23 hey, the federal claims have been reported. Yours
24 haven't, but theirs have.

25 The only thing that approaches that is the letter

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1 that Scott Bedke got in response to numerous
2 inquiries. The others did not get that letter. They
3 didn't get an explanation. It wasn't in the director's
4 report explaining, oh, by the way, we've bifurcated
5 this; and that means that theirs got reported and yours
6 didn't.

7 If they would have known that, if they had known
8 that for a second that the United States claims had
9 been reported, they would have objected. Why are they
10 here? Why are they spending money? They would have
11 objected in a second. They didn't know it.

12 And the United States can argue to the nth degree
13 that they should have known and all these things. But
14 they simply didn't know, and they couldn't reasonably
15 have known. They know, and that's why they're here
16 today.

17 And what I'm saying is they'll continue to come.
18 And if we can address each late objection without
19 getting a one-inch response that I didn't even get a
20 copy of, by the way, then that's great. But if we have
21 to go through this, all I'm suggesting is that it may
22 be a cleaner and easier process to simply remand the
23 whole thing back, recognizing we made a mistake, a huge
24 due process question, and have it remanded. But either
25 one at the end of the day works for the people that are

1 able to get their objections in against the
2 United States claims. They know the United States will
3 object to theirs.

4 THE COURT: Sure. Well, and I'll give
5 Mr. Bramer a chance to respond to this dialogue here.

6 But just to put you on notice, I don't intend to
7 erase the entire board. We're not going to start over
8 again from scratch. We can't ignore the fact that a
9 lot of procedures have gone through, and a lot of money
10 and time has been spent by a lot of people.

11 What I'm looking for is a solution from here
12 forward. And I can't ignore the fact that the
13 United States has spent thousands of hours and I don't
14 know how much money of the taxpayers money to protect
15 their claims. We just can't ignore that and start from
16 zero.

17 So if anybody comes in and files a late claim
18 that they didn't file before, that's going to be a very
19 heavy burden. Now, amending your claims, that may be a
20 different story. I mean that's a different burden
21 altogether, and that will be entertained more
22 seriously. But a late claim altogether where you're
23 just coming out of the blue, that one is going to be
24 treated very harshly and looked at very closely.

25 MR. SEMANKO: I think we understand that,

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1 Your Honor; and we --

2 THE COURT: But now what I don't want to do
3 is get into this business about is it a recommittal, is
4 it a remand, is it a stay. You know, maybe the
5 solution I'll come up with -- I don't know what I'll
6 call it; but what I have in mind is some way to handle
7 these together so everyone is treated fairly. But I'm
8 not going to waste a lot of time and money on this
9 either.

10 MR. SEMANKO: I appreciate that, Your Honor.
11 And our intent today was simply to let you know that
12 there are other procedural concerns out there than
13 merely the fact that the words good cause weren't
14 written on a letter to the court. There are a lot of
15 other procedural concerns; and we just wanted to bring
16 those to the court's attention. And we trust you to
17 resolve it the correct way.

18 Thank you.

19 THE COURT: I appreciate it. Thank you.
20 Mr. Bramer, did you want to respond to this?

21 MR. BRAMER: Just a couple brief comments,
22 Your Honor.

23 THE COURT: And then we'll move on to the
24 next motion. We'll take a short break here after
25 Mr. Bramer's comments. And then we'll talk about the

1 motion to file late objection, if we need to address
2 that separately.

3 MR. BRAMER: Thank you, Your Honor. First
4 of all, I just want to make clear to this court
5 Mr. Semanko seems to suggest the Forest Service is
6 receiving water rights or making claims; there's no
7 water there. Yet in the same breath he's telling us
8 his clients want to come in and file claims on those
9 same sources.

10 I can assure this court we have field
11 verification for each of these sources. We take it
12 quite seriously, every claim we've filed in this court,
13 and are willing to stand by those.

14 Secondly, Your Honor, Mr. Semanko has been in
15 this court for six years as has the firm of Rosholt,
16 Robertson and Tucker. And no one has come before this
17 court before today and challenged on due process
18 grounds and notice provisions of this statute.

19 First and second round notice had been argued in
20 the beginning of this case. It is the procedure
21 adopted by the court. It is a procedure followed for
22 six years. It is a procedure followed through several
23 thousand notices to people.

24 Yet today we are to disregard that on due process
25 grounds because, simply because they got a piece of

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1 paper, they didn't understand they had to file an
2 objection even though that piece of paper said that.
3 Your Honor, I would suggest this challenge should have
4 been before this court a long time ago if those
5 provisions are insufficient.

6 Finally, Your Honor, to address your question how
7 should we proceed. Stay the competing claims; allow
8 the claimants who made the claims in 1989 that are
9 overlapping with the Forest Service in basin 45 to
10 fight the competing claim battle when the director's
11 report comes out.

12 On those non-overlapping claims, set a scheduling
13 conference. Let's get a scheduling order. Let's get a
14 discovery schedule. Let's get a briefing schedule, a
15 motion schedule; and let's move this along.

16 At this point in time I don't see that any of the
17 things I am doing to help people try to get their day
18 in court are doing anything but backfiring. And with
19 all due respect, Your Honor, I think that's the best
20 way to go.

21 Thank you.

22 THE COURT: Well, Mr. Bramer, when you say
23 the non-overlapping ones, go ahead and set schedules
24 and move forward with them, you would define those
25 non-overlapping as Miss Brown has identified?

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1 MR. BRAMER: I would ask this court to
2 define those as Miss Brown has identified, but that we
3 would like to have approximately 30 days to check. An
4 we would like the court to request IDWR to make sure
5 that those are in fact non-overlapping claims.

6 Outside of three days ago, we did not know there
7 were such claims. So we would want to make sure that
8 those in fact are what Miss Brown purports them to be.
9 And no disparaging of Miss Brown, but I think there wa
10 a limited amount of time to undertake this exercise.
11 And I think that's something we want to be sure about
12 before we move forward on those claims.

13 THE COURT: Do you think 30 days would be
14 sufficient for you and Mr. Semanko and maybe some of
15 the parties to work to identify non-overlapping ones?

16 Because I think, my guess is -- if there's not
17 overlapping on these claims, my guess is everyone in
18 the courtroom here would agree that we can move forward
19 and get them out of the way. Then we're only talking
20 about the nuts of the case, the real hard ones.

21 MR. BRAMER: Your Honor, I think it's
22 largely -- we, Mr. Semanko and I, can discuss this
23 matter; but I think it's largely in the hands of the
24 department of water resources and how they're
25 interpreting the claims that are before them. And

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1 that's why I've suggested it should go back to
2 Miss Brown to have her double-check her calculations.

3 Certainly Mr. Semanko and I can discuss the
4 matter. But I think the bottom line is what the
5 department finds and what the department recommends to
6 this court. And that is what has prima facie evidence
7 in this court, not what Mr. Semanko and I may want to
8 agree to, which this court can appreciate we sometimes
9 differ with the department.

10 THE COURT: Miss Brown, are you still
11 there?

12 MS. BROWN: Yes, Your Honor, I am. I have
13 to say I'm a little confused.

14 I'm holding in my hand a memo that I sent
15 Jamie Gough April 16th, 1999. Actually it's a memo to
16 me. I misspoke.

17 She says, "Roxanne, could you please provide
18 copies of the claims which were filed by the following
19 individuals in basin 45 but were not reported out. The
20 claims could be filed under any of the following
21 names. We don't know for sure," et cetera. She
22 provided the name of Scott Bedke; Bruce Bedke; Bedke
23 Family Limited, Partnership; Bud Bedke; Ray Bedke; Win
24 Cup; Eric Bedke; Mark Poulton; Gary Poulton; Winslow
25 Whiteley; Wild Rose; Goose Creek; and Shoulder 3

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1 Ranches.

2 In response to this request from the
3 Forest Service, April 16th, 1999, and within a day or
4 two of this request, I not only provided what they had
5 asked for, but I also provided a copy of the
6 attachment 1 that you see attached to the report
7 entitled partial summary of claims in basin 45, U.S.
8 Forest Service and private parties.

9 THE COURT: So, Miss Brown, you think that
10 further, your further investigation wouldn't change
11 your investigation at this time.

12 MS. BROWN: No, sir. I did this
13 investigation nearly three months ago. And I took a
14 considerable time to get it as accurate as possible.

15 THE COURT: Anything further, Miss Brown?

16 MS. BROWN: No, Your Honor, not at this
17 time.

18 THE COURT: Mr. Tuthill, do you have
19 anything to add before you run away and do your other
20 duties?

21 MR. TUTHILL: No, Your Honor. Thanks for the
22 chance for input.

23 THE COURT: I appreciate your taking time
24 to meet with us.

25 And, Miss Brown, we thank you, too.

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1 has been asked for at this point is a hearing. That is
2 very important because if you do determine to hold a
3 hearing to decide whether or not to enter an order
4 directing the department to prepare this report, then
5 on behalf of the department I will be filing a notice
6 of special appearance to come in and to actively oppose
7 any efforts to get such an order entered because it
8 does have, from the department's point of view, very,
9 very grave separation-of-powers concerns which
10 ultimately, I believe, will only be resolved by the
11 Idaho Supreme Court.

12 So I simply want to make it clear at this point
13 that the department is not anticipating that you would
14 at this juncture enter an order directing the
15 department to recommend these water rights out of
16 order.

17 THE COURT: Well, I appreciate your
18 comments; but, Mr. Spencer, what I didn't have in
19 mind — I can't speak for the parties. But as I heard
20 them, I don't think anybody was pushing that point of
21 having you report them out of sequence early. I think
22 that was, if not a conceded point, at least one that
23 they agreed in principle would cause more problems than
24 it would solve; and it wouldn't get us from here to
25 there.

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1 MR. SPENCER: Your Honor, this is
2 Nick Spencer. I do have a point of clarification.

3 THE COURT: Go ahead.

4 MR. SPENCER: I understand that you are now
5 planning on taking the motion under advisement. I
6 walked into court this afternoon fat, dumb and happy
7 thinking that we were all on the same page as to how we
8 were going to proceed. And apparently now we are not
9 necessarily all in agreement as to how we are going to
10 resolve this situation.

11 And so if you are taking under advisement the
12 motion that was before you and that you will be
13 considering a number of different options, I am
14 concerned that it be clear that to my understanding the
15 option of ordering the department to recommend these
16 rights out of order is not an option that the parties
17 are any longer considering. If in fact that is an
18 option still on the table, which option you are going
19 to consider, I would ask you to take note that the
20 motion requested a hearing for the purpose of
21 determining whether or not the department would be
22 ordered to prepare a special director's report outside
23 of the normal order.

24 And I would request that if that is an option
25 being considered that it be kept in mind that all that

1 MR. SPENCER: That was my understanding, too,
2 Your Honor. I simply wanted to get that clarified on
3 the record.

4 THE COURT: Yes. I don't intend to order
5 IDWR to report these out early. I know the problems
6 you have down there. And without conceding any one of
7 your arguments in particular, I guess I'll just say
8 that I don't see where that's going to help the parties
9 or the court.

10 MR. SPENCER: All right. Thank you very
11 much, Your Honor.

12 THE COURT: Anything further, Mr. Spencer?

13 MR. SPENCER: No, I have nothing further,
14 Your Honor.

15 THE COURT: Mr. Bramer, anything further?

16 MR. BRAMER: Your Honor, I have nothing
17 further. Thank you.

18 THE COURT: Mr. Semanko?

19 MR. SEMANKO: No. I agree with your
20 assessment. We're not asking for the department to be
21 ordered to issue these out of order. All I did was
22 suggest another alternative that was agreeable to the
23 parties. I didn't mean to bring us to square one. I
24 don't think either of us has argued for that.

25 THE COURT: Now, Mr. Michael Poulton,

1 anything further, sir?
 2 M. POULTON: Can I clarify, Your Honor? Do
 3 you mean on this motion or on their —
 4 THE COURT: On this motion here.
 5 M. POULTON: No.
 6 THE COURT: Nothing further. Let's see.
 7 Gary Russell Poulton?
 8 G. POULTON: No.
 9 THE COURT: Nothing from Mr. Gary Russell
 10 Poulton.
 11 Jared Bedke, anything further?
 12 JARED BEDKE: Nothing further, Your Honor.
 13 THE COURT: And, Bruce Bedke, anything
 14 further?
 15 BRUCE BEDKE: Not on this particular motion,
 16 no.
 17 THE COURT: Okay. We'll take a five-minute
 18 break now and come back on the motion to file late
 19 objection. Thank you, counsel.
 20 (RECESS)
 21 THE COURT: Counsel, ladies and gentlemen,
 22 we're now back on the record.
 23 Mr. Spencer, are you still with us?
 24 MR. SPENCER: Yes, Your Honor. As a
 25 nonparty, the department takes no position on these

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1 motions; however, we would like to continue just for
 2 purposes of monitoring.
 3 And I might also mention that in addition to
 4 Miss Brown and myself, Mr. Fred Price of the Bureau of
 5 Land Management who has been here for a while on other
 6 business has just joined us and also would simply like
 7 to listen in to the proceedings.
 8 THE COURT: Well, good. Welcome,
 9 Mr. Price.
 10 MR. PRICE: Thank you, Your Honor.
 11 THE COURT: What are you doing down at the
 12 lion's den?
 13 MR. PRICE: Working on your deadlines.
 14 THE COURT: Good. Glad to hear you're
 15 getting work done.
 16 Well, counsel, we took the adjournment after we
 17 considered the earlier — and I think we called it a
 18 joint motion for a meeting. But at this time we're
 19 going to be hearing the — let's see. These are
 20 motions to file late objections. And they've been
 21 filed by Bruce and Jared Bedke and by Michael and
 22 Gary Poulton.
 23 And I kind of packaged the two of them together,
 24 the Bedkes and the Poultons motions, but I'm not sure
 25 if they're going to be argued as four separate motions

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1 or whether we're going to argue them as the Bedke
 2 motion and the Poulton motion. I don't know what your
 3 preference is.
 4 Mr. Bruce and Jared Bedke, do you have any
 5 preference?
 6 BRUCE BEDKE: Yes. I'm going to defer most
 7 of this — I've got a couple of things here I want to
 8 bring up; and then I'm going to defer most of it to
 9 Jared. And we'd like to — I'll let him go first.
 10 Are we ready?
 11 THE COURT: Okay. Good. Well, hold on a
 12 second now. Let's see.
 13 Michael and Gary Poulton, how will you be
 14 presenting your motions? Separately?
 15 M. POULTON: Probably I'll probably be doing
 16 most of the speaking.
 17 THE COURT: Okay. Now, let's see.
 18 Mr. Brown, you're going to be speaking for the
 19 United States?
 20 MR. BROWN: Partially, Your Honor. I'll
 21 defer to Mr. Bramer on some of the things that he wants
 22 to address.
 23 THE COURT: Okay. Good. Well, let's see.
 24 Mr. Bedke, since it's your motion, I'd appreciate
 25 it if you could — it would be helpful if you took the

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1 podium just so we can hear you. We don't want to miss
 2 anything you have to say. And basically — oh, and if ...
 3 you'd state your full name and then begin your
 4 argument. But for the record if you could tell us
 5 exactly why you want the court to grant the motions,
 6 that's what we're talking about here today.
 7 BRUCE BEDKE: Okay, Your Honor. I'm going to
 8 defer that part of it to my son Jared.
 9 There was just two things that came up in our
 10 previous meeting here that I wanted to set straight.
 11 It seems a little bit, maybe trite at this point; but
 12 it does concern me.
 13 Whoever talked over the telecom was referring to
 14 the Forest Service rights. But they referred to
 15 Scott Bedke's claim. I'd like to correct that. I
 16 don't think they have any more rights than Scott does
 17 at this point.
 18 And also it came up as a source — some of these
 19 water sources were bantered back and forth and
 20 considered. It was not our intent to overlook any of
 21 these sources. And we've kind of reviewed that a
 22 little bit. But I didn't make that statement at the
 23 time; but I'd like to let you know that our intent was
 24 to cover all of these resources.
 25 THE COURT: Well, Mr. Bedke, that's an

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1 interesting point when you say the word between a right
2 and a claim. And that always has kind of rankled me,
3 too. Because if somebody files a claim to a water
4 right, some people call it a water right even though
5 it's only a claim until it's adjudicated by the court.
6 So that's an important distinction. You're right.
7 Technically all of these are claims until the court
8 decrees them. Good point.

9 BRUCE BEDKE: That's been my understanding.
10 Maybe while I'm here I'll go ahead with my, whatever I
11 have here.

12 I'm always at the discretion of a definition.
13 When they talk about de minimis and non-de minimis,
14 you've referred to it as max de minimis, these are
15 claims that kind of go over the top of my head.

16 We're claiming waters on streams from an upper
17 reach to a lower reach. And sometimes it was my
18 intent -- and, of course, I didn't bring my tabulations
19 with me; but I think that if it got into one of these
20 other nomenclatures, whatever I intended to do was to
21 file on these reaches of these streams.

22 The IDWR, when they tabulated it, called it
23 either de minimis or non-de minimis, whichever was to
24 my disadvantage, it seemed like. And so I want to make
25 that distinction as well. I didn't, I don't know the

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1 difference between the two as such other than that the
2 water that I filed on was water that I have been
3 using.

4 I would -- let's see. Some of these claims, I
5 guess, that fall into these overlapping categories seem
6 to fall right on section lines or quarter section
7 lines. When I filed on this water, the IDWR advised me
8 to file on every 20 -- on the subdivision of every
9 20 acres. Now, later on I understand their advice
10 changed to 40 acres. So there can be some
11 discrepancies there as to the subdivisions, or the
12 legal subdivisions of these little springs or water
13 seeps that come up.

14 So I'm going to defer, then, to Jared if he's got
15 anything.

16 Thank you.

17 THE COURT: Well, thank you, Mr. Bedke.

18 JARED BEDKE: Jared Bedke. We were informed
19 in 1987 that all water rights in the Snake River Basin
20 had to be filed on for the new adjudication due to the
21 court case to determine that. And we did so on
22 May 24th, 1989. I'll state right now that I intend to
23 be the successor in interest of Bruce Bedke, so that is
24 why I'm taking this position at this time.

25 We filed according to the directions set forth at

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1 the time, which would have been in 1989. Right here I
2 have the instructions for filing a notice of a claim to
3 a water right acquired under state law in the general
4 adjudication of rights to the use of water from the
5 Snake River Basin Water System. These are revised in
6 May of 1988.

7 If you go inside, you'll see a little table here
8 that tells you how to file. And this is how we went
9 over to the IDWR and we filed on these. What it says
10 is for 901 to a thousand head of cattle, horses or
11 mules, you would file on .23 cfs.

12 We are running 2,000 head out there in common.
13 So we filed on .5 cfs. That is why it did not make the
14 de minimis claim. This was the old format as I just
15 said.

16 We filed under the original format, and they
17 didn't -- they weren't considered with the de minimis
18 when the bifurcation went through. That is why the
19 discrepancy as to are they all de minimis, or are some
20 of them, you know, in a large reach. And like dad
21 says, when we went down there we were told to file on
22 the entire drainage system. We were told to file on
23 the head waters of the creek, all tributaries of the
24 creek, and the bottom of the creek itself in one
25 filing. Because otherwise you were going to look at a

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1 tremendous number of filings. We followed the
2 instructions at the time, as I said.

3 THE COURT: Mr. Bedke, did the instructions
4 make any distinction between de minimis and
5 non-de minimis?

6 JARED BEDKE: No, Your Honor. They just say
7 for this many head of stock, you'll file on this much
8 water.

9 THE COURT: Do you remember when you first
10 heard that phrase, de minimis?

11 JARED BEDKE: Yeah. De minimis came -- I
12 heard about it the first time in March of this year.

13 And that was in a discussion with Scott Bedke. He said
14 the IDWR had made that distinction to him, I guess.

15 THE COURT: Go ahead.

16 JARED BEDKE: We went to the IDWR and they
17 assured us that our filings, since they were made in
18 this previous format, would be issued and submitted,
19 you know, recommended with the -- in a subsequent
20 director's report when the irrigation claims for
21 basin 45 are issued. I understand that will be
22 sometime in December of 2000, around that area.

23 The federal government's claims, however, to the
24 same waters were filed under the new format that was
25 changed in '94, I believe, 1994. They switched to a

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1 different format. They were included, and I feel that
2 this does not give me an equal footing with the federal
3 government at this time. Because as I understand it,
4 now -- after March of this year, we were informed
5 that -- if we don't object to the federal government's
6 water rights, their claims will be decreed as a matter
7 of course. In essence, they will be rubber stamped if
8 no objections show up to that.

9 At that time we went over to the IDWR and we
10 talked with Doug Jones. And we said: Give me a
11 printout of all the water claims in these sections.
12 And so we took the section list from there, and we
13 filed this motion to late object on that.

14 The stock water is vital to any cattle
15 operation. Our intent was to file on all the water
16 sources located within our allotment boundaries to
17 secure those rights at our priority date and for our
18 cattle.

19 We were assured last year when we went down with
20 the IDWR that the way it would be handled was the
21 conflicting claims would show up, Your Honor; and that
22 the conflicting claim alone would be enough to get it
23 before the court system; that our objections weren't
24 really necessary at that time.

25 We later found out that in the bifurcation our

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1 claims didn't make the current director's report. That
2 is why, when we found this out in March of this year,
3 we immediately set out to file late objections. And
4 that's why we filed them on April 22nd, I believe, of
5 1999.

6 One of the government's claims was that they were
7 all de minimis, and that the government filed
8 de minimisly. The United States, as I understand it,
9 waited until after the bifurcation date so they would,
10 of course, file de minimisly because that's the way the
11 new format was.

12 And that's about all I have to say, except that
13 there is -- we do have a method for filing late
14 objections. That's why we're here today. I understand
15 there have been several granted in the past. And there
16 probably will be several granted in the future.

17 Our position basically to object to theirs is
18 that we own the stock out there, Your Honor. Under
19 Idaho law it says that the water rights probably should
20 be decreed to the stockmen or the owner of the stock.
21 At least that's the way I understand the law at the
22 time. Like I say, once again, they're our cattle.
23 It's our allotment.

24 And they are fully in conflict as far as I know.
25 If you grant them the water right under the basis of

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1 our cattle, then I don't see how you can grant them to
2 us under the basis of our cattle. So as I see it,
3 they're very conflicting at that time.

4 And that's one more -- I'd just like to reiterate
5 that last year we were assured that our conflicting
6 claims would be enough to get us here, and that we
7 didn't have to object. But this spring I found out
8 that we had to object. And so that's why we made the
9 motions at that time. And I would also like to state
10 that I'm objecting to all the motions, all 196 subcases
11 here -- or water filings, I guess I should say, that
12 you sent out with the district court to us at the
13 notice.

14 Any questions, Your Honor?

15 THE COURT: Well, all of the 196 in the
16 list you just held up, those are all claimed by the
17 United States?

18 JARED BEDKE: Yes, sir.

19 THE COURT: And you're --

20 JARED BEDKE: They are on our allotments.

21 THE COURT: They're on your allotments.

22 JARED BEDKE: Correct.

23 THE COURT: But, let's see, and none of
24 them are off of the allotments, are they?

25 JARED BEDKE: Not that I'm aware of, no.

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1 THE COURT: And the basis of your objection
2 is the fact that you claimed that you own the water
3 right as opposed to the United States rather than
4 claiming that the United States just cannot have a
5 water right in the State of Idaho.

6 JARED BEDKE: Correct.

7 THE COURT: Some people have said that.

8 JARED BEDKE: No, sir. Under --

9 THE COURT: That I don't claim the water,
10 but I just don't want the United States to own the
11 water.

12 JARED BEDKE: Correct. Under the D permits,
13 they can file and obtain a license for water for the
14 stockwatering as I understand through reading state
15 law. But their beneficial-use claims are in dispute
16 because we're the one that are putting them to
17 beneficial use. So we feel like the water should be
18 decreed in our name and not theirs.

19 THE COURT: But you're claiming it because
20 you put that 196 claims to beneficial use.

21 JARED BEDKE: Correct.

22 THE COURT: Okay.

23 JARED BEDKE: And those will be reported out
24 in December of 2000 as I understand from the IDWR.

25 THE COURT: Off the record here. Away from

1 this just for a minute, still on the record,

2 Mr. Spencer, is that still going to be reported in
3 December of 2000; or has that changed?

4 MR. SPENCER: Your Honor, I don't believe
5 there have been any recent changes in the schedule; and
6 I don't have a copy of the schedule in front of me.
7 But December, 2000 does sound correct.

8 THE COURT: Okay. Well, anything further,
9 Mr. Bedke? Or Mr. Bedke?

10 JARED BEDKE: Not at this time, Your Honor.

11 THE COURT: Thank you. Shall we go right
12 to the Poultons motion, or do you want to -- does the
13 United States prefer to speak to this motion, or handle
14 them together? How do you prefer?

15 MR. BROWN: Your Honor, the motions are so
16 similar; and my arguments are the same. There's no
17 reason to respond to their arguments as of yet. Let's
18 go on to the Poulton.

19 THE COURT: Okay. Let's see, Mr. Michael
20 Poulton, do you want to speak first, or Gary Poulton?

21 M. POULTON: Okay. I'm Michael Poulton,
22 Gary's son. And he was one of the original claimants
23 in 1989 when we supposedly thought we had filed for the
24 water, for these water rights. And then the, you know,
25 the IDWR, they took us through the process and

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1 suggested that when the rules were changed on how to
2 file the water right claims the United States filed
3 under de minimis, whereas in the earlier rules you were
4 required to file by stream reaches, I think, or by --
5 it turned out to be larger amounts of water.

6 M. POULTON: Yeah, correct.

7 THE COURT: Are you satisfied that you're
8 really filing for the same water rights? It's just
9 that how they were filed was the problem?

10 M. POULTON: Well, I don't think we -- yeah,
11 yeah. That's what I'm saying, yeah.

12 THE COURT: So, in other words, you weren't
13 playing by the same rules as the United States?

14 M. POULTON: Well, no, I'm not saying it
15 wasn't the same rules. I'm just saying we weren't
16 notified of the rules. They changed the rules from the
17 1989 when we thought we were, you know, we were ahead
18 of them on this, on this water, on claiming this
19 water. And then they changed the rules on us. And we
20 were not notified of that by any means.

21 THE COURT: Are any of the claims that you
22 and your father have filed on, are they the same 196
23 that the Bedkes just spoke of?

24 M. POULTON: Well, they'll be a lot of the
25 same ones. We don't have a full 196; but there's a lot

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1 everything else; said that we were, you know, right up
2 in line; and then they come and they changed the rules
3 on us. And then, see, we don't even make the
4 director's report or anything else.

5 And so, like I say, I think if anybody's at fault
6 for us not making the director's report, it's the
7 IDWR. It is my personal opinion on it. We weren't
8 notified. We didn't know.

9 And the Forest Service and BLM, we asked their
10 employees, because they were all out there horseback
11 and flying around, asked them what they were doing, if
12 they were filing for water rights or what they were
13 doing. And they said, they assured us: Oh, no, that's
14 all been taken care of; you know, you guys beat us to
15 the punch and everything else. And come to find out,
16 they filed on them; and we didn't even get a chance to
17 object to them.

18 So I don't say that we're ignorant or anything.
19 I'm just saying I don't think we got even invited to
20 the game by any means by the Forest Service, BLM or the
21 Idaho Department of Water Resources.

22 And that's about all I have to say about that. I
23 mean I can't quote laws and everything else; but I'm
24 just saying we flat got screwed on the deal.

25 THE COURT: Well, Mr. Poulton, Mr. Bedke

1 of the same ones that they have. Because they have a
2 different -- they have two allotments, and we just have
3 one. So we just have the one, the claims that are on
4 the allotment that we run cattle with them on.

5 THE COURT: But in the Bedke's original
6 motion, they stated they had -- they wanted to file
7 late objections to 163 claims. And I think that's been
8 amended to 196 now.

9 You in your original motion said you wanted to
10 file late objections to 157. And those are the same
11 ones that were filed on by the Bedkes.

12 M. POULTON: Correct.

13 THE COURT: Does your number still stay the
14 same or -- is there a way we can nail these numbers
15 down, which ones they are?

16 M. POULTON: I, not without getting my list
17 out. There's no way -- we'd have to go through it and,
18 you know, see which ones go on which allotment.

19 THE COURT: Okay. Is there any way that
20 you'd be able to do that in a reasonable time -- to
21 identify the specific ones that you want to file late
22 objections to?

23 M. POULTON: Yeah. I could probably do that
24 in a reasonable time. I'm talking like a day, or two
25 or three days, a week. 10 days. 10 days would be a

1 lot better. I mean --

2 THE COURT: I know this may sound
3 nitpicking, but when a court enters an order usually
4 you say you enter the order in these following
5 subcases, and you specifically name subcases. You
6 can't just say, well, 157. You have to be pretty
7 specific.

8 I'm not asking that you have to do that now. But
9 I was just hoping you might be able to do that in a
10 reasonable time.

11 JARED BEDKE: I believe this would be the
12 list that he objected to. Excuse me, Your Honor. This
13 is Jared Bedke.

14 I believe I have a copy of the list that Michael
15 and Mike -- or Gary R. Poulton objected to. And it
16 would be for the 163 claims that dad and I objected to
17 originally that was amended to 196.

18 MR. BRAMER: Your Honor? Your Honor, may I
19 make a point of clarification?

20 THE COURT: Go ahead, Mr. Bramer. You can
21 speak at the microphone there, if you like, if you'll
22 just pull it towards you.

23 MR. BRAMER: I'm going to get some numbers
24 out of that table. I'm sorry.

25 I think for the purpose of making sure the

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1 parties are all operating from the same playing table
2 here, the Exhibit A that was utilized at the April 7th
3 hearing that I believe the Poultons and the Bedkes
4 attached to their motions for late objection was the
5 same Exhibit A that was attached to this court's order
6 setting that hearing.

7 And if this court recalls, during the course of
8 that hearing we determined that about 97 of those case
9 numbers were State of Idaho objections to BLM. Those
10 were separate and distinct from the objections
11 Mr. Bedke had filed, of which there were 48 to
12 Forest Service and 12 to BLM. The State of Idaho in
13 basin 45 filed an objection to every BLM water right.

14 I don't believe that it is the intent of these
15 claimants to object to every BLM water right in
16 basin 45. Rather, I believe it is their intent to
17 object to those water rights that overlap with the
18 allotments where they have their cattle.

19 So the list that we're talking about, the 196,
20 the 157, are numbers that I think we need to reevaluate
21 if their intent is to claim water on the allotments
22 where they're using cattle.

23 THE COURT: So the other ones, you said the
24 State ones, so those are actually on state land.

25 MR. BRAMER: No. It was the State of Idaho

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1 came into that hearing, and for some reason the court
2 joined the State of Idaho's objections in basin 45 into
3 the same proceedings as Mr. Bedke's objections to the
4 Forest Service and the BLM. At the end, during that
5 hearing one of the first things that came out is 97 of
6 the claim numbers on attachment A to the court's
7 number -- or court order represented objections by the
8 State of Idaho to the BLM that were irrelevant to the
9 proceedings involving the Bedkes, the Poultons, the
10 other parties to the proceeding that day.

11 Okay. So those, I don't believe -- and Mr. Bedke
12 and Mr. Poulton can correct me here. I don't believe
13 they're intending to object to water sources off of the
14 allotment where they don't have cattle. If that is
15 their intention, that's the statement on the record;
16 and I want to make sure that people understand that
17 list was taken from the court and is far broader than
18 just the allotment they're using their cattle on.

19 THE COURT: Okay. I appreciate it,
20 Mr. Bramer.

21 Mr. Poulton, do you agree with that -- that we
22 need to work on these lists a little bit better here so
23 we can define which are the claims on your allotments
24 that you use only?

25 And I don't mean to -- that may sound like a

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1 trick question. I'm not trying to trick you here. I'm
2 just trying to nail these numbers down.

3 M. POULTON: Yeah. Yes. I think we ought
4 to do that, yeah.

5 THE COURT: How long do you think it will
6 take for you to come up with a firm list of the water
7 rights that are on your allotments only. When I say
8 "yours," I mean the allotments that you and your
9 father have with Forest Service or BLM.

10 M. POULTON: I don't know. 10 days?

11 THE COURT: Okay. Do you have anything
12 further, Mr. Poulton?

13 M. POULTON: Not at this time, I don't
14 think.

15 THE COURT: Does your father want to say
16 anything here?

17 G. POULTON: I'm Gary R. Poulton. And I
18 think all of my objections have pretty well been
19 discussed, so I won't take any more time of the
20 court's. Thank you.

21 THE COURT: Mr. Poulton, if you're a
22 lawyer, you wouldn't make much money talking like
23 that. You need to straighten this out a little bit
24 more.

25 G. POULTON: I've been down that road

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1 before.

2 THE COURT: I appreciate your brevity.
3 Well, let's back up just for a minute to Mr. Bedke.

4 Do you agree that we need to refine your list as
5 well to exclude non-allotment claim numbers?

6 JARED BEDKE: In poring over these,
7 Your Honor — Jared Bedke again. In poring over these
8 196 numbers, I found that most of them were ones that I
9 did want to object to. I can't say all of them.

10 Because what I did is I compared the master list to the
11 ones that I wanted to object to, rather than the ones I
12 wanted to object to to the master list. I can do that
13 quickly and get back to you on those, I suppose.

14 THE COURT: Well, if you or Mr. Poulton
15 both could do the same thing to refine your lists,
16 because there's no sense either you or the
17 United States or anyone else arguing about these if we
18 don't have to. In other words, if the water right is
19 off of the allotments that you have with the
20 Forest Service or the BLM, there's no sense arguing
21 about it, I don't think.

22 Mr. Bedke.

23 BRUCE BEDKE: Your Honor, this is Bruce Bedke
24 here now. We have entered into a joint grazing
25 agreement with the BLM and the Forest. Now, I don't

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1 know how I can explain this other than to just get
2 started on it, I guess.

3 I have what's called a private allotment that I
4 have interjected into the grazing system. Now, it's my
5 understanding here that if I don't file on a water
6 right, for example, that's on the Poulton allotment in
7 another area that if somebody objected to my cattle
8 watering at that facility, there is a possibility that
9 I could be denied that water for those cattle when they
10 were in another area. So that was one of the reasons
11 why we filed on all of the water so that I could at
12 least insure myself or secure some semblance of a water
13 right.

14 Now, the State of Idaho in their statutes have
15 assured me that I do have certain in-stream water uses
16 here. And it also states that it's not necessary for
17 me to file a claim. I may do so if I wish to, but it's
18 not necessary. But in order for security to go forward
19 on this, we were advised that we should make these
20 claims.

21 And that's one of the reasons why some of these
22 claims would overlap maybe with Poultons or would
23 overlap with some of the other units, for example.
24 Because we're claiming this water under a joint grazing
25 agreement

1 Now, a lot of my claims here, Jared and my claims
2 here, are indeed in a different allotment; and perhaps
3 we can sort that out at a later date. We can at least
4 define what Poultons and I use as opposed to what I use
5 with someone else, for example.

6 THE COURT: Well, Mr. Bedke, my
7 understanding was that you're filing a late objection
8 to Forest Service-BLM claims because you are claiming
9 that same water right.

10 BRUCE BEDKE: That's right.

11 THE COURT: But now you're saying you may
12 claim water rights beyond your allotments in someone
13 else's allotments?

14 BRUCE BEDKE: No, no, I'm not claiming that
15 at all. But I am claiming BLM rights and Forest rights
16 that were filed in my adjudicated allotments, yes.

17 JARED BEDKE: Just what you said, Your Honor,
18 yes.

19 THE COURT: Okay. Anything further from
20 the Poultons or the Bedkes? Nothing further.

21 Mr. Brown.

22 MARTI BEDKE: May I say something? I am
23 Marti Bedke with the Bruce and Jared Bedke. I think a
24 point of clarification here.

25 Bruce, Jared and I are the only ones here that

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1 are involved in two different grazing allotments. We
2 are in on the west side of Goose Creek which is BLM and
3 Forest. And that allotment is used in conjunction with
4 each other.

5 We also have BLM filings in basin 45 which is of
6 a BLM allotment that we run with other permittees in.
7 We have filed on all those in-stream water rights.

8 So our filings will extend to many more than what
9 we are here with Gary and Mike Poulton, Scott Bedke and
10 Carl Bedke. Because we also run in the allotment in
11 basin 45 which is only BLM; and the other permittees
12 are Matthews Brothers, R. O. Jones and Donald Bedke. I
13 felt like this was a point of clarification that needed
14 to be said at this time.

15 THE COURT: Well, Miss Bedke, where you
16 share the allotment with others, are your names
17 appearing on the document as an allottees? Permittees,
18 I should say.

19 MARTI BEDKE: We are all individual
20 permittees that run cattle in the grazing allotment.

21 THE COURT: So that the allotment has
22 multiple permittees and you have a right to be there,
23 in other words.

24 MARTI BEDKE: Yes, yes. So we are in two
25 different allotments with two different groups of

1 permittees. One, we run with these folks on the west
2 side of Goose Creek. The other allotment is with
3 different folks who are not here today on the east side
4 of Goose Creek.

5 THE COURT: Okay. The reason I was
6 bringing up that --

7 MARTI BEDKE: So does that help you?

8 THE COURT: Yes. What I wanted to make
9 sure was that you weren't claiming water rights on
10 allotments that you don't have a right to be there.

11 MARTI BEDKE: I understood that. That's why
12 I wanted to make the point of clarification.

13 THE COURT: I appreciate it. Thank you.

14 MARTI BEDKE: Okay. Thank you.

15 THE COURT: Now, Mr. Brown, do you want to
16 speak for the United States' position or --

17 MR. BROWN: Just briefly, Your Honor.
18 First of all, I don't find any evidence that
19 Jared Bedke or Michael Poulton are claimants in the
20 SRBA. I was informed by IDWR that they couldn't find
21 any record of them being claimants. And it's my
22 understanding that they need to be claimants in order
23 to file objections.

24 THE COURT: You're saying that was
25 Jared Bedke --

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1 MR. BROWN: And Michael Poulton.

2 THE COURT: Just those two?

3 MR. BROWN: Yes. I understand that
4 Bruce Bedke and Gary Russell Poulton are claimants in
5 the SRBA. Therefore they can file objections.

6 Second, I think all of the late objections are
7 time barred, Your Honor. I believe that there's a
8 statute of limitation contained in the statute.

9 The statute itself says that any claimant who
10 desires to object to a water right shall file an
11 objection with the district court within the time
12 specified and notice of filing of the director's
13 report. "Shall file" means exactly that. It doesn't
14 say may file. It doesn't say -- it doesn't give any
15 discretion for the court to consider a late filing
16 unless there's a timely motion for enlargement of
17 time.

18 Or a potential objector could show equitable
19 tolling. That means they didn't get notice.

20 But here it's clear that both of the claimants
21 who have filed late objections -- both of the proper
22 claimants who have filed motions to file late
23 objections did get notice that there was a publication
24 of a director's report. And they also knew where to go
25 to look at the director's report.

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1 So I don't see any equitable tolling of that
2 statute of limitation. So nine months and four days
3 later they come in and file a motion for leave from
4 this court to file a late objection. It's simply not
5 proper. It's time barred. And it should be denied on
6 that basis.

7 Second, I think there's only one way now that a
8 potential objector could file a motion for leave to
9 file a late objection. And that's under IRCP 60(b).

10 I believe Judge Hurlbutt back in 1995 said that
11 this court established IRCP 55(c) and 60(b) as the test
12 in determining whether to allow a party to file late
13 objections or responses who had not done so by
14 August 18th, 1995. And then he goes on to say that
15 IRCP 55(c) and 60(b) does not govern late objections or
16 responses filed after August 18th, 1995.

17 IRCP 55(c) concerns default judgments. Here, the
18 parties have defaulted to nothing. This is an in rem
19 proceeding. It's a recommendation by an administrative
20 organization of the State of Idaho.

21 By filing an objection, what one does is file a
22 petition for judicial review of a decision by an
23 administrative agency. If they don't file that within
24 a certain period of time, it's time barred. So that is
25 the initiation of a case or controversy when someone

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1 files an objection.

2 There's only one way to get relief from that
3 proceeding, and that is through IRCP 60(b). IRCP 60(b)
4 says you have to file a motion for relief from the
5 proceeding not more than six months after the judgment,
6 order or proceeding was entered or taken.

7 Well, on January 3rd six months expired. On
8 April 7th motions to file late objections were filed.
9 They're untimely, and the motion should be denied. And
10 that requirement is mandatory.

11 And if you'll look at GORDON v. GORDON at
12 118 Idaho 804, you'll see that the Idaho Supreme Court
13 says that that's mandatory. If you don't file your
14 motion in a timely manner, no relief. So on that basis
15 alone, all of the motions to file late objections in
16 this proceeding have to be denied.

17 Third, if this court decides to allow the parties
18 to file a late motion, then it has to be considered
19 under the criteria set forth in rule 60(b). In other
20 words, the movants have to allege facts in their motion
21 that show a meritorious position that goes beyond the
22 mere notice requirements that would have been
23 sufficient if it were pleaded in a timely manner.

24 That's lacking in their objections. It's lacking
25 in their motions.

1 Second, they have to provide a sufficient reason
2 for this court to allow a late filing of objections.
3 What are those sufficient reasons? Mistake,
4 inadvertence, surprise, or excusable neglect.
5 They haven't pleaded nor have they proved any of
6 that. Nor can they prove it. We haven't seen any
7 affidavits showing any excusable neglect, inadvertence
8 or anything else. All I've heard today is hearsay; and
9 the court is not allowed to consider hearsay as
10 evidence.

11 Merely seeking relief from the time constraints
12 that are contained in the statutes and rules of civil
13 procedure does not constitute excusable neglect. Nor
14 is discovery of new legal issues, nor is a mistake of
15 law a sufficient ground. So they have no reason for
16 this court to grant them the relief they request. So
17 on that basis, the motion should be denied.

18 Last, Bruce Bedke filed motions to file late
19 objections on three cases that have already gone to
20 partial decree. So if the court considers the motions
21 for all of the other subcases, on a partial decree you
22 have to go to 60(b).

23 And as I previously said, there's no grounds to
24 set aside a partial decree. And that argument is
25 contained in my memorandum in opposition.

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1 Further, he made objections for four claims where
2 I believe they were BLM, the BLM objections. And there
3 were already Standard Forms 5 filed with this court
4 resolving those objections. At that point the
5 proceeding was at an end.

6 So should the court allow the proceeding to take
7 a back step so someone else can make an objection to a
8 case that's already been resolved? The answer, of
9 course, is no, not unless they bring a proper motion
10 under rule 60(b). It's untimely, and there aren't
11 sufficient grounds to do that.

12 Unless the court has any questions, I don't think
13 I have anything further.

14 THE COURT: Mr. Bramer.

15 MR. BRAMER: Thank you, Your Honor.
16 Your Honor, I just will keep my remarks brief. Most
17 people are wondering if an attorney can undertake such
18 an activity.

19 Your Honor, let's talk about what we have before
20 us and what we don't have before us. We do not have an
21 allegation that the persons filing the late objection
22 did not receive a copy — or the notice of the
23 director's report that was sent out on March 2nd,
24 1998.

25 We do not have an allegation that they failed to

1 read that director's report which is contained as
2 Exhibit 1 to our filing which provides under
3 instruction for taking a water right claim to court,
4 what do I — and I quote, "What do I do if I disagree
5 with a recommendation or a federal water right claim?
6 If you disagree with any element of the recommendation
7 for your water right or anyone else's water right and
8 want to be heard in court, file an objection with the
9 SRBA court. Your objection must be received by the
10 SRBA court on or before July 3rd, 1998."

11 We do not have anyone suggesting they did not
12 receive this information. We do not have anyone
13 suggesting why they failed to comply with this
14 procedure. We do not in any of the pleadings here have
15 any reason stated why objections were not filed.

16 If you look at Mr. Poulton's motion for late
17 objection, and I quote, and this is the language
18 supporting their motion for a late objection, "We,
19 Michael A. Poulton, Gary R. Poulton, are filing the
20 motion to the SRBA to file late objections in the
21 above-listed subcases." Signed. There is no reason
22 given for their failure to comply with notice which no
23 one is contending they did not receive.

24 Mr. Bedke says our claims aren't reported so
25 we're on an unfair playing field; the federal

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1 government shouldn't go forward with this; distinguish
2 between filing a claim to a water right and filing an
3 objection to a water right.

4 This notice makes it very clear. If you don't
5 agree with someone else receiving a water right, you
6 are supposed to object. Yet we have no reasons given
7 for that failure to comply. Combine that with the fact
8 that one of these claimants, Mr. Bedke, undertook
9 diligently to figure out why his claims weren't
10 reporting; and when he determined they weren't
11 reported, he in fact filed an objection on July 17th,
12 1998.

13 THE COURT: Was that Jared Bedke?

14 MR. BRAMER: That was Scott Bedke. He knew
15 his claims weren't going to be reported out. He filed
16 an objection. He filed a motion for a late objection
17 which was granted. Even then no one else took any
18 steps to file objections.

19 Your Honor may realize the United States in six
20 years of this litigation has opposed few, if any,
21 motions for late claims or objections. The problem we
22 have here, Your Honor, is a total lack of any factual
23 foundation that would give this court the grounds to
24 grant these objections. It simply isn't there.

25 If you were to grant these objections,

1 essentially what you're saying is just come in and file
2 them; we don't have to give you any information. And
3 we have serious concerns that should this court do that
4 we're going to be in a situation where we're going to
5 see lots of people sitting back and waiting and
6 saying: I'll jump in if and when the time is
7 appropriate, if and when people get money for a lawyer,
8 if and when we get organized to fight these battles.

9 Not -- no, I think Jared Bedke said he was not
10 notified of the rules being changed. The rules he's
11 referring to is how you claim a de minimis stock water
12 right. Whether it's a 40-acre parcel or a 20-acre
13 parcel, it does not change. The rules on filing an
14 objection has never changed. They have been the same.
15 They have been in these notice of director's reports
16 that go out to everybody. Again, there's no allegation
17 of not knowing that.

18 I think it's important, Your Honor, that people,
19 if they miss court deadlines, need to come into the
20 court and explain why they failed to comply with those
21 court deadlines, and in this particular case why they
22 failed to file objections. Again, as Mr. Brown has
23 emphasized, excusable neglect, failure to get notice,
24 we didn't receive the director's report notice, I
25 didn't know that because I didn't see that language

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1 because I never got that notice.

2 We're not hearing any of that. We simply have
3 nothing to base these claims of a late objection on.
4 That's what the record shows, Your Honor.

5 We have real concerns that this court needs to
6 have standards to allow people to understand when and
7 how they file these. As Mr. Semanko has agreed
8 earlier, he doesn't intend to file late claims without
9 a basis for showing them, without good cause.

10 We have none of that here. We simply have
11 nothing in the record, so to speak, to support these
12 objections.

13 Your Honor, I have nothing further.

14 THE COURT: Mr. Bramer, you said the rules
15 for filing claims have changed?

16 MR. BRAMER: No, the rules -- IDWR's
17 interpretation of how you filed claims seemed to have
18 varied between 1987 and 1993 and up until 1996 actually
19 where there were differences in how they wanted people
20 to report claims.

21 I think part of the problem with these claimants
22 is they thought they could put all their claims on one
23 claim form and that would be sufficient. The
24 Forest Service in fact, when we filed in 1993, would
25 have loved to have put all of those claims on one claim

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1 form. It would have been immensely easier. The
2 department told us that was unacceptable. I'm assuming
3 their confusion relates to that particular issue.

4 But that does not go to objections. Objections
5 are separate and distinct from claims. That is why
6 there is a separate statement in here, why there are
7 separate instructions, why there is in fact a separate
8 procedure.

9 THE COURT: So the rules for filing an
10 objection have not changed.

11 MR. BRAMER: To my knowledge, Your Honor,
12 they have been the same since the adjudication
13 commenced.

14 THE COURT: Okay. Anything further?

15 MR. BRAMER: Nothing further, Your Honor.

16 THE COURT: Okay. Mr. -- oh, Mr. Semanko,
17 you had something to say here?

18 MR. SEMANKO: I'd like to --

19 THE COURT: As a party?

20 MR. SEMANKO: I'd like to respond on behalf
21 of Scott Bedke who is a party to these subcases.

22 Scott Bedke did not receive a copy of the
23 memorandum in opposition and therefore had no
24 opportunity to file a memorandum in reply to the
25 opposition, which the rules clearly contemplate under

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1 rule 6(f). I don't know that this opposition was even
2 timely filed as a matter of fact. And if it wasn't, I
3 certainly would move to have it stricken.

4 But in responding to it, which Scott certainly
5 would have if he had time to respond to it in a proper
6 manner, 42-1412(1) is not jurisdictional, that is, for
7 filing objections. Administrative Order 1 clearly
8 contemplates that late objections can be filed. I
9 believe it's rule 14 -- I'm sorry, rule 12 deals with
10 late objections. Let me make sure I've got the right
11 rule, Your Honor. Too many letters and not enough
12 numbers.

13 It's rule 10, procedure for water rights where an
14 objection has been filed. And if you flip to page 17,
15 (j), when a motion to file late objection is filed to a
16 previously unobjected to recommendation or abstract.
17 So it clearly contemplates in AO1 that there's a
18 process to deal with late objections. The argument
19 that you can't even file a late objection simply can't
20 be given much credence.

21 THE COURT: What page were you quoting
22 from, Mr. Semanko? From AO1, rule 10, page --

23 MR. SEMANKO: Page 17, rule 10(j), I believe,
24 amended 10-16-97, Administrative Order 1, which I
25 believe was the last amendment.

1 THE COURT: Okay. Thank you.

2 MR. SEMANKO: That's just on the first
3 point.

4 The second point, I have not heard before reading
5 this response, this opposition that you had to file
6 your motion to file late objection within six months of
7 the closing period for filing objections to a
8 director's report. In other words, a director's report
9 is akin to a partial decree; and therefore your relief
10 is under rule 60(b), strictly the six-month period
11 applies; and you can't file any late objections even if
12 it hasn't been decreed yet because six months have run
13 since the end of the objection period. That's, that's
14 what I take this argument to be.

15 This is not the Administrative Procedures Act.
16 This is the adjudication. And the statutes are
17 different. We have an APA in title 67; and the
18 adjudication is not included in that.

19 This is not a case where we had an opportunity to
20 have a hearing in front of the department and present
21 evidence, and that is on judicial review to the court.
22 That is not the proceeding that we're in. So to say
23 that this is a judicial review of an administrative
24 decision, I think, is not accurate. This is not an
25 Administrative Procedures Act appeal on judicial review

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1 maybe they knew that, but they didn't know they had
2 been recommended by the department. Because their
3 claims for the same water were not recommended.

4 How in the world did they know, should they have
5 known that the United States' claims had been
6 recommended? It doesn't say that in the notice. And
7 I'm not challenging the adequacy of the notice. What
8 I'm saying is there are going to be occurrences,
9 because of the bifurcation, where the notice is not
10 adequate. And this is one of those cases.

11 My water right is not in there. Another water
12 right just like mine for the same source shouldn't be
13 in there either. And if it is in there, nobody told me
14 it was. When they did tell me, when I did find out, I
15 filed an objection in a timely manner. So that's what
16 these folks have done.

17 To say that they're not entitled to relief under
18 the rules if you do apply the good-cause standard, the
19 United States may not like the meritorious defense
20 that's been alleged in the objections that are attached
21 to the motions. But there certainly are statutes,
22 there are theories that have realization in the law
23 that are recognized by this court. And to say that
24 those aren't meritorious defenses simply because
25 they're in shorthand and refer to statutes -- no

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1 under title 67 of Idaho Code.

2 THE COURT: Are you suggesting that
3 rule 60(a) applies?

4 MR. SEMANKO: No, Your Honor.

5 THE COURT: As opposed to rule 60(b)? Or
6 what does apply here?

7 MR. SEMANKO: Your Honor, the standard that
8 applies is good cause. And until the time that there's
9 a partial decree issued -- and there are other
10 equitable and legal deadlines, I think. You can't
11 file, I don't think, a late objection after a trial has
12 occurred. That's something that you can't do. You
13 can't even move to intervene after a trial has already
14 occurred. So there are some limitations.

15 But certainly where the case has not been decreed
16 yet, there's been no trial held, these people have
17 filed their objections in as timely a manner as they
18 possibly could. To say that these folks have laid back
19 and said, well, I don't know if I need to object to the
20 United States or not, I'll wait until I get an
21 attorney, or -- they didn't know. They did not know.

22 And I don't know which courtroom Mr. Bramer was
23 in today. I heard lots of reasons from these folks as
24 to why they didn't object. They didn't know that the
25 United States had -- not only that they had filed,

1 beneficial use, disallowal of a claim by the
2 department. I don't ever see anything more than no
3 beneficial use found, no lawful appropriation found.
4 Why isn't that a sufficient meritorious defense for a
5 claimant or an objector to allege in an objection?
6 No beneficial use by the United States. I made
7 the beneficial use. That certainly should be a
8 meritorious defense.

9 The issue about whether or not they've got good
10 cause under rule 60(b) also involves an inquiry into
11 whether there was a mistake, inadvertence, surprise,
12 excusable neglect, there's some other ones in the
13 statute that the response by the United States fails to
14 mention like newly discovered evidence,
15 misrepresentation or other misconduct of an adverse
16 party.

17 And I'm not saying that what the department has
18 done with bifurcation arises to the level of
19 misrepresentation; but these folks certainly were going
20 down the wrong track -- these objectors, I mean -- in
21 thinking that these would all be considered together,
22 they'd all be recommended together, they'd all be
23 resolved together; and then they find out later that
24 that's not this case; that the United States' claims
25 have gone off on their own track; and these claims are

1 to be reported later. It's simply not equitable; it's
 2 not fair to not let these folks come in.
 3 You know, it was sad enough when I got here today
 4 knowing that the United States had filed claims wanting
 5 the water that should be decreed to the private
 6 claimants; but that's a debatable proposition that the
 7 court needs to resolve, whether the water right should
 8 be decreed to the United States or to the private
 9 claimant in a truly contested claim. But what I did
 10 not know fully until a little while ago was that the
 11 United States, the full brunt of the United States in a
 12 one-inch brief would be offered up in opposition to the
 13 private claimants even having the opportunity to make
 14 the argument to the court that these rights should not
 15 be decreed to the United States. They should be
 16 decreed instead to the private claimants.

17 And it is, to me, it's a sad thing that they're
 18 here arguing with such clamor and such vigor that these
 19 folks shouldn't be able to get in. They have filed the
 20 motions. They have stated the reasons why to this
 21 court; and they certainly, in our estimation, should be
 22 allowed to be brought in.

23 One more thing I'd like to mention. There's
 24 reference in this brief to the SMITH SPRINGS decision
 25 where certain irrigation districts and canal companies

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1 were not allowed to file late objections -- or I should
 2 say late responses. That was with regard to one of the
 3 test basins. There was a statutory window that was
 4 opened up which Judge Hurlbutt said governed whether
 5 you could come in late or not.

6 We missed that. I was the attorney in that. We
 7 missed that deadline. The court said we couldn't get
 8 in, and that rule 55(c) and 60(b) don't apply to late
 9 objections. He was referring to, and I'm sure
 10 Your Honor was referring to because he wrote the
 11 initial decision, to those test basins and to that
 12 statutory window that was opened in those cases.

13 To say that no late objections or responses can
 14 be filed in the adjudication regardless of whether good
 15 cause can be demonstrated, I don't think that's how far
 16 the court was trying to reach in that SMITH SPRINGS
 17 decision. So that's certainly buried in this brief;
 18 and I wanted to at least put it in the right context --
 19 that it was in a test basin, and it was after the
 20 statutory window was opened up to allow people to file
 21 late objections and responses. And people that didn't
 22 take advantage of that, the court said we're not going
 23 to let you in. This has been going on too long in the
 24 test basins.

25 I appreciate your indulgence in letting me

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1 respond for my client.

2 THE COURT: I thought you were going to say
 3 you agree with my reasoning in SMITH SPRINGS.

4 MR. SEMANKO: Well, I'll let you know after
 5 the Supreme Court decides.

6 THE COURT: Well, Mr. Semanko, one
 7 question. Did you say that your client at least, and
 8 probably the other objectors, didn't know the U.S.'s
 9 water right claims had been recommended?

10 MR. SEMANKO: I thought that's what these
 11 folks had said today, is that they didn't know at the
 12 time of the director's report was filed, at the time
 13 the director's report was filed they didn't know that
 14 they had been recommended, not that they hadn't been
 15 claimed. If I said that, I misspoke. They knew they
 16 had been claimed. They didn't know they had been
 17 recommended.

18 THE COURT: Are you saying you didn't know
 19 that the claims as recommended were the same as your
 20 client's claims?

21 MR. SEMANKO: That's not what I'm saying,
 22 Your Honor. I'm talking about excusable neglect, about
 23 inadvertence.

24 They get the notice in the mail. It says this
 25 basin has been filed. And they say: Well, I got my

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1 domestic for my house, my ranch; where is the rest of
 2 the claims I filed. They go down to the department and
 3 the department tells them don't worry about it; yours
 4 are going to be reported later.

5 They don't have any idea what happened with the
 6 United States claims. They assumed, because they're
 7 the same water rights that are being claimed -- as
 8 Mr. Bramer says, it's the same water; two different
 9 people are filing on it -- that they were all going to
 10 be reported at the same time. Then they find out later
 11 that it was only theirs that got left behind on the
 12 same water. The United States' ones went forward. And
 13 whether anybody wants to believe that or not, that's
 14 why these people are here late -- because they found
 15 out about it late.

16 THE COURT: Well, because your client's
 17 water right claims weren't reported, they had
 18 reasonable belief that the U.S. claims had not been
 19 reported; and therefore they're excused from filing an
 20 objection?

21 MR. SEMANKO: They were led to believe that
 22 all of these were going to be considered together.
 23 Logic follows that if theirs are reported, the United
 24 States' will be reported, too. If theirs aren't
 25 reported, the United States' weren't reported either.

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1 They worried about -- they looked at whatever
2 they received the notice for -- they didn't receive the
3 notice because they filed claims that the federal
4 government also filed. They received the notice
5 because of something that had nothing to do with the
6 federal claims. It was perhaps a domestic on their
7 farm or something, or on their ranch.

8 So when they don't get notice that their rights
9 have been reported, why in the world would they think
10 the United States', for the same water, had been
11 reported? Why is it reasonable to expect someone to
12 think that's true?

13 And it's certainly excusable for them to think
14 that if theirs hadn't been reported the United States'
15 hadn't been reported either. So to say that there's no
16 argument of any of the standards in rule 60(b) being
17 met, I think, is saying a little much. There certainly
18 is reason to find some good cause under rule 60(b).

19 The other thing, I'm sorry, I wanted to clarify
20 and perhaps they want to respond, but I think the two
21 that hadn't been claimants are claimants in the
22 adjudication. And they'll probably want to address
23 that.

24 THE COURT: Well, thank you, Mr. Semanko.
25 Well, because Mr. Semanko kind of was out of

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1 sequence here, I'd allow the United States to respond
2 to that, if you'd like.

3 MR. BROWN: Well, I'd love to, Your Honor.
4 First of all, I don't believe I ever said that a
5 claimant can never file a late objection. I did say
6 that he can't file a late objection unless he shows
7 equitable tolling of the statute. An equitable tolling
8 would be something like I didn't get notice.

9 But it's clear that they did get notice. And
0 they got -- they received a copy of the notice of the
1 director's report for reporting areas 7 and 10. And
2 that's Exhibit 1, page 6 of attachment 1 to the United
3 States' memorandum in opposition.

4 And what does it say on the first page of the
5 exhibit? On page 6 it says "instructions for reviewing
6 the water rights of others." And it tells you where it
7 is and what to do. And the United States' water rights
8 were contained in those. And the parties had ample
9 opportunity to go down and have a look at the
0 director's report, look at the United States' claims,
1 and file timely objections or a motion for enlargement
2 of time to file objections.

3 There's simply no excuse for not doing that,
4 languishing on your rights and sitting back and
5 leisurely deciding to file it nine months and four days

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1 later.

2 THE COURT: So what the claimants received
3 was notice that a director's report was filed; but they
4 would then have had to go down to look at the
5 director's report at the county offices, I suppose.

6 MR. BROWN: Just like everyone else in the
7 state who is a claimant in this. If the United States
8 received that same kind of notice, we would be held to
9 that same standard. We receive that same kind of
10 notice, only we request that a copy of the director's
11 report be given to the United States so that we can
12 look.

13 In fact, I don't think this court has ever
14 granted a motion that the United States has brought for
15 leave to file late objections, ever, even though it was
16 just three days one time and maybe five days extension
17 of time in another case. I can't think of one time
18 that the United States was given that kind of
19 consideration.

20 And it should be an evenhanded administration of
21 the law. And if you allow these folks to file late
22 objections nine months and four days after it was due,
23 then that's not an evenhanded administration of the
24 law.

25 The notice itself contains the same language as

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1 the statute does. It says your objection must be
2 received by the SRBA court on or before July the 3rd,
3 1998.

4 The statute says you shall file. That's
5 mandatory language, Your Honor. If they don't follow
6 that, then it's time barred.

7 It's the same thing as all of the cases that I
8 cited. Those cases read exactly the same as the
9 statute of limitation in the SRBA's statute. And those
10 courts held that it was a statute of limitation. And
11 even if something was filed two days after that ran,
12 the parties were time barred. And it's a good deal
13 more Draconian than this court has been.

14 THE COURT: Mr. Bramer.

15 MR. BRAMER: Your Honor, the allegation --
16 Mr. Semanko says there's numerous reasons why they
17 didn't file objections. As far as I can hear today,
18 there's one reason. They didn't understand they have
19 to.

20 Now, I direct this court's attention to Exhibit 1
21 marked as attachment 1, page 7, just above the section
22 that I read earlier. "What do I do if I agree with a
23 recommendation or a federal water right claim?" And
24 let's start with the fact that Mr. Semanko provided us
25 earlier -- we knew the federal government was filing

1 claims, which made sense. It's their land. They're
2 permittees. They work with the Forest Service or the
3 BLM.

4 It says in the second full paragraph on that
5 page, and I quote, if you want to review someone else's
6 water right, you need to look at the complete
7 director's report which is available at the SRBA
8 Courthouse in Twin Falls and the locations listed on
9 the third page of this notice. It's clearly stated
10 there.

11 And, Your Honor, I would ask the court to step
12 back. We've not been in front of the court on this
13 issue before. We have been through tens of thousands
14 of water rights. We have not had this argument
15 before. And in fact Mr. Scott Bedke read this notice,
16 went in and filed his objections, complied with the
17 procedures because he was concerned that his claims had
18 not been reported out. Yet now we have another group
19 of people coming in and saying I didn't get any
20 notice.

21 I think this is as much notice as you can give;
22 and this is what we've worked on for six years. It
23 tells you what to look at and if you have any
24 questions.

25 What would I suggest is reasonable? If they were

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1 concerned their rights hadn't been reported, they
2 should have went down and looked at the director's
3 report to make sure no one else's rights were
4 reported. And they should have filed an objection.

5 They simply didn't. They're not offering any
6 reason other than I think the reason we're hearing is
7 we don't understand this paper. I'm not quite sure
8 what they don't understand; but, Your Honor, I don't
9 think that's sufficient.

10 Thank you, Your Honor.

11 THE COURT: Thank you, Mr. Bramer.

12 MR. SPENCER: Your Honor, this is
13 Nick Spencer. At this point I would like to clarify a
14 minor matter for the record.

15 THE COURT: Please do. Then we'll hear
16 back from the Poultons and the Bedkes and wrap this
17 up.

18 MR. SPENCER: All right. Thank you,
19 Your Honor.

20 In his opening argument Mr. Brown stated that
21 Mr. Jared Bedke and Mr. Michael Poulton were not
22 claimants in the SRBA.

23 It's come to my attention that Mr. Brown likely
24 received that information through a request of the
25 department and Miss Brown. At the time that Miss Brown

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1 received that request, she checked and did not find any
2 listings for Messrs. Bedke and Poulton.

3 She has subsequently done additional checking and
4 found that in fact they have filed claims for domestic
5 rights, and therefore the information that the
6 department provided to Mr. Brown was erroneous.
7 Mr. Jared Bedke and Mr. Michael Poulton are in truth
8 claimants to the SRBA.

9 THE COURT: Anything further, Mr. Spencer?

10 MR. SPENCER: That is all, Your Honor.

11 THE COURT: Thank you.

12 MR. BROWN: Your Honor, then on the record
13 I apologize for making that assertion. I was

14 misinformed, and I withdraw that portion of the brief.

15 MR. SPENCER: And, Your Honor, I apologize
16 that we provided incomplete information to Mr. Brown.

17 THE COURT: Will the United States be
18 asking for attorney fees?

19 MR. BROWN: No, Your Honor.

20 THE COURT: Well, Mr. Poulton and
21 Mr. Bedke, normally the people who file the motion
22 argue first; and then the people who oppose it speak
23 once; and then you get a chance to respond. And we're
24 at that point now. So you get your last chance to
25 address the court on your motions. So whoever wants to

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1 speak.

2 BRUCE BEDKE: I'm going to let Jared wrap
3 this up. But I had one little -- this is Bruce Bedke
4 here. Throughout Mr. Bramer's comments here he kept
5 referring to water rights. I don't know. Maybe I'm
6 kind of hard headed. But he doesn't have any water
7 rights yet, and neither do I. That's what I'm arguing
8 for here in my behalf at least.

9 In effect that IDWR changed their format is the
10 reason that we had to come back in and file for our
11 late objections. We've already reviewed that. I don't
12 know that I need to spend any more time on it.

13 One of the things that I want to say is that when
14 the SRBA was started here in the late Eighties it was
15 my understanding that we would get down to arguing or
16 debating on who belonged to the water or who the water
17 belonged to. I guess I'm a little bit confused here or
18 upset with the court because it seems like Mr. Bramer
19 and Mr. Brown don't have any intentions on giving me my
20 day in court; but they're arguing the chicanery of the
21 law here. And I'm bothered by that. I don't have that
22 expertise at my disposal; but my feelings still don't
23 go away.

24 And with that having said, I'll defer here to
25 Jared.

1 THE COURT: Jared Bedke, please.
 2 JARED BEDKE: This is Jared Bedke. As far as
 3 a meritorious position, I think we very well stated
 4 that in our objection as well as our letter. The
 5 objection itself says that there's a priority date
 6 discrepancy. We don't feel like the Forest Service or
 7 the BLM should have a priority date, you know, in the
 8 early -- in the late 1800s. I mean that's just, that's
 9 just not an issue.

10 The beneficial use. They're claiming a
 11 beneficial use should be theirs due to our stock.
 12 We're saying no. We should get the beneficial use.
 13 That's our meritorious claim. This is our water
 14 rights, not theirs.

15 Now, the reason that we didn't go and file a late
 16 objection is when we went to the IDWR last March or
 17 May, I believe it was, we were told: No, your
 18 conflicting claims will be enough to spark a conflict
 19 and show up in court. You do not have to object to
 20 theirs; they do not have to object to yours. A
 21 conflicting claim would be enough.

22 That was my understanding that I came away from
 23 the meeting with. We did not then file our late
 24 objections. As soon as we found out they were
 25 necessary, we went to the court -- or we went to the

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1 IDWR. We asked for those water right numbers, and we
 2 did file late objections to them.

3 Also, if you look at the printout of the SRBA
 4 when the director's report is issued, it is not issued
 5 on legal descriptions. It is issued on water right
 6 numbers or persons claiming. It's listed in
 7 alphabetical order or in water right number.

8 Now, just the fact that -- the water right number
 9 itself does not tell me where they are at. So I have
 10 to go to the IDWR and seek redress for that and say
 11 which water filings are on these sections. I just
 12 don't have the manpower to pore through a thousand or
 13 1500 claims to water rights and look at each one of the
 14 legal descriptions to see if it falls in my deal.

15 But when I was told I had to object, I did just
 16 that. I went to the IDWR, Doug Jones, and said:
 17 Mr. Jones, please give me all the water right filings
 18 in these sections.

19 And, you know, that was the first I had heard of
 20 it in March. And we did immediately. Once I heard
 21 this -- dad and I heard about this on Thursday. And
 22 Friday we were in the IDWR office over here in Twin.
 23 And so that -- and that is about all I have to do.

24 If there are any questions, I'll be glad to
 25 answer them.

1 THE COURT: Mr. Poulton.
 2 M. POULTON: Well, we're pretty much in the
 3 same way that Bruce and Jared did. We all put in our
 4 objections the same day.

5 But I have a question. You say there's been tens
 6 and thousands of decrees already settled already? Is
 7 that what you said earlier, Mr. Bramer?

8 MR. BRAMER: Yes. And the Forest Service
 9 has had over 3,000 partial decrees issued to it to
 10 date.

11 M. POULTON: Okay. How many of them were
 12 objected to?

13 MR. BRAMER: I can't say off the top of my
 14 head. We've resolved every objection, every objection
 15 to date. We have not received that many objections.

16 M. POULTON: Okay. Why do you think that
 17 is?

18 MR. BRAMER: Your Honor --

19 M. POULTON: I'm just curious. You don't
 20 have to answer --

21 MR. BRAMER: Why do you think we received
 22 few objections? Because in most cases -- or in all
 23 cases we sat down with the people making the objections
 24 and addressed their concerns and negotiated
 25 settlements, to address both their concerns and our

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1 concerns and were able to mutually resolve those.

2 And that's what we had hoped to do in these cases
 3 prior to being here in court in front of the judge.

4 And, again, I would invite the parties for us to start
 5 those discussions again because I think it would be
 6 useful. I think we'll be engaged in more and more of
 7 these litigations and arguments which -- until we've
 8 made a decision that we cannot agree with each other
 9 and it's impassable, what we're going to do is engage
 10 in this sort of legal practice.

11 M. POULTON: Well, that kinda doesn't really
 12 clarify things for me. I don't know. I guess my
 13 opinion is everybody else was just like us, and they
 14 didn't know any different. Forest Service went and
 15 filed on it, and that was that.

16 But I don't have anything more to say. Jared and
 17 Bruce pretty much covered everything that I have to
 18 say.

19 THE COURT: I see Mrs. Poulton's hand in
 20 the back. In you would step to the podium, please.

21 K. POULTON: I'm Kathy Poulton.

22 THE COURT: What's your relationship to
 23 the --

24 K. POULTON: I'm the wife of Mike Poulton
 25 and the mother of Michael Poulton. They are two

1 different people, by the way.

2 The reason that -- when we went in at the last
3 court hearing, I believe that was April 7th, we went in
4 and we were going to make our late objections. And I
5 think those are the ones that these attorneys have, and
6 they sent us copies. And they were upset because we
7 did not write reasons on that particular objection.

8 We were told at that court hearing by, I think we
9 talked to the lady who is sitting in the front of this
10 courtroom. We also talked to another lady that was
11 there. We talked to you, Judge. And we were led to
12 believe that we did not have to put significant reasons
13 on that objection at that time. That objection would
14 lead us to a court hearing where we could present our
15 objections at that new court date.

16 So that is why we did not put significant reasons
17 on that objection. And I specifically asked the ladies
18 that were helping me: Do I need the put more reasons
19 down here other than this statement?

20 And they said: We think this is all you need to
21 get us to a new court hearing. And that's the reason
22 there were no objections put down.

23 Now, we were trusting the court to give us the
24 proper instructions. And it appears that our trust has
25 been misled or misused or what have you. Because these

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1 two attorneys over here sat here and turned it back in
2 our face.

3 So I just wanted to clarify that for the court.

4 THE COURT: Okay. Thank you. Anything
5 further from the Poultons or the Bedkes?

6 (NO RESPONSE)

7 THE COURT: What I'll do is take the matter
8 under advisement and issue a ruling in due course.

9 But in the meantime what I'd like to do --
10 Mr. Semanko, you mentioned that you just saw the United
11 States' memo -- I'd like to give you an additional
12 10 days to file any written memo that you or -- and the
13 same thing goes for the Bedkes and the Poultons, too.
14 If you want to submit anything in writing in response
15 to that, I suppose I can leave that open. But mainly
16 because you didn't get a copy of that, Mr. Semanko,
17 I'll leave that open for 10 days.

18 I'd also like to leave an additional 10 days for
19 the parties to better define their water right numbers,
20 the specific list of numbers that you want to file
21 these objections to. I know the first list was kind of
22 a rough out-of-the-gate reaction. But there might be
23 some you can eliminate from that; and it will make your
24 cases and the United States' position a little clearer
25 if we can better defined that. Because as I mentioned

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1 before, we don't want to argue about subcases we don't
2 need to waste time on here. So if you can get that to
3 me within 10 days, I would appreciate it.--

4 And all you have to do is simply call it
5 amendment, maybe you can call it an amendment
6 attachment to your motion to better define -- whatever
7 you want to call it, but just so you get it to me.
8 Make sure you send a copy of that to all of the other
9 parties including Mr. Semanko, and make sure you send a
10 copy of that to the attorneys for the United States,
11 and then finally a copy to Mr. Spencer for IDWR.

12 JARED BEDKE: May I get Mr. Spencer's
13 address? Or is it on the back of the objection forms?
14 Would it go to the same --

15 THE COURT: Yes, it should be the same,
16 IDWR address.

17 MR. SEMANKO: Your Honor, can I ask? If you
18 think it's necessary, I certainly would like to have an
19 opportunity, and again only if you think it's
20 necessary, to respond to the conflicting-not
21 conflicting report, the BLM and the Forest Service
22 report to the extent we think maybe we did claim for
23 something that she didn't, that Roxanne thinks we
24 didn't claim for.

25 Is that helpful to you if not now, maybe later

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1 depending on the ruling of the first motion? Because I
2 think from talking during the break and things that a
3 lot of what we were talking about before may not
4 necessarily be a late claim or even an amended claim,
5 but we just disagree on whether it's conflicting or
6 not. And so -- because of the difference on legal
7 descriptions and things like that. So if at some point
8 it's helpful for us to give our response to that list
9 or a view on that list, you know, we'd certainly like
10 to have an opportunity to do that.

11 THE COURT: And that would be the, in
12 effect, response to Miss Brown's partial summary of
13 claims?

14 MR. SEMANKO: For the Forest Service and the
15 BLM. If you think that's helpful. And it doesn't
16 necessarily need to be now. If because of your ruling
17 that would make sense to have that, I'm saying. I
18 don't want to waste resources I don't need to. But if
19 that's helpful at some point, I think it needs to
20 be -- the attachments need to be clarified. Those
21 lists probably will need a clarification, too.

22 THE COURT: If you can, I'd certainly
23 appreciate that.

24 MR. BRAMER: Your Honor, we'd be willing to
25 work jointly with Mr. Semanko on that process. Because

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1 I think in some sidebar conversations with
2 Mr. Scott Bedke there was some issues he raised that he
3 had some problems with; and we found at least one thing
4 that we had some problems with. And I think jointly
5 working on that, we can try to get IDWR a list, try to
6 reach agreement with them on exactly where their claims
7 are. To the extent we can, that will at least narrow
8 the focus of the court and it knows what they're
9 dealing with.

10 THE COURT: Certainly. I appreciate that
11 offer. Anything you can do to help me get a better
12 record to Judge Wood both to be fair to Judge Wood and
13 to give him something to start with, but also to be
14 fair to yourselves and to the United States. Because
15 the last thing you want me to do is babble on about the
16 wrong subcases or to miss the issues altogether. I'm
17 going to need a little help getting a decision out on
18 this one; so anything you can do to help, I'd certainly
19 appreciate it. The better record you give me, the
20 better decision I'll get and the better recommendation
21 I'll give to Judge Wood.

22 Well, counsel, is there anything further we need
23 to consider? And when I say "counsel," I mean this
24 Bedkes and the Poultons too.

25 JARED BEDKE: Just one more thing. When --

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1 THE COURT: Your name, please.

2 JARED BEDKE: When the department told us how
3 to file in 1989, they took us by the hand -- this is
4 Jared Bedke, by the way, yes. They took us by the hand
5 and they told us how to file according to the
6 instructions at the time. As far as we knew, there was
7 never any difference in the way everybody else had to
8 file. We found out last spring that the process was
9 bifurcated; and part of that, now all filings came
10 under a de minimis way of filing rather than over the
11 entire reach.

12 I just wanted to further clarify that to the
13 court.

14 THE COURT: Sure. And the fact you brought
15 up that point reminded me of something I probably need
16 to say on the record. I don't for a minute think that
17 this bifurcated system of reporting de minimis,
18 de maximus, whatever we want to call it, however that
19 decision was made, was intended to deprive anyone of a
20 water right. I don't think for a minute that there was
21 any nefarious purpose here. The fact that the
22 United States filed in a different format than what the
23 private claimants, I don't think there was anything
24 intentional there.

25 A lot of people argued early on that we shouldn't

1 have this split water right reporting where you have a
2 smaller water right reported separately from an
3 irrigation and other water rights. Well, those
4 arguments have already been made; and the decision was
5 made. Now we're just trying to live with it.

6 But the important thing that Judge Hurlbutt and
7 Judge Wood at this time are always saying to us is
8 we've got to do the right thing; we've got to report
9 these water rights fairly; and we've got to do it in
10 the way you should expect the court to report them,
11 fair and just. And that's what we intend to do.

12 JARED BEDKE: I don't mean to assert the fact
13 that there's any underhandedness going on. All I'm
14 saying is that through this, as they admit, certain
15 problems will arise; and this is a major problem to us
16 that has arisen.

17 THE COURT: My guess is no one saw this
18 problem coming. It's kind of like one of those freight
19 trains in the middle of the night that hits you when
20 you're walking down the trestles. It gets you from
21 behind.

22 BRUCE BEDKE: Your Honor, when we filed on
23 these, I think the IDWR did a lot of this grouping
24 together that they had referred to earlier. I was
25 very -- I can show you my receipt. I made something

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1 like 60 different filings.

2 So my filings were not grouped together by any
3 means. It cost me a little over \$600 for my filings.
4 And so they were all separated out. If there was any
5 collecting done, it was done with the IDWR, you see.

6 So I want to make that clear.

7 THE COURT: Sure. And I think you heard
8 from Mr. Tuthill, and you may have heard me say this,
9 too, that what -- the reason IDWR chose to bifurcate
10 these was to do it in a timely manner. Because the
11 other choice was to wait until all of the irrigation
12 claims were done, then reporting them; and that would
13 have delayed everything until 2000 instead of the
14 little progress we've been able to make in basin 45 so
15 far.

16 So several of us may regret that decision, but
17 others of us think it was a good decision. And it
18 helped us get through some of these subcases.

19 Well, counsel, enough for preaching. Is there
20 anything further in the court?

21 MR. BRAMER: We have nothing further,
22 Your Honor.

23 MR. SEMANKO: No. Thank you, Your Honor.

24 THE COURT: Okay. Nothing further here.

25 Mr. Spencer, anything at your end?

1 MR. SPENCER: No, nothing further here,
2 Your Honor.
3 THE COURT: Thank you for joining us. I
4 appreciate it. And thank you, everybody.
5 (PROCEEDINGS ADJOURNED)
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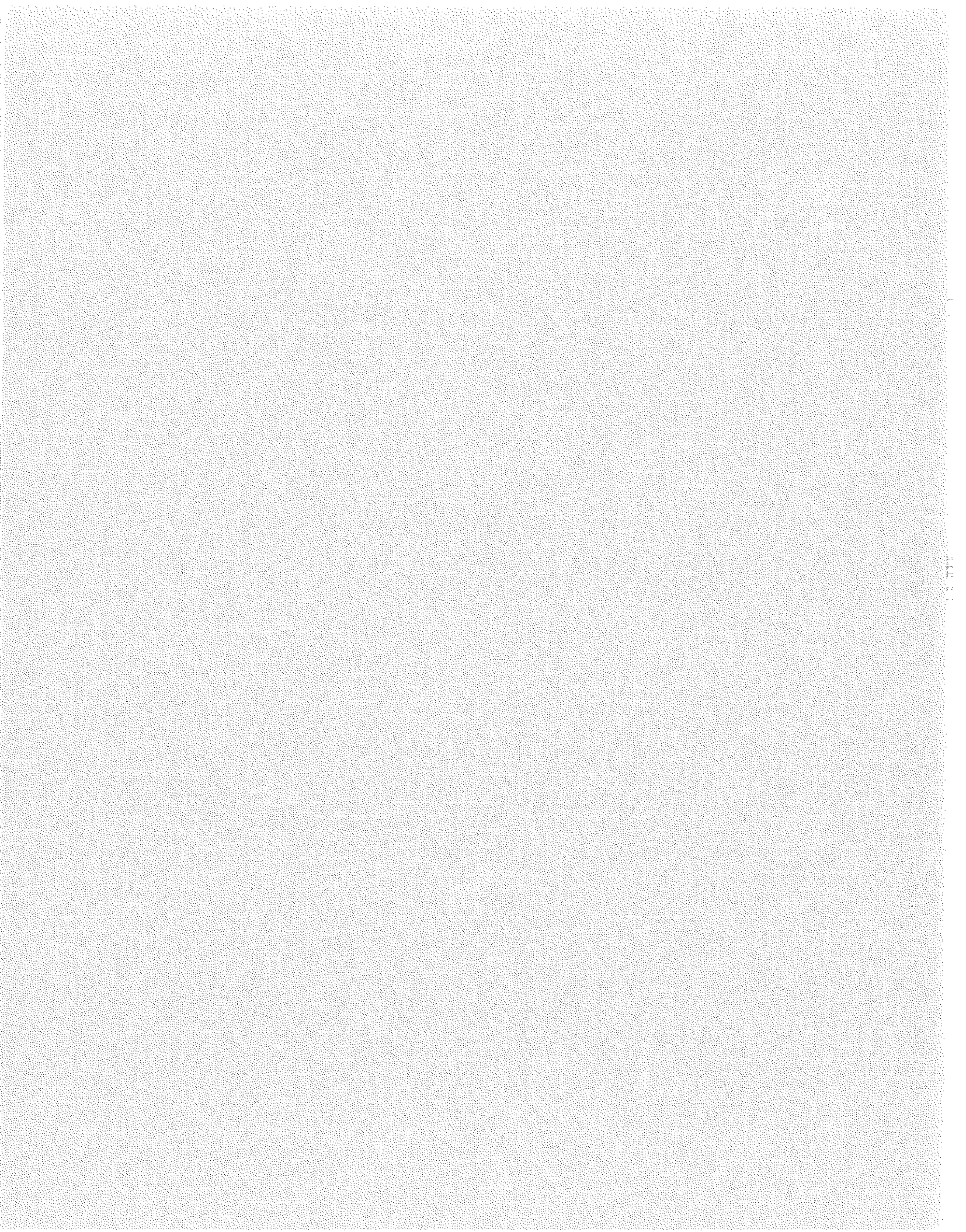
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1 TRANSCRIBER'S CERTIFICATE

2 STATE OF IDAHO)
3)
4 County of Twin Falls)
5
6
7 I, DUANE J. SCHNEBERGER, duly appointed,
8 qualified and acting official reporter of the Fifth
9 Judicial District of the State of Idaho, DO HEREBY
10 CERTIFY that the foregoing constitutes a complete
11 transcription of the requested portion of the
12 proceedings in the foregoing matter from electronic
13 recording tapes, to the best of my ability, said
14 transcript consisting of pages 1 through 139,
15 inclusive.
16 IN WITNESS WHEREOF, I have hereunto set my hand
17 this 10th day of June, 1999.
18
19

20 DUANE J. SCHNEBERGER, Idaho CSR No. 5, Twin Falls, ID
21
22
23
24
25

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

3 *****

4 In Re SRBA) REPORTER'S TRANSCRIPT

5 Case No. 39576) Subcase No. 47-16433,

6) et al

7
8 *****

11 D-a-t-e: Thursday, July 1, 1999

13 T-i-m-e: 3:45 P.M.

15 P-l-a-c-e: SRBA Courthouse, Twin Falls, Idaho

17 B-e-f-o-r-e: TERRENCE DOLAN, Special Master

19 H-e-a-r-i-n-g: Motions to File Late Objections

22 *****

Page 1

1 who I'm representing today. That may help. But I'd
2 like to go first.

3 I've entered notices of appearance -- and notices
4 of appearance are great things. I try to file them so
5 people can keep track of who I'm representing. But I
6 did just file these, so let me let everybody know.

7 I filed a notice of appearance today for
8 Gary Poulton in all the Basin 47 subcases. I've not
9 filed a notice of appearance in the Basin 45 subcases
10 for him as of yet.

11 I've filed for Michael Poulton in the Basin 47
12 subcases that he's filed motions to file late
13 objections in. He, Michael Poulton, is not a party to
14 the private claim that we talked about this morning --
15 or earlier today. Gary Poulton is, but Mike Poulton is
16 not.

17 I've filed a notice of appearance for
18 Carl Bedke. As I informed the court of earlier, he is
19 not someone who has filed a motion to file a late
20 objection here. He's only a claimant on the five water
21 rights that have been the one split water right that we
22 talked about earlier today.

23 So I'll be representing the motions on the
24 motions to file late objections filed by Gary Poulton
25 and Mike Poulton. I've entered a notice of appearance

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1 COURTROOM OF THE DISTRICT COURT, SNAKE RIVER
2 BASIN ADJUDICATION COURTHOUSE, 253 Third
3 Avenue North, Twin Falls, Idaho, Thursday,
4 July 1, 1999, 3:45 P.M.

5 *****

6 THE COURT: Good afternoon, counsel. We're
7 now back on the record. This is the date and time set
8 for motions to file late objections filed by
9 Scott Bedke, Michael and Gary Poulton, and Jared and
10 Bruce Bedke.

11 Representing the late objectors is Norm Semanko
12 who is in court. The claimant, the United States
13 Forest Service, represented by Randy Bramer.
14 Representing IDWR is Nick Spencer.

15 And do we have Mr. Ampe representing the State of
16 Idaho? I think we show the State of Idaho being a
17 claimant on one of these or some kind of a party. Did
18 Mr. Ampe get away?

19 MR. SPENCER: I've not seen him this
20 afternoon, Your Honor.

21 THE COURT: I guess we can let him know
22 later on what we did with his water right.

23 Well, Mr. Semanko, do you have any preference on
24 how we proceed?

25 MR. SEMANKO: I would -- let me let you know

1 for Scott Bedke in the Basin 45 subcases, and argued
2 for him, and filed a brief for him in that. He has
3 indicated to me that he would like to make arguments on
4 the Basin 47 motion to file late objections, so he's
5 here. And then Jared Bedke and Bruce Bedke intend to
6 argue their motions.

7 So there's five motions. I'm arguing two.
8 They're arguing the other three individually, if that's
9 right. I think that's right.

10 THE COURT: Well, I understood there would
11 be three separate motions by Scott Bedke. The next one
12 by Michael and Gary Poulton, and then a third by Jared
13 and Bruce Bedke?

14 MR. SEMANKO: I'm looking at the State's --
15 or I'm sorry, the United States' memorandum in
16 opposition. It has attached all of these as exhibits.
17 And I see a motion to file late objections in
18 15 subcases filed by Scott Bedke. So that's the first
19 one.

20 And then you've got one asking to file objections
21 to 26 by Gary Poulton; a separate one to file 26 filed
22 by Michael Poulton, which looks identical; another one
23 by Bruce Bedke for 26; and another one by Jared Bedke
24 for 26; and then Scott's amended motion is in here
25 somewhere to add the other 11 so that he's objecting to

1 26 -- or seeking to object to 26 as well.

2 So I've got five separate people filing
3 objections according to the record. And I'm
4 representing two of them today. And the other three
5 are representing themselves individually, if that helps
6 clarify.

7 MR. BRAMER: If I may, Your Honor, that's
8 footnote 2, page 2; and our memorandum in opposition
9 outlines those and gives exhibit numbers for each of
10 those respective motions.

11 THE COURT: I'll try to keep a scorecard of
12 where we go through on these. Do you want to present
13 the arguments in one, go through all of them, and
14 then -- or do you have another preferred order?

15 MR. SEMANKO: We'll argue all 26 collectively
16 for the Poultons, all 26 that they've sought to file
17 late objections in. For Mike Poulton and Gary Poulton,
18 the argument will be basically the same. And then
19 Jared and Bruce will make the argument on their 26.
20 And Scott will make the objection on his 26. The 26
21 are all the same numbers. So there's only 26 subcases
22 that we're seeking to create here by filing the late
23 objections.

24 THE COURT: Let's see. In our list that we
25 prepared here, we had 15 subcases where motion to file

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1 late objection is filed by Scott Bedke.

2 MR. SEMANKO: That's correct. And then he
3 filed an amended claim -- or amended motion to file
4 late objections that added another 11 and had a list
5 that gave all 26. And that list of 26 should be
6 identical for the other four individuals.

7 Is that not correct? Is that your understanding,
8 Mr. Bramer?

9 MR. BRAMER: That is my understanding,
10 Your Honor. And those are contained respectively --
11 the June 4th Scott Bedke motion is Exhibit K to the
12 brief. And April 28th, 1999 is Exhibit B to our brief
13 in support -- our memorandum in opposition, excuse me.

14 THE COURT: Do you have a preference on who
15 goes first now? You said you wanted to go first?

16 MR. SEMANKO: I'll go ahead and go first, if
17 that's all right.

18 THE COURT: Okay. Mr. Bramer, do you want
19 to save your response to all of these at one time; or
20 do you want to do them individually?

21 MR. BRAMER: Your Honor, I think at this
22 point we would reserve the right to address them
23 individually. I think, however, we'll probably just
24 deal with them once all of the movants have made their

1 THE COURT: Okay.

2 MR. SEMANKO: Your Honor, Norm Semanko
3 appearing for Gary Poulton and Michael Poulton in the
4 26 subcases that are listed with the notice for this
5 hearing.

6 If I could take up a preliminary matter first
7 with regard to the memorandum in opposition to motions
8 to file late objections that was filed by the
9 United States, I did receive that two days ago,
10 June 29th, a little after 3 o'clock by hand carrier,
11 which is about two days ago. And I would request, and
12 I hope the United States would concur in allowing me to
13 file a reply brief by next Friday, July 9th.

14 I've not had sufficient time to review that, let
15 alone write a reply brief. I think this is the same
16 issue we had the last time where we didn't have
17 sufficient time to review the memorandum in
18 opposition. I'd like to take that issue up first and
19 see if we can allow for a reply brief.

20 The other thing I'd like to do in that reply
21 brief is set forth the confusion that was discussed
22 during the previous hearing about who has filed what
23 objections in Basin 45. And I can clarify that in a
24 footnote or in an attachment as well.

25 THE COURT: Mr. Bramer, do you oppose

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1 Mr. Semanko having until -- see, a week from this
2 Friday?

3 MR. SEMANKO: Yes, Your Honor.

4 MR. BRAMER: No, Your Honor, we don't
5 oppose. We do apologize for the late filing on that
6 brief due to additional objections being filed by
7 Jared Bedke and Bruce Bedke and the Poultons on
8 June 7th. We would have no objection to that.

9 THE COURT: So, Mr. Semanko, your memo will
10 be due -- what date will that be?

11 MR. SEMANKO: July 9th.

12 THE COURT: July 9th. Good. Go ahead.

13 MR. SEMANKO: Your Honor, there certainly is
14 a right to file a motion to file late objection. The
15 United States itself during the last hearing for
16 Western Stock Growers noted that section 10(j)
17 prescribes the method in AO1 for dealing with motions
18 to file late objection.

19 Section 10(j)(1) says they shall be reported in
20 the docket sheet; and then a hearing shall be scheduled
21 by the special master in part 2. So I think we're
22 beyond that question of whether they can be filed. If
23 that is still an issue, it's something we address in
24 our Basin 45 brief for Scott Bedke and will address

1 it's raised again by the United States.

2 That leads me to — and if it is argued here,
3 I'll respond to it in a short reply to the United
4 States' argument. But I think the real issue here is
5 whether the standard for filing late objections has
6 been met.

7 The standard is twofold under rule 55(c) and
8 rule 60(b). And that is, number one, whether there's
9 good cause for filing the late objection; and then,
10 secondly, whether there's a meritorious defense.

11 On the second issue of meritorious defense, I've
12 not detected an argument of the United States in either
13 the Basin 45 or 47 brief saying that there is no
14 meritorious defense. The U.S. doesn't appear to have
15 challenged the motions on this basis.

16 Moreover, there is a meritorious defense. It's
17 set forth on the face of the proposed objections to be
18 filed. And that is that the U.S. is not the one that
19 put the water to beneficial use. The private
20 claimants, the grazers, have done that. They own and
21 run the cattle. And they have appropriated the water
22 supply, not the United States.

23 On Scott Bedke's objection, it says, quote, our
24 cattle put this water to beneficial use; and the water
25 should be decreed to the owners of the livestock.

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1 whether we should be able to object to those. That
2 won't be an issue for the United States' claims. For
3 our claims which have one out of twelve been reported,
4 that will be an issue, and one that we'll be prepared
5 to address.

6 I have read the decision. And I know that the
7 United States is going to rely heavily on that from
8 talking to them. But it wasn't fatal even in that case
9 to their getting a water right. They ended up with a
10 1985 priority. That's only one element of the water
11 right. The objections by the United States to 14293B,
12 C, D, and E say that we shouldn't have a water right at
13 all.

14 So it's not fatal to showing that we have a water
15 right. It only goes to the priority-date issue.

16 You first have to get over the issue of can we
17 have a water right out on the federal land in a grazing
18 allotment. And then, of course, we're going to have to
19 deal with, if there is a water right, what are the
20 elements. And certainly priority date was the most
21 problematic one for Joyce in that particular case.

22 THE COURT: But you're saying for now
23 you're stating a meritorious defense that you have a
24 water right out there; and priority date doesn't matter
25 at this point.

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1 Gary and Michael Poulton's objection say the
2 same. Bruce Bedke's objection says, quote, my cattle
3 put the water to beneficial use. The water should be
4 decreed to the owner of the livestock. Jared Bedke's
5 objection is substantially the same, a little bit
6 different words.

7 So clearly we've set forth what we think is a
8 meritorious defense. If we're correct about our
9 defense, we would prevail and obtain a water right for
10 our clients under their claims for the ones that have
11 been reported; and for the ones that haven't been
12 reported, when they are reported. And we would be able
13 to defeat the United States' claims that have been
14 reported for the same water.

15 THE COURT: Mr. Semanko, when you say the
16 cattle put the water to beneficial use, I know in the
17 Joyce Livestock business down in Owyhee County there
18 was the issue about whether the cattlemen could show a
19 chain of title; and there was a problem there.

20 Is that going to be an issue here? I assume
21 you're claiming an early priority date, 18 something.

22 MR. SEMANKO: 1872. We're mixing apples and
23 oranges in demonstrating why these need to be granted
24 and why they need to be considered together. We're
25 here today to talk about the United States' claims, and

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1 MR. SEMANKO: Priority date matters; and
2 we'll have to address that issue. But it doesn't
3 mean — even if we lost, even if we had the worst case
4 scenario as what happened in Joyce and we could only
5 demonstrate the person that currently is claiming and
6 using the water, or the entity claiming and using the
7 water has a priority date as of when they started using
8 it, we'd still have a water right.

9 So to us, the meritorious defense has to be that
10 we indeed have a water right and, more importantly for
11 purposes of this hearing, that we don't believe the
12 United States has a water right because they didn't put
13 the water to beneficial use. The meritorious defense
14 has to be as to the objection we filed in this
15 subcase.

16 So we feel like we have a meritorious position in
17 filing individual claims that the U.S. has objected to,
18 certainly in a proceeding we talked about an hour or so
19 ago. And we also feel like we have a meritorious
20 position here where we're seeking to file objections to
21 the United States' recommended claims, and demonstrate
22 that they don't have a water right.

23 THE COURT: So your claimed, your
24 objection, meritorious defense, or position has to do
25 with the weakness or a defect in the U.S.'s claim.

1 MR. SEMANKO: Well, Your Honor, the United
2 States' claim, as I understand the law, is presumed to
3 be correct. It's presumed to be correct because of the
4 prima facie evidence standard in 42-1412. And unless
5 someone comes in and shows otherwise, it will be
6 decreed with very few exceptions because of that prima
7 facie effect.

8 We feel that if we're granted the opportunity to
9 object, we can rebut the prima facie showing of the
10 director's report, burst the bubble so to speak, and
11 show that there isn't a water right there because of
12 the theories that we've set forth. That's all we're
13 saying.

14 We have a meritorious position that we would
15 espouse in the proceeding. We're not going to be
16 wasting the court's time with some frivolous defense or
17 some frivolous argument that the United States
18 shouldn't have a water right.

19 We're not arguing in this particular case that
20 the United States cannot hold a water right. We're
21 saying as to these certain beneficial-use claims
22 certainly, number one, beneficial-use claims, the water
23 right should be decreed to the private claimant under
24 their claim and not to the United States under their
25 claim. That's what we're arguing on those.

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1 For the licenses, and you can see on the face of
2 the objection there's concern about what the statutes
3 provide. And I know in basin 35 subcases, basin 72
4 subcases, basin 51 subcases the issue came out about
5 does 42-113 and 114 mean that the water right must go
6 to a private claimant all the time. And the court said
7 no. And that's right.

8 And also the federal government, to take liberty
9 with their argument, said 42-501 must mean that water
10 rights should be decreed in the name of the
11 United States. And the court said no, that doesn't
12 mean that they should always be decreed to the
13 United States.

14 Both of those mean that under certain
15 circumstances water rights can go to private
16 claimants. And in other circumstances, for licenses
17 after 1937, I believe it is, they can go to the federal
18 government.

19 But it doesn't have any bearing on the
20 beneficial-use claims because those statutes --
21 certainly 42-501 doesn't apply to beneficial-use
22 claims. It only says the United States can get
23 licensed for a water right as of that date the statute
24 was enacted.

1 court if we're allowed to come in obviously, not the
2 least of which is if the United States has been
3 licensed a water right, which is, I think, the minority
4 of the cases that we're seeking to object in, can that
5 be challenged? Can the license be attacked in the
6 adjudication?

7 That may go on a separate track. It may go on
8 the same track. But it's an issue that would have to
9 be addressed if our objection was granted.

10 The rest of them are beneficial-use claims. So
11 the issue is going to be: Was there an intent to put
12 the water to beneficial use? Was the water put to
13 beneficial use?

14 Since they're stock water claims, the in-streams
15 won't have to show a diversion under the state law.
16 The other ones would have to show a diversion. So --
17 and then the issue will be who. Who did that? Who put
18 it to beneficial use? Whose water right was it or is
19 it? Are there two water rights out there -- one for
20 the U.S. and one for the private?

21 We don't get to those issues obviously unless our
22 objections are heard. But we have a meritorious
23 position is what we're saying.

24 THE COURT: Well, for purposes of this
25 motion, you're asking me to look at the merits of the

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1 U.S.'s claim rather than whether you have a claim or
2 not to the same water.

3 MR. SEMANKO: No. No. I understand that to
4 file a late objection you need to show that your
5 objection is meritorious. Not that you would win, but
6 that you have a valid argument, you don't have a
7 frivolous argument.

8 If I came in here and said I want to set aside
9 the United States' decree or I want to file late
10 objection to the United States' recommendation because
11 the sky is blue, and that's my basis that I'm going to
12 argue to the court, that's not a meritorious defense.
13 It's not a meritorious position that I would be
14 advancing.

15 So what we're saying is that we have a
16 meritorious position that we are going to espouse to
17 the court if the objections are granted. I understand
18 that to be the purpose of having to show a meritorious
19 defense.

20 The second issue, and the one that has been
21 raised by the United States, is whether there's good
22 cause to file the late objections. Good cause under
23 rule 55(c) and rule 60(b) could be things like mistake,
24 inadvertence, surprise, excusable neglect.

1 rule 60(b). The court is to apply a standard of
2 liberality rather than strictness, and give the moving
3 party the benefit of the doubt is what JOHNSON v.
4 PIONEER TITLE COMPANY, 104 Idaho 727, says.

5 The court has also said that judgments by default
6 are not favored. And the general rule in doubtful
7 cases is to grant relief in order to reach a judgment
8 on the merits, which we talked about during the last
9 session with the Western Stock Growers. That's
10 JOHNSON, 104 Idaho at 732, and also BALDWIN, 114 Idaho
11 at 525.

12 Especially in this type of case where, as
13 Mr. Spencer indicated earlier, where water rights are
14 on different tracts, and as Mr. Tuthill said, and I
15 know Mr. Bramer has said before, people are confused
16 about the process and where things are going and the
17 track things are on, there is good cause. There is a
18 mistake in believing that the U.S. claims had not been
19 reported.

20 One of our claimants' water rights has been
21 reported in Basin 47. The other has not. None of our
22 Basin 45 claims in this grazing allotment that I'm
23 aware of have been reported.

24 Inadvertence in not knowing that the U.S. claims
25 were reported, surprise that the U.S. claims were

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1 reported. Not that they were claimed necessarily, but
2 that they had been reported two years earlier than the
3 de maximus claims, so to speak, were going to be
4 reported.

5 Excusable neglect, certainly, but not ignorance.
6 The United States argues that our clients ignored the
7 SRBA process. Nothing could be further from the
8 truth.

9 The test is not what the movants would have done
10 if they would have had an attorney. The test is what
11 they would have done as a reasonably prudent person who
12 is not represented by an attorney. SCHRAUFNAGEL v.
13 QUINOWSKI, 113 Idaho, 753 at 755, 56, Court of Appeals,
14 1987.

15 What would the reasonably prudent person have
16 done in this case? Would they have attempted to
17 monitor SRBA claims on the Internet? Would they have
18 contacted the department and asked them what's going
19 on? Would they have showed up for a hearing on
20 April 7th in Burley? Would they have started to
21 prepare objections? Would they have started to consult
22 with an attorney and prepared objections and then,
23 after the objections were filed, retain the attorney?

24 I don't think so. The reasonably prudent person
25 is probably sitting in Oakley right now not worrying

1 about it.

2 These are the people that have gone beyond what
3 the rest of the folks in that basin have done. They
4 didn't understand; they didn't know what was going on;
5 they were confused about the process. But once they
6 figured it out, albeit with a little assistance, they
7 proceeded to file the objections. They filed them, and
8 they are late. They are late.

9 THE COURT: Did you say that a reasonable
10 prudent person who did not have an attorney is the
11 standard that needs to be applied?

12 MR. SEMANKO: I'm looking at SCHRAUFNAGEL v.
13 QUINOWSKI, 113 Idaho 753. And the basic theme in that
14 case is that a pro se litigant's misunderstanding or
15 mistaken beliefs about procedure can constitute
16 excusable neglect or mistake justifying relief.

17 What happened in that case was there was a notice
18 put out about a trial. A trial scheduling order was
19 set. The trial was going to be set, let's say it was
20 December 1st. In the meantime a summary judgment
21 motion was filed. This particular person was
22 represented pro se. The opposing party filed a motion
23 for summary judgment. It was noticed up. The notice
24 was sent to the pro se claimant or litigant. He
25 ignored it because he didn't understand it.

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1 He said, well, there's a trial scheduling order,
2 a trial scheduled for December; I'm going to show up
3 for the trial; I don't need to worry about the summary
4 judgment motion.

5 Summary judgment motion gets held. He's in
6 default. Summary judgment is granted. He goes in and
7 asks for relief under rule 60(b), and the court says a
8 pro se litigant's misunderstanding about the process is
9 a basis for relief. And the court says the test is not
10 what the movants would have done if they had had an
11 attorney at that point in time, but rather what a
12 reasonably prudent person would have done under the
13 circumstances.

14 So it goes on is this a mistake of fact, or is it
15 a mistake of law. A mistake of law is not an exception
16 under rule 60(b). Mistake of fact is.

17 Procedure, understanding orders, when things are
18 set, the court recognized in that case, blurs with
19 mistake of fact — or blurs mistake of fact and mistake
20 of law. In that case they found it was a mistake of
21 fact.

22 And what I'm saying is the reasonably prudent
23 person in this case may or may not have figured it
24 out. Our folks certainly did figure it out, and filed
25 late objections as soon as they reasonably could.

1 THE COURT: How do you reconcile that with
2 the cases that hold a pro se litigant to the same
3 standard as an attorney?

4 MR. SEMANKO: I reconcile it by the fact that
5 those cases were discussed; and the court said this is
6 maybe not an exception, but it's distinguishable
7 because there's a misunderstanding about the process, a
8 complication and confusion, and that that constituted
9 an excuse, excusable neglect or fact. They said it
10 could be a mistake of fact or excusable neglect in that
11 case and constitute good cause.

12 THE COURT: So there's a distinction
13 between a mistake in procedures versus a matter of
14 law.

15 MR. SEMANKO: Well, there's certainly in the
16 law a distinction between a mistake of fact and a
17 mistake of law. And in this particular case,
18 SCHRAUFNAGEL, the court found that the
19 misunderstanding, the confusion, the mistake, the
20 excusable neglect with regard to process for a pro se
21 claimant constituted good cause. It was a mistake of
22 fact or excusable neglect. And I urge you to read that
23 case if you haven't because it does deal with the same
24 type of issue.

25 The U.S. complains because Scott Bedke's

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1 objections were 75 days late, Jared and Bruce Bedke's
2 were 112 days late, and the Poultons were 115 days
3 late. And then they go on to point out, aha, they
4 can't say that they didn't know about the United
5 States' claims or that they didn't even know what the
6 United States' claims numbers were because on our
7 exhibit, Exhibit J, we have an attached list that we
8 attached to each of our objections, United States did.
9 It says for private claim No. 14923B, C, D, and E,
10 which we're objecting to as the United States, the
11 companion United States' claim that it should be
12 decreed in, and it lists all the numbers. Aha, they
13 should have known.

4 This was filed and mailed on the deadline. Is it
5 reasonable to expect that these folks go, oh, geez, now
6 I need to file an objection and file it the day that it
7 was mailed to them, which is the deadline? I don't
8 think so.

9 If you look at it that way, Scott Bedke filed an
0 objection within 75 days of getting that objection and
1 knowing that those water right recommendations squared
2 completely with his recommendations, and that they had
3 been reported. Jared, 112; Bruce, 112; and the
4 Poultons, 115 days after that.

1 a reasonable time frame to turn around objections if
2 that's when they found out that they had been
3 recommended and that they in fact were overlapping
4 claims?

5 I think it is reasonable. And I think it is good
6 cause.

7 The June 29th, 1998 letter from the department to
8 Scott Bedke was attached as an exhibit to my Basin 45
9 brief for Scott Bedke, and also was attached as an
10 exhibit to the United States' brief in this proceeding,
11 and tries to make it sound like they all should have
12 known what was going on because Scott got this letter
13 back in 1998.

14 The letter in 1998 acknowledges that we've got a
15 mess on our hands and confusion. Mr. Shaff says,
16 quote, the timetable may have become confusing for
17 basins 45 and 47.

18 Yeah, it has. That's why the objections were
19 filed late.

20 Then he goes on to say, "In Basin 47 the claims
21 may be equally challenging, but the task can have a
22 different outcome."

23 It wasn't different. One of the claims was
24 reported, 14923. Claim No. 14924 was not recommended.
25 We aren't clear why at this point. But it wasn't.

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1 The court advised these parties, or at least most
2 of them, from my reading of the transcript at an
3 April 7th initial hearing in Burley that, quote,
4 anybody who wants to file an objection after it's
5 initially filed then has to file a motion to file a
6 late objection; and then that has to go to hearing on
7 whether that late objection is going to be allowed or
8 not, on page 38 of the transcript from April 7th. And
9 that's precisely what we're here doing today in
10 Basin 47.

11 The U.S. did not, who was present at that time,
12 object in any manner to the ability to file late
13 objections as they are apparently doing -- not
14 apparently, as they are obviously doing now. Most
15 interesting of all in the Basin 45 -- let me grab the
16 transcript from April 7th.

17 Most disturbing to me of all in the Basin 45
18 initial hearing in Burley after the discussion about
19 the possibility of filing late objections, Mr. Bramer
20 says, quote, I think -- and this is at page 50 and
21 51 -- I think given the confusion that these folks have
22 had with their water rights in the South Hills --
23 Mr. Bedke, Mr. Whiteley, who has now been succeeded by
24 Carl Bedke -- you're going to hear over and over again

1 Pretty prophetic.
 2 I think in all fairness to them, even though
 3 we've jumped through all the technical hoops in this
 4 court and should have our water right decreed, that I'm
 5 more than willing, if they would like to file a late
 6 objection and make the objection to our claims so we
 7 can sit down and work through this, that would give
 8 them a full and fair opportunity to make the
 9 objection. I think there's some confusion here. And
 10 rather than drawing a technical line of the law and
 11 saying you should decree this right to us, I think in
 12 all fairness to the claimants we should give them an
 13 opportunity to come in and make an objection here, if
 14 that's what they would like to do.
 15 That's all I have, Your Honor. Thank you.
 16 THE COURT: Thank you, Mr. Semanko. Let's
 17 see, the next -- shall we have Gary Poulton present --
 18 MR. SEMANKO: That was for Gary as well.
 19 THE COURT: Oh, sorry. And that was for
 20 Michael Poulton as well?
 21 MR. SEMANKO: Yes, Your Honor.
 22 THE COURT: Bruce Bedke?
 23 BRUCE BEDKE: This is Bruce Bedke. I have
 24 nothing to say.
 25 THE COURT: Mr. Bruce Bedke, do you agree

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1 with Mr. Semanko's arguments and --
 2 BRUCE BEDKE: Oh, yes, wholeheartedly. As I
 3 said before, this whole process in my opinion reeks of
 4 chicanery here. I'm upset with the whole process.
 5 That's all.
 6 THE COURT: Thank you. Let's see,
 7 Jared Bedke?
 8 JARED BEDKE: Jared Bedke, Your Honor. After
 9 having been informed in 1987 that all the water rights
 10 in the Snake River Basin had to be filed upon for the
 11 new adjudication, we did so on May 24th, 1989. And
 12 that's not in dispute. Our 47 filings, we made two of
 13 them at the time; and one of them got recommended.
 14 That's 14923A, I believe. 14924 was not recommended.
 15 Now, we asked the IDWR in the spring of 1998 if
 16 we needed to object to the filings of the government or
 17 the other conflicting claims. And we were told we did
 18 not need to file an objection to these conflicting
 19 claims because the conflicting status would be enough
 20 to get it before the court.
 21 As I understand it at this time -- or as I
 22 understood it at that time, the IDWR's philosophy was
 23 to recommend both claims, and let the court determine
 24 who indeed owned the disputed water right. So
 25 objections really weren't necessary.

1 THE COURT: When were you told that,
 2 Mr. Bedke?
 3 JARED BEDKE: Last year. In the spring of
 4 1998. We became aware after that, of course, that that
 5 is not the case.
 6 As I now understand it, if only one party objects
 7 to another's claim and the second party's claim is not
 8 objected to, the legitimacy of the second party's claim
 9 is never addressed before the court even if the two are
 10 in direct conflict. So if these late objections do not
 11 get in, the merits of the Forest's case or the
 12 government's filings in this case will never be
 13 addressed. I believe that is a good cause enough.
 14 In glancing through the memorandum in opposition
 15 to the motions from the United States, I don't see that
 16 Mr. Bramer admits if we can show some good cause our
 17 late objections must be allowed. To go on with what
 18 Mr. Semanko said on page 51 again, I can go through
 19 that again; but Mr. Bramer admits that ours should be
 20 allowed in because of the confusion involved in the
 21 bifurcation process.
 22 The fact that we were told we didn't even need to
 23 file an objection, I believe, is an excellent cause.
 24 We were not told by the IDWR to ask the court and see
 25 what we needed to do at that time.

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1 We only dealt with the IDWR. That is the state
 2 water agency. That's where we made our filings.
 3 That's who reported everything to us. We did not have
 4 any idea that we needed to seek the court and find out
 5 the distinction whether or not we needed to file an
 6 objection at that time. When we asked the IDWR, they
 7 told us no, the conflicting status will be enough to
 8 get the two addressed.
 9 THE COURT: Well, Mr. Bedke, when you found
 10 out that the U.S. claims were reported and you didn't
 11 file an objection, were you thinking that those would
 12 be held in abeyance until yours came up and then it be
 13 handled together, or --
 14 JARED BEDKE: We thought that the conflicting
 15 status -- the claims the Forest made and the claims
 16 that we made were in direct conflict for the same water
 17 at the same time. So we were told that the conflicting
 18 status of the two claims would show up on the court as
 19 a red flag; and that they would look at both cases at
 20 that time, both water claims, and say should it be in
 21 the private claimant's hands; or should it be in the
 22 Forest Service hand.
 23 THE COURT: You didn't think the U.S.
 24 claim, being unobjected to, would proceed forward?
 25 JARED BEDKE: Not at that time, no.

1 THE COURT: Okay.

2 JARED BEDKE: We thought the conflicting
3 status was enough to merit the objection at that time.
4 And later on we found that; and as soon as we found
5 that out, we sought and we filed these late
6 objections.

7 My meritorious position, as Mr. Semanko said, is
8 that we own the water. Our cattle put it to beneficial
9 use.

10 The beneficial-use filings that the
11 Forest Service has, they cannot show a beneficial use
12 unless they rely on our livestock, especially for
13 stockwatering purposes. They own none.

14 Dave Tuthill of the Idaho Department of Water
15 Resources said in the June 7th transcript, if I might
16 quote from him on page 43 -- or excuse me, page 44, he
17 said, "We anticipated, as we bifurcated this process,
18 that there would be some problem areas that could
19 arise. And I can say then that bifurcation process in
20 most basins, it's worked quite well. We have found
21 here in Basin 45, and perhaps Basin 47, that there's a
22 concern."

23 Then he goes on to say that I've had -- because
24 from our perspective I mentioned to him that it would
25 be very appropriate to look at both the Forest Service

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1 rights and his claims in one forum. So from my
2 standpoint from the git-go in this situation, where we
3 reported some of the claims, the Forest Service claims
4 and where other claims that might be overlapping and
5 influencing those in some way have not been reported,
6 from my standpoint, it's been very appropriate to stay
7 the action in the earlier ones, waiting for the others
8 to catch up.

9 We're asking at this time that our late
10 objections be allowed so that we might proceed with
11 these different cases.

12 That's about all I have at this time. If you
13 have any questions, I can answer them now.

14 THE COURT: Well, Mr. Bedke, Bruce Bedke
15 said that he suspects there's some chicanery going on
16 here.

17 Do you suspect the same thing?

18 JARED BEDKE: Well, the definition of
19 chicanery is legal trickery. So that would mean that
20 using the law to trick us is in essence what we're
21 doing here. We're saying that, oh, you didn't meet the
22 deadline; and that's hard and fast.

23 Rule 60(b), as I understand it, says no. If
24 there's excusable neglect, you know, by -- or something

1 party, something to that effect, then our late

2 objection should be or could be allowed in that case.

3 And so the legal trickery of the matter is, is
4 that they're trying to hold us hard and fast where
5 there is not that standard that need to be met.

6 THE COURT: Well, do you -- oh, so you
7 don't suspect IDWR of chicanery?

8 JARED BEDKE: We're suspect because we didn't
9 make the report. But as far as that goes, I can't say
10 what their motives were or anything of that. I think
11 they were just trying to speed along the process the
12 more I get into it.

13 But it's resulted in an unfortunate consequence
14 which we are a party to. And that's why we're seeking
15 the remedy at this time.

16 THE COURT: Thank you.

17 MR. SEMANKO: Now, Your Honor, Scott Bedke
18 had wanted the speak on his motion. I haven't filed a
19 notice for him in Basin 47. I did for Michael and
20 Gary Poulton only.

21 THE COURT: So, Mr. Scott Bedke, you're
22 speaking on Basin 47 objections?

23 SCOTT BEDKE: Right.

24 THE COURT: Motion to file late objection
25 in Basin 47.

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1 SCOTT BEDKE: To the United States' claims in
2 Basin 47.

3 THE COURT: Okay.

4 SCOTT BEDKE: And most all the salient points
5 have been touched on either by Mr. Semanko and also by
6 Jared.

7 VOICE: Tell us your name.

8 SCOTT BEDKE: Scott Bedke. A couple things
9 I'd like to reiterate, though.

10 The exact same thing happened to us in Basin 45
11 as it did in -- in Basin 47 as it did in 45, is that we
12 made all these filings, as it was previously mentioned,
13 in the spring of 1989. We did so under the complete
14 direction of the department of water resources at the
15 time.

16 During the bifurcation process, our claims were
17 put in limbo, I think as Mr. Shaff described it. And
18 the United States' claims were allowed to proceed.

19 And we were told by the department of water
20 resources at that time that this conflicting claims
21 status would be enough to get our day in court, I think
22 is the term that was used; and that all claims, that
23 these overlapping claims would be considered together;
24 and that the United States' inclusion into the

1 advantage to them in the final outcome of who ended up
2 with the water right.

3 We did not — you know, we were, I guess,
4 ignorant to the Joyce case. In fact, the Joyce case is
5 interesting because they were probably one of the first
6 cases out of the chute so to speak; and even in that
7 case where the Joyce people did not file an objection
8 to the BLM's claims, then they were given a water right
9 as a matter of course and never had to argue the merits
10 of their case. Whereas the Joyce people did and, of
11 course, were granted a water right. So this issue has
12 never come before the court to this point.

13 THE COURT: Could you say that again,
14 please? I missed the point.

15 SCOTT BEDKE: The point is that the Joyce,
16 Joyce Livestock did not object to the BLM's claims.

17 THE COURT: When they were first reported.

18 SCOTT BEDKE: When they were first reported.
19 And so they were given a water right as a matter of
20 course. Correct?

21 THE COURT: The U.S. was given a water
22 right without the objection?

23 SCOTT BEDKE: Right. See, they did not
24 understand at that point — I think they were given
25 some of the same advice that we were, that they did not

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1 have to object to the BLM's case, or to the BLM's
2 claims. And so they thought that if they argued the
3 merits of their claim that the fact that they had, you
4 know, ended up with the water, you know, if they won
5 the argument, then there would only be one right
6 granted, not two as there turned out to be. Okay.

7 Let's see. I would reiterate Mr. Bramer's quote
8 from the April 7th that this was going to be, you know,
9 that this was very confusing to all. You know, the
10 quickest way, the most simple way to clarify it would,
11 procedurally would be to get everybody up to square one
12 by granting, you know, letting all these objections
13 proceed.

14 It was interesting, Mr. Spencer's comments
15 earlier today — that's Nick Spencer from the
16 department of water resources — where he described the
17 United States' claims proceeding, without putting words
18 in his mouth, I guess he could restate it, but the
19 United States' claims proceedings along the legal path
20 where these other ones were meant to proceed at the
21 same point, along the same path at the same rate are
22 now still at square one, where the United States'
23 claims have proceeded. And that we can, you know, we
24 can rectify this one of two ways. You know, we talked
25 about that at the last hearing, where we can remand the

1 whole thing back to the department of water resources
2 would be a good way; or all these motions, the
3 objections can be granted and bring everybody up to the
4 same point procedurally.

5 And I think that's consistent with what the court
6 has been trying to do. You know, you've reiterated
7 yourself to the Western Stock Growers today that we're
8 not going to play gotcha or hide the ball, that these
9 cases would be decided on the merits. And I think
10 that's consistent with — you know, so there's several
11 ways we can get everybody to the same point
12 procedurally. And I guess it's up to the court to
13 decide that.

14 But I would, you know, I would plead that we do
15 that; and that the chicanery, I guess, that Bruce
16 refers to may be, you know, where through a procedural
17 or an undotted I or an uncrossed T, then we don't,
18 we're not allowed to have a fair fight, if you will.

19 I guess the overriding principle here is that our
20 intentions in 1989 were to claim all the water, every
21 spring, seep, mud hole on our allotment that our cattle
22 water — or use for water in the Goose Creek
23 allotment. That was in Basin 45, Basin 47. And that
24 we intended to object to all other claimants that made
25 a claim on that same water for livestock.

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1 We do not operate as the United States' agent out
2 there as has been discussed. We are the ones that put
3 this water to beneficial use with our cattle. We are
4 the successors in interest to people that have done it
5 since the 1870s. And that is the overriding
6 principle. That's what guided us in 1989, and that's
7 what guides us today.

8 Thank you.

9 THE COURT: Mr. Bedke, you said you're the
10 successors in interest to water users who have used the
11 water since 18 — what was that date?

12 SCOTT BEDKE: In the 1870s.

13 THE COURT: 1870s, okay. And when you say
14 "the allotment" out there, do you call it the Goose
15 Creek allotment?

16 SCOTT BEDKE: Well, it goes by several
17 terms. I think the official name is the Goose Creek
18 Cattle and Horse Allotment. But it's the one that is
19 on your map outlined in blue.

20 THE COURT: And have those allotments been
21 in effect since the 1870s?

22 SCOTT BEDKE: The allotments were not put
23 into effect until after the establishment of the land
24 management agencies. Prior to that you might say it
25 was public domain; and it was more or less a, well,

1 maybe free-for-all is a little, is a little inaccurate;
2 but that's basically what it amounted to. If you lived
3 in the area, then you let your livestock graze in the
4 range adjacent to where you lived.

5 THE COURT: But the cattle have been using
6 the land, whether it's called an allotment or whatever,
7 the same land.

8 SCOTT BEDKE: Right, since the settlement of
9 this area.

0 THE COURT: And I notice Mr. Pickett has on
1 his claim sheep in there. I assume you mean livestock
2 rather than just cattle.

3 SCOTT BEDKE: Right.

4 THE COURT: Okay.

5 SCOTT BEDKE: I believe the first livestock
6 interests were cattle; but sheep followed soon
7 thereafter, I imagine.

8 THE COURT: Anything further?

9 SCOTT BEDKE: I have nothing.

0 THE COURT: Good. Well, thank you.
1 Appreciate it.

2 Any more Poultons or Bedkes?

3 MR. BROCKMAN: Your Honor, as a former pro se
4 claimant, may I address the court? As a former pro se
5 claimant, Your Honor, may I address the court? I'm

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1 Bill Brockman from Kimberly.

2 THE COURT: Well, Mr. Brockman, it's not
3 normal for a nonparty to make a statement to the
4 court. But is it something that you want to say
5 briefly or --

6 MR. BROCKMAN: Very briefly, Your Honor.

7 THE COURT: You won't be offering facts or
8 anything like that?

9 MR. BROCKMAN: No, I've been -- I am not an
0 attorney, and I've been scolded about that in court by
1 Judge Hurlbutt. So it was just some comments in
2 general.

3 THE COURT: Well, for background, I suppose
4 there wouldn't be any objection to that.

5 MR. BROCKMAN: This is strictly background
6 information. I believe you and I have become well
7 acquainted over the last five years. I've attended
8 most of the information meetings that IDWR has had
9 here. And I was a pro se claimant. I did file a brief
0 in 1996. So I was involved in the Western Stock
1 Growers until I sold my permit two years ago.

2 But with all the information and all the notes
3 and all the questions that I asked, and I believe you
4 were here at a lot of those hearings, and I know

1 extremely difficult for a layman to come into this
2 court and get the information that he needs to carry on
3 all your objections and all your filings in a timely
4 manner. So I am not trying to advise the court; but
5 I'm just trying to make the point that with the 40 or
6 50 meetings, 40 or 50 information sessions that I've
7 sat in on in this courtroom, it is still exceedingly
8 hard to file everything and understand everything and
9 get it in proper perspective.

10 That's all I have.

11 THE COURT: Well, thank you, Mr. Brockman.
12 I appreciate that. Let's see.

13 Anything further on the motions for late
14 objections? In that case, we'll go to Mr. Bramer.

15 Mr. Semanko, you have a quizzical look on your
16 face.

17 MR. SEMANKO: No. I was going to ask if I
18 could reserve time for a short rebuttal, but maybe it
19 won't be necessary.

20 THE COURT: Mr. Bramer.

21 MR. BRAMER: Your Honor, I believe that may
22 be necessary. Your Honor, first of all, let me suggest
23 that what we've heard today is a lot of various
24 allegations that are unsupported by documents. We'll
25 look at the objections. I think what we'll find is

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1 movants have not shown good cause.

2 But, first, let's clear up a couple factual
3 issues. And the allegations of chicanery and somehow
4 improper behavior greatly disturb me in this matter.

5 My name is Randy Bramer. I'm here on behalf of
6 the United States Forest Service.

7 Earlier today two parties --

8 THE COURT: Well, Mr. Bramer, before you
9 get started on that issue, although the statements have
10 been made about chicanery and that, I take that with a
11 grain of salt. And frankly I have no inkling, I don't
12 even think for a minute that anyone is engaged in any
13 chicanery or any underdog sort of thing here, or
14 underhanded behavior. So that's not an issue.

15 I don't suspect the U.S. are trying to sneak in,
16 and I don't suspect IDWR is trying to steal anybody's
17 water right. I know there was a decision made to
18 divide these water rights into de minimis and
19 non de minimis, or we call them de maximus. And that
20 was, I think, for the convenience of the parties and to
21 get the paperwork flowing, you might say. But I don't
22 suspect any nefarious purpose there.

23 MR. BRAMER: Your Honor, I'm having a hard
24 time when you try to narrow down who they're not

1 In any event, let's go first to the allegation of
2 my statement on April 7th, at which time the issue
3 before the court was a water right. And if the court
4 will take the time once the hearing is over to read
5 pages 46 through 52, this particular quote that was
6 attributed to me as being the basis for I'm for
7 allowing all these late objections to come in without
8 cause was directly related to one claim where IDWR
9 confirmed that the water right should have been decreed
10 in the name of Mr. Bedke, Ray Bedke on behalf of
11 Scott Bedke, and was inaccurately put in the name of
12 the United States. That was where that statement was
13 made.

14 It had nothing to do with the late objections.
15 It had nothing to do with the misreporting by IDWR. It
16 in no way was a generalized statement of approval for
17 this process. That particular claim was at issue. And
18 if the court reads this, they will see that statement
19 is totally taken out of context.

20 Your Honor, we've been in this adjudication six
21 years. April 7th to the present date the parties that
22 are in front of this court today, by our preliminary
23 review of this court's records, have filed more late
24 objections than all other parties put together in the
25 adjudication to consumptive-use claims.

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1 They're coming to this court and they're asking
2 you to say it's impossible to understand; we were
3 confused. The question, Your Honor, is where has
4 everybody else been for all these years. Everybody
5 else read the director's report when they got the
6 notice.

7 There's no dispute here that they didn't get the
8 notice. There's no dispute the notice wasn't clear.
9 The fact is if they would have read the notice, took
10 the necessary steps, gone down and looked at the
11 director's report, or called the department and asked
12 them about claims that they were concerned with, and
13 certainly I think we know they were concerned with the
14 United States' stock water claims, they would have in
15 fact found out these claims were being reported out.
16 And they would have filed objections in a timely
17 fashion just like every other claimant since the
18 adjudication started. No different. No one here has
19 explained why didn't you do the normal activities when
20 you received the director's report that everybody else
21 did.

22 What would a reasonably prudent person have done
23 under Mr. Semanko's situation? Well, first, he would
24 have gotten the notice of a director's report. They
25 would have read it. It would have said if you're

1 concerned about someone else's water right, here's what
2 you do. If you want to file an objection, here's what
3 you do. If you have any questions, here's who you
4 call; here's where you can look at the director's
5 report.

6 I suggest to this court a reasonably prudent
7 person would have done those things. No one saying
8 they did. No one saying why they didn't.

9 What else would a reasonably prudent person have
10 done? Okay. First, we have the allegation IDWR told
11 us that we didn't have to file objections.

12 Well, Your Honor, where is the evidence in the
13 record? And even if objections were supported, but
14 there's no evidence of that, they're not naming names
15 or anything. And I'm not saying it wasn't said. But
16 I'm saying even if they were told that, Scott Bedke
17 filed objections in Basin 45 in July. And he did that
18 because he was concerned about the process. And he
19 filed late objections.

20 More importantly, Your Honor, let's say they
21 relied on that representation. Come April 7th all the
22 folks here were in your courtroom. All the folks here
23 were aware at that point that the government claims had
24 been reported out in Basin 45. All the folks here were
25 told by this court that you could file late objections

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1 if you disagreed with them. April 7th, 1999.

2 What happened next? Scott Bedke filed objections
3 on April 28th to some of these claims. Okay. The rest
4 of the parties in June, June 4th to be precise, come in
5 and file objections. There's no explanation for this
6 delay. They simply didn't do it. They sat in this
7 courtroom during the hearing we had in June and wrote
8 these objections up.

9 And, Your Honor, the bottom line here is there's
10 no good cause shown for that delay. I am sympathetic
11 to the process. I am sympathetic to people not
12 understanding. But this is not a matter of one or two
13 people coming in and saying I missed a couple claims or
14 I didn't understand. There's no allegation we didn't
15 get the director's report. There's no allegation we
16 didn't read it. All right.

17 Rules say you apply liberally. I think that's
18 Mr. Semanko's point earlier. Could this court have
19 been any more liberal than they were on April 7th in
20 allowing these people to file their objections in
21 Basin 45? Has anybody given this court any reason to
22 believe that these claimants did not, shouldn't have
23 reasonably known the same thing was going to happen in
24 Basin 47 and they should have at least checked? Isn't
25 that about as liberal as you get — nine months after

1 the objection deadline saying to these folks you can
2 file late objections if you have this concern?

3 No default should be allowed. This is not a
4 default, Your Honor. This is filing statutory
5 procedures. This is not a default. This is objections
6 they didn't file in a timely fashion. Okay.

7 Now, what is the good cause we're talking about
8 here, Your Honor? I think we should look to the
9 wording of the motions to file late objections. And if
10 we do, you'll see Mr. Scott Bedke -- and I'm going to
11 direct the court's attention to Exhibit No. 2 -- or
12 excuse me, Exhibit B. And this is an objection by
13 Mr. Bedke dated 4-28-99.

14 And if you look at this, it says the reason for
15 filing the late objection: "I only recently became
16 aware that the U.S. had filed claims to water that I
17 had claimed. I have been following the status of my
18 claims through the Internet and was not aware of the
19 government's conflicting claims due to the fact that
20 all claims are listed by subcase rather than a legal
21 description."

22 Do you know what you don't see there,
23 Your Honor? You don't see any of these reasons these
24 people are arguing now.

25 The fact is there's no evidence to support these

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1 objections. The fact is it's ad hoc rationalizations.
2 They're coming back and saying let us do this now.
3 Let's look for a second at Mr. Bruce Bedke and
4 Jared Bedke's objection. This would be Exhibit C and
5 D. And I read from Exhibit D signed by Bruce Bedke.
6 "I only recently became aware that the United States
7 had filed claims to water that I had claimed. I have
8 been following the status on my claims through the
9 Internet and was not aware of the government's
0 conflicting claims due to the extreme number of
1 government" -- blah, blah, blah.

2 You know what? Three months, excuse me, two
3 months later exactly the same letter is submitted by
4 these claimants as their reasons for filing late
5 objections. That's what's being argued as good cause
6 here. That's what was offered in support.

7 We filed objections as soon as we found out.
8 This reads for itself, Your Honor. Mr. Scott Bedke met
9 with IDWR at June -- or in July, June of 1998. He
0 filed objections in July of 1988 because of concerns
1 that the government claims had been reported out and
2 his weren't.

3 Good evidence he was aware. But at a minimum, as
4 of April 7th when they were all there they knew these

1 didn't do anything until Scott on the 28th filed
2 something. But everybody else came in June 4th and
3 filed all these other objections. These are the stated
4 reasons.

5 Now, let's look at the practical implications of
6 what we have here, Your Honor. This case in 1987 when
7 the statute was passed, this court, the department of
8 water resources was asked to put together a process for
9 timely and efficient adjudication of 170,000 water
10 rights. As part of that process, they had to set
11 procedures and deadlines. And as this court and as the
12 legislature and as IDWR has constantly been criticized
13 for, the importance of deadlines has been constantly
14 emphasized.

15 Part of the procedure for filing deadlines are
16 the procedures for filing objections. Part of the
17 procedures for making sure people meet these deadlines
18 is clear notice to the parties. Okay.

19 Now, oh, why will this hurt? What's the big deal
20 here?

21 Your Honor, what do we have now that we didn't
22 have on April 7th. April 7th I stood in front of you,
23 I had, I believe, 60 objections by Mr. Scott Bedke. At
24 that point in time a bunch of late objections were
25 handed in. I believe there were roughly 196 objections

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1 from four more people. No reasons stated to speak of.
2 I had four, 500 more.

3 End of April rolls out. We had 11, 12 or more
4 objections. So I got a couple hundred, three, 400 I
5 didn't have. June rolls around. All of a sudden I've
6 got four times 30 new ones, another 120. Okay.

7 So you're saying, well, that's those folks; they
8 don't understand. What happens next? June 24th, I get
9 Mr. Pickett's objections. I didn't know to file these
10 because the United States, until they objected to me, I
11 didn't know I had to file them. What do I get this
12 morning, Your Honor? I get 99 objections from the
13 Western Stock Growers listed under 12 parties.

14 The problem here, Your Honor, is if we don't
15 require people to show good cause, why bother to have
16 deadlines? Why bother to have schedules? And I
17 emphasize to this court this is not fair to everybody
18 else who has been complying with these procedures for
19 six years.

20 Do you know how we determined our objections? We
21 don't go on the Internet. The court hasn't told us
22 that's a reliable device. We get the director's
23 report, we go down to IDWR, and we review the paper.
24 We go through it page by page as has everyone else.

1 setting a standard and making sure good cause is met,
 2 Your Honor, basically guts the process and gives you no
 3 certainty and no ability to finish this adjudication.
 4 Your Honor, at a minimum, I ask make sure there are
 5 clear deadlines and make sure that people are required
 6 to meet them. It is necessary to ensure the integrity
 7 of the process and to finish this adjudication.

8 With that, Your Honor, I have nothing further.

9 THE COURT: Thank you, Mr. Bramer.

10 Mr. Spencer, do you have anything to offer at
 11 this point?

12 MR. SPENCER: Your Honor, if I may, I would
 13 like to address one procedural point. And I detect
 14 some confusion regarding the nature of the notice that
 15 individual claimants received.

16 And I do want to point out for the record that
 17 when a director's report is filed, there is docket
 18 sheet notice. There is notice in all the county
 19 courthouses.

20 But all the claimants in a given basin do not get
 21 notice individually in the mail. Only those claimants
 22 who have water right recommendations reported in that
 23 director's report get individual notice. And so if the
 24 given claimant did not have his water rights
 25 recommended in the director's report, he would not

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1 receive in the mail individual notice that that
 2 director's report had been filed.

3 And I just wanted to make that clear for the
 4 record.

5 THE COURT: So if the Bedkes rights were
 6 not reported in this batch, they would not have
 7 received notice of all of the other filings?

8 MR. SPENCER: That is correct, Your Honor.
 9 Unless they had a water right recommended in a
 10 director's report, they would not get a notice in the
 11 mail individually.

12 MR. BRAMER: Your Honor, I believe the
 13 appropriate question is: Did they have claims in
 14 Basin 45 and Basin 47? And I believe our research has
 15 indicated in fact they had at least one claim and would
 16 have received such notice.

17 If that's wrong, they want to speak to that, deny
 18 ever receiving the notice, this would be the time and
 19 the opportunity for them to do so.

20 THE COURT: Well, Mr. Spencer, if they did
 21 have a claim filed in basin -- in this case we're
 22 talking about Basin 47. If they had a claim in there,
 23 what would they receive? They would receive notice
 24 that a director's report was filed, and here's what the
 25 director is recommending for their water right.

1 MR. SPENCER: If they have a water right that
 2 was recommended in that director's report, right.

3 THE COURT: Right. But would they receive
 4 some sort of notice of anybody else's water right other
 5 than the statements saying go down and if you want to
 6 look at anybody else's water right, you have to do it?

7 MR. SPENCER: No, Your Honor. What they
 8 would receive in the package would be a description of
 9 their water right recommendation. That would include
 10 with it a notice that the director's report for that
 11 group of water rights in that basin had been filed.

12 That notice would include within it instructions
 13 regarding filing objections to your own water right,
 14 and information regarding where to go to review other
 15 recommendations in that director's report, and provide
 16 information about filing objections to other folks'
 17 water right recommendations in that director's report,
 18 or filing responses if other folks filed objections to
 19 your water right.

20 THE COURT: If the Bedkes received this
 21 notice, assuming they had a water right in Basin 47,
 22 they got notice about their own water right; but to see
 23 what the U.S. had filed or what was reported in the
 24 U.S.'s name, they would have to go down to the county
 25 courthouse or IDWR offices?

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1 MR. SPENCER: The SRBA court or to a regional
 2 office of the department of water resources.

3 THE COURT: Or on the Internet? Did we
 4 have the information on the Internet back then?

5 MR. SPENCER: I don't recall, Your Honor, if
 6 our standard notices provide Internet information or
 7 not. Okay. I'm just informed by Miss Brown that now
 8 we don't provide that information.

9 If Mr. Bedke had a water right that was
 10 recommended in the small D&S report for Basin 45, he
 11 would have received an individual copy of his
 12 recommendation with this notice that would have
 13 provided information regarding where to go look to see
 14 what all the other recommendations in that basin looked
 15 like. If he did not have a water right recommended in
 16 that report, he would not have received such individual
 17 notice in the mail. His notice would have been docket
 18 sheet notice and, of course, the opportunity to check
 19 at the court, or to check at a regional office, or to
 20 check at a county courthouse.

21 THE COURT: The Bedkes mentioned several
 22 times about conflicting water rights and what they were
 23 told by IDWR.

24 If a water right is in conflict, if there are
 25 multiple claims to the same water right, is there a

1 flag that comes up when they receive notice on their
2 claim if they filed it in that basin?

3 MR. SPENCER: No, Your Honor, there would not
4 be.

5 THE COURT: So the claim wouldn't
6 necessarily be reported in two names, the U.S. and
7 the — Miss Brown?

8 MS. BROWN: Thank you, Your Honor. The
9 department —

10 THE COURT: Roxanne Brown for the record.

11 MS. BROWN: Yes. The policy that water
12 resources follows in that regard is that if the claims,
13 let me say a claim by the Forest Service and a claim by
14 one of these parties were identical, completely
15 identical as to priority date, as to source, as to
16 place of use, point of diversion, completely identical,
17 that we would then move those claims together as one
18 with both names listed on them. Assuming — our
19 assumption would be that these two claims, identical
20 claims were for one identical water right, one single
21 water right.

22 If there is any discrepancy between one claim and
23 another, we would assume that these claims are indeed
24 different claims, two different water rights. So we
25 would have a single recommendation for what we assumed

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1 was a single water right, a claim to a single water
2 right, or several claims to a single water right where
3 we have several recommendations for claims that may be
4 to a same source; but we were unable to discern whether
5 or not they were to a single water right.

6 THE COURT: What are the chances of a claim
7 to a stock water right within an allotment being
8 reported as identical?

9 MS. BROWN: Quite slim, Your Honor. There
0 have been cases where that has occurred. But most
1 often there is some, some difference.

2 One of the problems is that these areas are quite
3 remote; and although more than one party may seek to
4 claim a particular source, they may actually look on
5 the map and have a slightly different name for that
6 source which would kick it out of the identical box.
7 You might have a slightly different legal position or a
8 legal description for that source, slightly different
9 place of use for that source.

10 THE COURT: Do you happen to know if any of
11 these in Basin 47 were reported in both the U.S. and
12 the Bedkes or the Poultons's names?

MS. BROWN: In Basin 47, no. I'm unaware
of any that were reported with two names on the same

1 THE COURT: Okay. Well, Mr. Semanko, I
2 think you had something very important to tell us
3 again?

4 MR. SEMANKO: Are we now on the other side?
5 I'll take two minutes.

6 I just wanted to say, with regard to the argument
7 that reasonable people would have done all the things
8 that Mr. Bramer said they would have done, the
9 reasonable people are here. They did what they did
10 when they found it out. They did it as quickly as they
11 could. And I strongly suspect that a number of people
12 in their position are not as diligent as they were, and
13 they should not be condemned for taking the action and
14 bringing the action to court that they have in asking
15 to have the late objections filed.

16 They feel like they're here. They have a right
17 to be here. And they have a right to be heard.

18 The notice that was sent to these folks, as was
19 touched on a little bit here shortly ago, didn't say,
20 hey, guess what, your stock water rights have not been
21 recommended to you; but they've been recommended to
22 somebody else; and you better get an objection in.
23 They were not in the director's report. Even in 47 one
24 of theirs was not in the director's report. 11 out of
25 12 of the total of their claims were not in 45 or 47's

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1 director's reports. Yet they're to be expected to
2 figure out that someone else who has filed on the same
3 water's claims have been recommended.

4 And if you get to the substance of what
5 Scott Bedke filed and the others filed, it says that
6 they just became aware that the claims had been filed.
7 And we all know from practicing in the adjudication
8 that the terms "claim" and "recommendation" get
9 confused all the time. I'm not objecting to a claim;
10 I'm objecting to a recommendation that's made to the
11 department. It's pretty obvious that what they became
12 aware of is that the recommendations had been made.

13 Mr. Bramer mentions that at the April 7th hearing
14 everybody knew what was going on and should have got
15 them filed. That was on Basin 45, not 47.

16 The initial hearing for the comparable case here
17 was held two hours ago. They got them filed before
18 that. Scott filed his on April 28th, 21 days within
19 the April 7th hearing. That's not an unreasonable time
20 for him to have prepared the Basin 47 objection, if the
21 April 7th hearing is really the date that he should
22 have been charged with having known about this and
23 couldn't claim mistake or inadvertence or anything
24 anymore.

1 all in shorter than 60 days after April 7th. And I
2 think you can read the statements of the wives that
3 were at the hearing that they surely intended to get
4 their husbands in gear and get the objections filed.
5 So I don't think there's any lack of diligence here.
6 And it would be unfortunate if that were the finding of
7 the court.

8 There is an extreme number of claims, and it is
9 confusing. And I know the court knows it's confusing,
10 and we know it's confusing.

11 We're not saying confusion because of the massive
12 size of the adjudication in and of itself should be
13 good cause. But where it's coupled here with -- and I
14 won't call it chicanery. I'll just call it confusion.
15 It's confusion that was caused by the fact that we
16 decided for the good of the entire adjudication to have
17 a bifurcation. There's been confusion. There's been
18 mistake of fact. There's been excusable neglect. And
19 there's no doubting the fact that this happened. And
20 it caused confusion. And it should constitute a part
21 of what is good cause.

22 It is similar perhaps to the event that happened
23 when the department was removed as a party. Oh, geez,
24 we can't remove the department as a party. If you do
25 that, I need to be able to get in late now because they

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1 were defending my water right.

2 Well, it was a fundamental change in the process
3 that the State legislature decided was for the good of
4 the adjudication and the good of the state; but it
5 caused some unintended consequences for some parties.
6 So the court said we'll let you come in. We'll open up
7 a 60-day window, and we'll let you come in even in the
8 test basins where the objection deadlines have long
9 since run.

10 This is similar. The court, the major parties
11 that are involved all decided, the department, that
12 this would be a good idea to bifurcate to get, as
13 Mr. Nick Spencer mentioned, some of the claims moving
14 along faster and get them decreed faster. And overall
15 it's been good.

16 But we've had some problems because of it. And
17 the folks that have been impacted because of that
18 should not be left behind in the wake. They should be
19 allowed to come up and participate in the process.

20 I submit to you that the concerns of the
21 United States are not so much about procedure, but
22 about substance. Mr. Bramer also said at the hearing
23 in April: "My name is Randy Bramer. I regret to
24 inform this court that notwithstanding my best attempts
25 after six years I finally appeared in a subcase hearing

1 where an objection has been filed."

2 That was Scott Bedke's objections, and the late
3 objections had already been granted. I'm glad
4 Mr. Bramer reminded us that those had been granted.

5 But I think what the United States is really
6 concerned about is they're going to have to defend
7 against this and decide -- the court is going to have
8 to decide where you've got a valid federal claim filed
9 with a valid objection filed against it, and you've got
10 a valid private claim with a valid federal objection
11 filed to it, and they are conflicting claims, who owns
12 the water. Whose water right is it?

13 It will be litigated. It will be decided. We
14 want it to be decided in our back yard. Because that's
15 the water and the land that these guys care about. We
16 don't want it to be decided in basin 37 or any of the
17 basins up in the Clearwater or any of the basins where
18 it would still be timely to file an objection. We
19 don't want to go that route. We want to do it in our
20 basin with the water rights that we're concerned
21 about.

22 It's too bad that we missed the deadline. It's
23 unfortunate. We apologize for it. But there is a
24 standard. It is good cause. We've met it. And we
25 think that the motion should be granted.

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1 Thank you.

2 THE COURT: Mr. Semanko, will you be
3 submitting additional memoranda in this?

4 MR. SEMANKO: Yes. Prior to the -- I think
5 we agreed on July 9th is the deadline for filing a
6 reply brief to what the United States had filed as a
7 memorandum in opposition.

8 THE COURT: Even after the arguments today,
9 though, you still want to go ahead and do that.

10 MR. SEMANKO: Yes. I haven't had time to
11 review the United States' entire brief. And there's a
12 number of arguments outside of the good-cause argument
13 about whether objections can even be filed at all or
14 late objections. So I think I need to be able to
15 address those. But I'll try to incorporate as much of
16 the Basin 45 brief and argument today as I can.

17 THE COURT: One last thing before everybody
18 closes here. There was reference to transcripts. And
19 I don't get those transcripts as a matter of routine.
20 So --

21 MR. SEMANKO: Those would be appended to the
22 United States' brief. Again, they put together a very
23 nice compilation that includes all of the objections,
24 late objections that were filed and the cover letters,
25 i.e., motions. And the two transcripts from April 7th

Multi-Page™

1 and June 7th are both in that packet, and a few other
2 things that Mr. Bramer and I both referred to during
3 our arguments. So it should all be there.

4 THE COURT: So all the transcripts are
5 there. Okay.

6 MR. SEMANKO: Correct, Mr. Bramer? I think
7 that's right.

8 MR. BRAMER: Yeah, Your Honor. April 7th,
9 1999 hearing is attached as Exhibit M. And then the
10 June 7th transcript is attached, I believe, as

11 Exhibit L. There's an index, Your Honor, on the front
12 of your brief. The June 7th transcript would be I.

13 And then the April 7th transcript would be Exhibit M.

14 THE COURT: Good. Well, counsel, is there
15 anything further, then, we need to consider at this
16 point?

17 JARED BEDKE: I would like to respond as
18 well.

19 THE COURT: Oh, please do.

20 JARED BEDKE: This is Jared Bedke once
21 again. I just wanted to reiterate what Norm says.

22 On April 7th it was told that we found out about
23 all this, and our objections were not filed until
24 June 4th. On April 7th I filed all my objections to
25 the Basin 45 hearings. And as Norm said, it was a

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1 reasonable amount of time before I found out what the
2 47 filings were. And at that time I did file the late
3 objections in Basin 47.

4 Also, I did not get a notice of the director's
5 report. I personally, Jared Bedke, did not. In the
6 memorandum in opposition to the motions that Mr. Bramer
7 conducted, he even concedes that point in his
8 footnote 12 on page 5.

9 He states that "the affidavit does not state that
0 Jared Bedke was served with a copy of the notice.
1 Jared Bedke is a son of Bruce Bedke," and then on and
2 on and on and on.

3 I don't open my dad's mail. And I hope he
4 doesn't open mine. And we don't discuss everything
5 that goes on in the entire world, even though it might
6 be prudent; but we do not.

7 He also stated that there was a numerous amount
8 of claim numbers, some 900, I think his total got to.
9 As far as I can determine, there's only 156 claim
0 numbers in Basin 45 that all four of us have objected
1 to. They're the same numbers. And in 47 there's only
2 26. So I only come up with a total of 182 claim
3 numbers that are in dispute here. Our late objections
4 are only 182.

1 person would have gone down and done this and done that
2 and done that; we do at the office.

3 Well, I move cattle. I irrigate hay. I cut
4 hay. I gather cattle. I feed cattle all winter. I
5 repair machines when they break down. I fix fence. I
6 dig water lines. I dig ditches. I do all kinds of
7 things. All Mr. Bramer and his staff have to do is
8 watch the SRBA. And since April 7th I've also had to
9 become an Idaho water scholar. And that has not been
10 any small task.

11 So I'm wearing multiple, multiple hats here. And
12 so as a reasonable and prudent person with not just one
13 thing on my mind, I feel like I was in a very timely
14 fashion here as soon as I found out and that good cause
15 does exist. And I once again want to state that as
16 soon as we found out we needed to do this, we went down
17 and immediately filed.

18 And I want to thank you for your time.

19 THE COURT: Thank you, Mr. Bedke. Anything
20 further from anyone else?

21 MR. BRAMER: If I may, Your Honor, just one
22 quick point. Your Honor, this adjudication has been
23 going on six years. We've had tens of thousands of
24 partial decrees issued. We are talking about
25 reasonable people. Everyone else has had to do this

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1 and comply with these deadlines.

2 All of a sudden these folks are saying we're the
3 reasonable people; we didn't do this; that's the right
4 way to view this.

5 I would ask this court to remember that we looked
6 through the director's report. So did Wiley Smith, so
7 did Young Harvey Walker, so did the basin thirty -- so
8 did Mitch Sorensen. These people all looked through
9 the director's reports. They all identified
10 objections. They all got exactly the same notice. It
11 didn't say the claims were competing or not competing.
12 This is the same thing that everybody has gotten for
13 six years.

14 Now all of a sudden we're to believe that we
15 didn't understand; we didn't have any reason to believe
16 this. They're not denied their day in court. They've
17 filed claims. They're going to litigate those claims.
18 If they want to consolidate those claims and our claims
19 and litigate them, let them do so.

20 But let's not forget what we're doing here.
21 We're running an adjudication with 170,000 claims that
22 needs to have some sort of procedure inherent in here.

23 Finally, concerns about substance. As I said
24 earlier, they have filed claims that can be

1 And finally with respect to Scott Bedke, I'm not
2 saying Scott Bedke became aware in April 7th, 1999.
3 I'm saying he became aware of the problem in July of
4 1998 when he filed objections. So it wasn't like he
5 jumped right on this in three weeks. That's not the
6 point at all.

7 The bigger picture here, Your Honor, is I told
8 you on April 7th I was concerned about opening, quote,
9 the floodgates of litigation with objections. I would
10 submit to this court that those floodgates have
11 opened. And this court is seeing those late
12 objections.

13 They can take Mr. Bedke's count or they can take
14 my count. But when you take in the Bedkes, the
15 Poultons, Western Stock Growers, Pickett Ranches and
16 put all those together and add them up, you're going to
17 see that number is more in the ballpark of what I'm
18 talking about.

19 There are no standards left by this court at this
20 point. Anybody can file anything any time. And I
21 think when the court looks at these motions it has to
22 ask themselves what procedures are we going to use, and
23 what standards do people have to meet.

24 Thank you, Your Honor.

25 THE COURT: Thank you, Mr. Bramer. Well,

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1 counsel and pro ses --

2 SCOTT BEDKE: Is it my turn?

3 THE COURT: Oh, yes, if you have a
4 response. I keep forgetting you.

5 SCOTT BEDKE: My name is Scott Bedke. I
6 guess I resent to a point the portrayal of us ranchers
7 as being somewhat inept in this. I mean we acted,
8 we've acted in good faith at every turn here. We've
9 done our very best to comply. We've gone to people
10 that we supposed knew what was going on. We've been
11 given bad advice in several instances.

12 But, you know, we -- these are not -- you know,
13 we filed in 1989. We thought we were ahead of the
14 curve here. We thought that we were in compliance at
15 every turn. And we have tried to get to, you know, get
16 right procedurally at every case -- at each and every
17 point.

18 I recall -- or just would reiterate Mr. Shaff's
19 letter, the very last, second to the last paragraph.
20 And, of course, this is after the bifurcation and the
21 problems in Basin 45. He says, "In Basin 47 the claims
22 may be equally as challenging, but the task can have a
23 different outcome."

24 Well, what was the outcome of Basin 45? That was
25 where our claims were not reported, and the United

1 States' claims were and had proceeded.

2 Now, so I interpreted that to be that I'm
3 still -- the illusion that I'm laboring under at that
4 point is that a conflicting claim or an overlapping
5 claim is basis enough to get your day in court. We
6 were told several times that we did not have to have
7 reciprocating objections in order to decide who would
8 own the water. And that was reiterated time and time
9 again from the department of water resources.

10 And the same -- in this paragraph we were told
11 that if we, you know, if I went, if we went down to the
12 department of water resources and amended our claims
13 that were non de minimis -- you know, they were filed
14 under the old format, filed in 1989 in Basin 47. And
15 if we'd come down and break them up, thus the A, B, C,
16 D, you know, on the claim numbers, you know, 14923A, B,
17 C, B, E, F, G, I think it is, that that would put us on
18 the same footing or the same position procedurally as
19 the United States' claims.

20 Again, that was bad advice obviously. And so
21 we're trying to rectify that here by getting -- it is
22 not true that we don't have to file reciprocating
23 objections. We do have to file them. And as soon as
24 we found out that we did have to do that, we are.

25 And to portray us as inept and to -- and that we

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1 just sit back and, you know, don't pay attention to
2 this, we have paid attention. We've done our best to
3 stay abreast, and I think evidenced by our presence
4 here today.

5 But like I say, this is not the -- these have not
6 been the acts of people -- I mean we've acted in good
7 faith. We've tried to stay ahead of the game and
8 procedurally correct from day one; and, you know,
9 unfortunate for us that when the Basin 45 stuff and the
10 Basin 47 stuff came up, the procedures were
11 bifurcated. I mean that was not our fault.

12 And so I just say that if there are any neglect
13 or whatever we've done has been excusable; and
14 there's -- you know, it seems very easily corrected at
15 this point.

16 Thank you.

17 THE COURT: Thank you, Mr. Bedke. Well, if
18 there's nothing further, then, I'll consider the matter
19 under advisement.

20 But now I'll withhold it until you have your
21 responsive memorandum in, Mr. Semanko?

22 MR. SEMANKO: I'll file it by next Friday,
23 Your Honor. And I will also clarify, as I said before,
24 who objected or is seeking to object to what in
25 Basin 45. There's some confusion still on that.

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1 For the record, Scott Bedke and the Poultons have
 2 objected to 60 claims, water right recommendations in
 3 Basin 45. And the Bedkes, Jared and Bruce Bedke have
 4 objected to 156.

5 In Basin 47 they've each, all of them objected to
 6 the same 26. But I'll try to clarify that in my
 7 brief.

8 Thanks.

9 THE COURT: Thank you. I appreciate it.
 10 If there's nothing further, then, we'll go off the
 11 record. Thank you, folks.

12 (PROCEEDINGS ADJOURNED)

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1 TRANSCRIBER'S CERTIFICATE

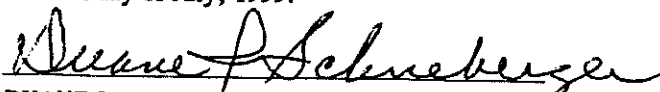
2 STATE OF IDAHO)

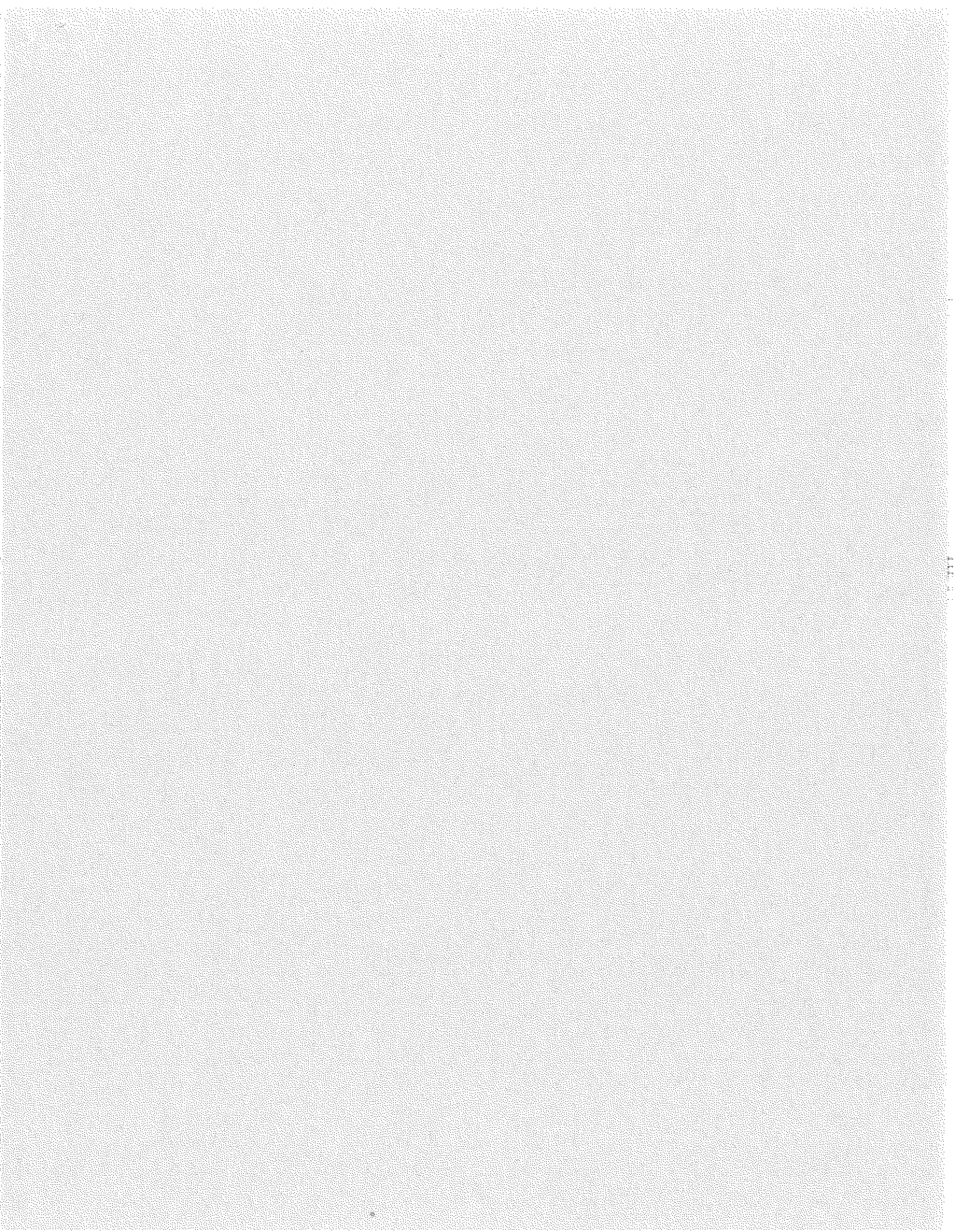
3)

4 County of Twin Falls)

5
6
7 I, DUANE J. SCHNEBERGER, duly appointed,
 8 qualified and acting official reporter of the Fifth
 9 Judicial District of the State of Idaho, DO HEREBY
 10 CERTIFY that the foregoing constitutes a complete
 11 transcription of the requested portion of the
 12 proceedings in the foregoing matter from electronic
 13 recording tapes, to the best of my ability, said
 14 transcript consisting of pages 1 through 69, inclusive.

15 IN WITNESS WHEREOF, I have hereunto set my hand
 this 8th day of July, 1999.


 DUANE J. SCHNEBERGER, Idaho CSR No. 5, Twin Falls, ID



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

3 *****

4 In Re SRBA) REPORTER'S TRANSCRIPT

5 Case No. 39576) Subcase No. 47-14923A,

6) B, C, D & E

7
8 *****

11 D-a-t-e: Thursday, July 1, 1999

13 T-i-m-e: 2:15 P.M.

15 P-l-a-c-e: SRBA Courthouse, Twin Falls, Idaho

17 B-e-f-o-r-e: TERRENCE DOLAN, Special Master

19 H-e-a-r-i-n-g: Initial Hearing

20
21
22 *****

Page 1

1 been succeeded by Scott Bedke; Gary Poulton, who is
2 present and I've filed a notice of appearance for
3 today; and Winslow Whiteley. His interest passed on to
4 Robert Whiteley when Winslow died. And Robert Whiteley
5 has since conveyed it to Carl Bedke. I filed a notice
6 of appearance for him today.

7 We don't have an NCAP, notice of completed
8 administrative proceedings, submitted yet; but there
9 has been a change of ownership submitted by Carl Bedke
10 and his wife. So we wanted to be here today to let the
11 court know that those are the four parties -- or the
12 four people who are the claimants on these particular
13 water rights.

14 THE COURT: And you're representing all
15 four of them.

16 MR. SEMANKO: For purposes of today's initial
17 hearing and scheduling and those things, I will be
18 representing all of them today, yes.

19 THE COURT: Good. Thank you. Also present
20 in the courtroom this afternoon we have
21 Randall Bramer representing the United States. And we
22 have Nick Spencer representing IDWR.

23 Since this is an initial hearing, there's a lot
24 of things we could talk about. Is there anything we
25 can start it off with here and get the ball rolling?

Page 3

1 COURTROOM OF THE DISTRICT COURT, SNAKE RIVER
2 BASIN ADJUDICATION COURTHOUSE, 253 Third
3 Avenue North, Twin Falls, Idaho, Thursday,
4 July 1, 1999, 2:15 P.M.

5 *****

6 THE COURT: Good afternoon, counsel, ladies
7 and gentlemen. We're back on the record. This is the
8 date and time set for an initial hearing on five
9 different water rights, Basin 47. They begin with
10 14923A, B, C, D, and E.

11 In court this afternoon we have Norman Semanko
12 representing the claimants. The original claimant was
13 Winslow Whiteley; and I think, Mr. Semanko, you're
14 going to explain where we are in ownership on all of
15 these five claims?

16 MR. SEMANKO: Yes, Your Honor. Do you want
17 me to do that right now?

18 THE COURT: Well, just briefly. You can
19 use the microphone right there, if you need to.

20 MR. SEMANKO: There are four names on the
21 claim 47-14923 as it was originally filed. That's
22 since been split for purposes of recommendation to the
23 court into an A, B, C, D, and E portion.

24 The original claimants were Bruce Bedke, who is
25 still a claimant; Ray Bedke, who is deceased and has

Page 2

1 Mr. Semanko?

2 MR. SEMANKO: I may say a few words real
3 quickly. Mr. Bramer and I did have the opportunity to
4 speak this morning. He was kind enough to call me and
5 talk about this ahead of time.

6 I think where we're at, Your Honor, is, in our
7 mind, is kind of a continuation of the hearing that we
8 had on June 7th in Basin 45. At that time we expressed
9 concern about the U.S. claims going forward while the
10 private claims had not yet been reported and, more
11 importantly for purposes of today, the fact that we
12 thought they all ought to be considered together to the
13 extent they were claiming the same water for the same
14 purpose.

15 We've got the same basic issue today. 47-14923,
16 as originally claimed, was for a half a cfs for 2,000
17 range cattle on several different sources. And for
18 purposes of being reported, it was chopped up into
19 de minimis pieces -- as my clients call it,
20 de minimized -- so that it could be reported. And it
21 was reported.

22 It overlaps obviously, as you can see from the
23 objections that the United States filed, with a number
24 of United States' claims. Those claims are the subject
25 of a hearing later today as to whether or not our

Exhibit 5

1 clients and others should be able to file late
2 objections in those subcases.

3 I guess the short story is, what we'd like to see
4 happen is that when those are resolved in terms of
5 whether there will be objections and whether there will
6 be subcases or not in the United States' claims, we
7 think they ought to be again proceeding in tandem with
8 these claims so that we -- we'll have common sets of
9 facts about where the cows go, who owns the cows, where
10 they drink water. All those kinds of things are facts
11 that are going to be relevant in both subcases whether
12 it's the private claimants' subcase 14923 or the United
13 States' claims in the 26 subcases where motions to file
14 late objections have been granted.

15 So I guess what I'm asking or suggesting is that
16 we continue this. I also would like to at this time
17 make a motion to reclassify these subcases as Class 2
18 subcases rather than Class 1. They are not the typical
19 minor, small Class 1 type of subcase where the director
20 recommends 1 cfs, the claimant thinks it's supposed to
21 be 1.1 cfs, and they have a battle over that.

22 This is a case where a claim has been recommended
23 by the department to a private claimant. The BLM,
24 Forest Service, the federal government, anyway, have
25 objected. It's Forest Service in this case. And it's

Page 5

1 much more complicated than a standard Class 1 subcase.

2 And I don't know if anyone would have an
3 objection to that. But certainly if it's going to be
4 grouped together with other cases, it's not something
5 that lends itself to a 45-day schedule.

6 We think it's something that should be the
7 subject of a scheduling conference, including
8 opportunity for 16(k) type of resolution, if the court
9 decides that's necessary or if the parties decide that
10 it's time to sit down and talk. Certainly we ought to
11 talk about discovery schedules and consolidation and
12 all those types of issues. And those kinds of things
13 lend themselves much more to a rule 16 scheduling
14 conference than to the initial hearing process. So we
15 would like to get these on a track for a scheduling
16 conference rather than an initial hearing, and would
17 make that motion at this time.

18 Your Honor, I thought it would be helpful -- just
19 briefly, the last time we talked about where these
20 grazing allotments are; and it's kind of hard to
21 understand it just from me talking. I brought a couple
22 maps just for illustrative purposes. If I can -- and
23 if there's no objection, I'll show those to counsel.

24 THE COURT: Mr. Semanko, do you want this

1 MR. SEMANKO: No, I would just like to
2 provide it for illustrative purposes. I don't think
3 it's fair to ask that it be marked as an exhibit and
4 admitted. I haven't provided it to counsel ahead of
5 time. And certainly this is not an evidentiary
6 hearing.

7 But just for purposes of trying to explain as a
8 continuation of the last hearing where we are, outlined
9 in blue on the map is what we refer to as the West Side
10 Allotment, the Goose Creek Cattle and Horse Grazing
11 Allotment. And this is the allotment that this water
12 right, 14923A, B, C, D, and E is in. It's on the west
13 end of that allotment.

14 The great majority of the claims, the 10 claims
15 that have not been reported in Basin 45, are more on
16 the east side of this same allotment. So when we say
17 it's necessary perhaps to consolidate, and later we
18 probably will, at least the proceedings for Basins 45
19 and 47, we mean it. Because the cows don't know that
20 there's a basin line somewhere in Range 19 East. All
21 they know is that there's this allotment, and maybe
22 there's some fences and things.

23 But the facts are going to be appreciably the
24 same. And the claimants and objectors are going to be
25 appreciably the same for this entire allotment.

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1 And the grazing allottees in this blue area, in
2 the West Side Allotment are Bruce Bedke, Scott Bedke,
3 Gary Poulton, and Carl Bedke. Those are the four that
4 are here on 14923.

5 The other allotment in the purple -- and also
6 this is the allotment, the blue, where the claims that
7 are the subject of the hearing on motions to file late
8 objections in Basin 45 last month and in Basin 47 this
9 month are located with the exception of some additional
10 objections that Jared and Bruce Bedke filed. They're
11 in this other allotment as well, the purple allotment.
12 That's the east side of Goose Creek grazing allotment.

13 And that's the only extent that those are
14 involved right now, because those private claims have
15 not been reported with only a few exceptions, I
16 believe. Maybe we can speak to that later.

17 But just for illustrative purposes, the claims
18 that we're dealing with right now are in the blue in
19 the West Side Allotment. And I wanted you to know --
20 and basically the dividing line there is Goose Creek.
21 As you can see, the Goose Creek reservoir is right
22 smack in the middle. At the very northeast part of the
23 map is Oakley, so you can orient yourself a little bit
24 there. And there are a number of grazing allotments in
25 this Oakley area.

1 THE COURT: Well, Mr. Semanko, do you think
2 the issues in 45 and 47 are going to be identical?

3 MR. SEMANKO: They will be, Your Honor.
4 There will be some issues about licenses and, as
5 Mr. Pickett was saying during the last hearing, about
6 the type of water right that's been claimed. But for
7 the most part, the issue is going to be the issue of
8 whether the water right is properly -- I don't want to
9 say held because I'll get in trouble. United States
10 holds water rights under licenses. But whether the
11 water right should be decreed in this case to a private
12 claimant who has claimed it or to the United States
13 who's claimed it under a different number. And that's
14 essentially the issue.

15 And there's a number of theories as to why it
16 should go to one or the other. And that's the subject
17 of a later hearing. I'm not going to get into that.

18 But certainly for purposes of scheduling, this is
19 a small tail that shouldn't wag the dog. We've got,
20 out of 12 claims that were filed in this grazing
21 allotment, and that includes the de maximus claims, all
22 of those have not been reported yet. Those 11 or so
23 have not been reported, including one in Basin 47.
24 47-14924 has not been reported.

25 I've got my copy of the name and number index

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1 right here on counsel's table. And I don't see 14924
2 in there. So by my count, out of the 12 claims that
3 were filed by these claimants, only 1 has been
4 reported.

5 So to let this one -- and then, of course, you
6 have the issue of all the objections to the
7 United States' claims for the same water, some one
8 hundred and -- well, that's not the right number
9 because that includes the other allotment. But
10 certainly a number of objections in Basin 47
11 26 subcases that would have objections in them. To let
12 this one subcase go forward with all that other pending
13 and yet to be reported or yet to be decided whether
14 objections will be filed, I think, would be a huge
15 waste of judicial resources and certainly my clients'
16 time.

17 So we'd hope these could be scheduled at a later
18 time with whatever survives out of the pile that we've
19 got in the other hearings and the other reports that
20 are issued later, and that they be the subject of a
21 scheduling conference rather than an initial hearing.

22 I'd stand for any questions.

23 THE COURT: Well, Mr. Pickett suggested
24 there might be a difference in treatment between
25 in-stream flow claims for stockwatering versus

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1 diversions or improvements at least for stockwatering.

2 Do you think that's going to be a distinction?

3 MR. SEMANKO: I haven't had that conversation
4 with him yet, Your Honor. And I will have that
5 conversation with him as he indicated.

6 There may be some difference on how we treat
7 things because of licenses; but other than that,
8 there's any number of differences, factual differences
9 on federally involved water right claims. For example,
10 the point of diversion could be on private land rather
11 than public land or federal land in any event; and you
12 look at it completely different in terms of what the
13 issues might be or how you might settle it.

14 So I guess until I know exactly what his claims
15 look like, and he's in a -- he's not in either one of
16 these allotments. His allotment is not drawn on here.
17 I don't know exactly where it is; but it's not either
18 one of these allotments.

19 So until I know factually what he has claimed and
20 what he's seeking to object to -- and he's been
21 representing himself to date -- it's very difficult for
22 me to answer the question. But, yeah, there could be
23 some differences in how we treat some different kinds
24 of claims. But for the most part, the issue is the
25 same.

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1 And I think as Jared Bedke expressed at the
2 April 7th initial hearing on some water right claims,
3 there's a couple of different theories that are
4 floating around. And you can see them expressed in the
5 late objections that have been filed.

6 One is the idea that I've already mentioned --
7 that the beneficial use was made by the private
8 claimant, and so the water right should be decreed to
9 the private claimant rather than the United States.

10 The other is where there are licenses, or even
11 where there aren't licenses, the United States couldn't
12 have appropriated the water because it was already
13 appropriated by the private claimant. And that's
14 another theory that's out there as well.

15 And whether those different types of theories
16 apply in all factual circumstances, I don't know until
17 I see the factual circumstances. But in our cases
18 those are the two theories that have been put forward
19 for the court to look at as far as a meritorious
20 position.

21 THE COURT: Do these allotments go into
22 other states? Or is the state the boundary?

23 MR. SEMANKO: I'm looking at them for
24 noddings. They do go into other states?

25 VOICE: The Utah and Nevada state line

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1 is the lower boundary of the allotment.

2 THE COURT: So we're not talking about
3 water rights in Nevada or Utah.

4 VOICE: No, sir.

5 MR. SEMANKO: That's somebody else's
6 subcase.

7 THE COURT: Well, Mr. Semanko, since we're
8 here at an initial hearing, some of the other things we
9 need to talk about are settlement possibilities,
10 alignment of parties.

11 Do you have any ideas of where we need to go
12 there, where the court might be able to help move
13 things along?

14 MR. SEMANKO: Much to both counsels for the
15 United States credit, they have approached us about
16 sitting down and talking settlement. Other than
17 counsel shoptalk, we haven't talked about any
18 specifics. We're agreeable to talking with them.

19 Probably what we will do is communicate what
20 would be acceptable to us to them and see if it's worth
21 sitting down at that point, whether they think we're
22 close enough that we should sit down. I don't want to
23 waste either their time or our time; but certainly I
24 personally as counsel for others have settled some of
25 these; and I would be not exercising my role as counsel

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1 have not been reported yet.

2 So that's an issue I haven't had time to think
3 out, and would maybe be something we'd want to brief or
4 have a hearing on rather than trying to figure it out
5 here. But that's at a maximum. I think we'd like to
6 see them all considered together.

7 But at a minimum we've got to have the Basin 47
8 stuff, I think, considered together factually and
9 legally. They're too common to let one go forward and
10 not have the other one go with it. So --

11 THE COURT: Well, we talked about some of
12 the water rights that haven't been reported yet and
13 holding off on these water rights until those are
14 reported. And I think we were talking in the year
15 2000?

16 MR. SEMANKO: Well, that's for Basin 45.
17 It's December of 2000. I'm not sure, and maybe the
18 department can check or maybe they know, what it would
19 be for Basin 47.

20 But if we're right about 14924, 47-14924 not yet
21 having been reported and being in the same grazing
22 allotment -- and I'd note on the claim for that it, one
23 of the remarks is see also reference right A45-10325
24 for other water rights. Well, that's a reference in a
25 Basin 47 claim to a Basin 45 water right and the other

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1 properly if I didn't at least explore that.

2 But, on the other hand, it's entirely up to the
3 client what is acceptable in terms of sitting down and
4 talking. So I've gotten a good idea from my clients
5 over the last couple of weeks what would be acceptable
6 to them; and I'll communicate that to counsel for the
7 United States and see if we can move forward with some
8 kind of discussions. We certainly don't want to have
9 to keep this ball rolling if we don't have to.

10 THE COURT: What do you suggest for our
11 next setting in 14923?

12 MR. SEMANKO: I want to say after we get
13 resolution on the motions to file late objections.
14 Because at a minimum those cases need to be considered,
15 those subcases with this subcase. I'd say at a minimum
16 we'd want it after that. Maybe August 2nd we'll know
17 something; and we can at least talk about it on
18 August 2nd with the status conference or something.
19 But that's at a minimum.

20 At a maximum, I think we're looking at the issues
21 being the same between Basin 45 and 47, and maybe --
22 and a lot of the facts, and maybe consolidating at
23 least procedurally, if not completely, those subcases
24 as well. Now, that, of course, would require the

1 nine water rights that we talked about last time which
2 haven't been reported. So they are intimately linked.

3 And I think we have to wait for the 45s and this
4 47 to be reported before we truly know what the ball of
5 wax is going to look like. In the meantime we resolve
6 the late objection issue, see if people can get in on
7 late objections or not, and we'll be able to square off
8 and settle the dispute either through the court or, you
9 know, through discussions.

10 THE COURT: Well, assuming the late
11 objections are allowed, using your figure the ball of
12 wax, aren't we getting bigger and bigger and bigger
13 until we can't handle this thing anymore until at least
14 a year from now?

15 MR. SEMANKO: Well, if you went with my
16 suggestion last month of remanding the whole thing back
17 to the department for Basin 45 and perhaps 47, it would
18 be a pretty big ball of wax.

19 But here I'm seeing one claim that's been chopped
20 into five pieces in Basin 47 that's before the court
21 now, 14923, 14924 which hasn't been reported yet, so
22 there's two, in essence two private claims that have
23 been divided into six in Basin 47. There's the
24 26 subcases in which -- Mr. Bramer will characterize it

1 objections; so there's more than 26 objections. But 26
2 subcases in which people are seeking to file objections
3 in Basin 47 that I'm aware of. I haven't talked with
4 Mr. Pickett. There may be more that he's involved with
5 that we're not at this point.

6 So I'm looking at 30 or so there, 32; and then in
7 Basin 45, of course, we know the numbers on
8 Jared Bedke's amended Exhibit A, 156 Basin 45 subcases
9 in which -- of course, all they're asking is to be
10 heard on the merits. But those, if the court decided
11 not to hold those back because of waiting for Basin 45
12 to be reported, I guess, could go forward. We would
13 prefer obviously to have the legal issues made at one
14 time with regard to both kind of claims, private and
15 government claims. But just roughly counting there,
16 it's around 200 subcases.

17 And I guess I don't know what you mean by how big
18 the ball of wax gets, or if you're meaning to address
19 the motion that is to be heard later. But certainly if
20 we wait for Basin 45 and 47 to be reported until we
21 consider the federal claims and this one private claim,
22 it will take a little more time to do it.

23 But, on the other hand, we're going to have to
24 resolve those when they get reported, anyway. The same
25 issues are going to be argued. The same, more

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1 resources are going to be used. And it just doesn't
2 seem to be a good use of resources to move ahead with
3 some and wait for the others to come later, especially
4 in light of what we all know was overall a good result
5 but had some bad effects of going ahead and splitting
6 things up between de minimis and de maximus water
7 rights. We've created a little bit of a problem.

8 And I've read over the April 7th transcript; and
9 there were references by the court, by counsel for the
10 United States, by the private claimants -- I wasn't
11 involved at that point, but to the fact that there's
12 been a lot of confusion and a lot of problems caused
13 because of the fact that these have been bifurcated.
14 And certainly Mr. Tuthill at the June 7th hearing made
15 that abundantly clear for both Basin 45 and 47.

16 So I think we've got a dilemma. As you stated at
17 the last hearing, we need to figure out how to deal
18 with it. And I sympathize with your struggling to
19 figure out how to deal with that; but I think we have
20 to figure out a way to deal with it rather than letting
21 the ones that have been out of the cage go forward and
22 holding the others back for later.

23 I think we do need to consider them together.
24 And since we don't want to force or try to force the
25 department to pump these all out right now, we're left

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1 with having to wait until they're reported before we
2 resolve this problem.

3 THE COURT: Well, another alternative might
4 be to pick one of the cases that represents, contains
5 all of the issues that we need to decide eventually and
6 proceed with that one case now instead of waiting for
7 the remainder to be. And then the law of the case
8 would govern the later ones as they're reported.

9 Is that a possibility?

10 MR. SEMANKO: Well, if that were to be done,
11 and I'm thinking it through as I stand here, it would
12 obviously have to be, at least for the ones that I
13 represent, 14923A, B, C, D, and E because that's the
14 only one that's been reported to a private claimant at
15 this point. If their objections are granted, obviously
16 then you got a full plate; and you could decide the
17 issue. And that's up to the court to decide whether
18 that's an efficient way to move.

19 The facts are going to be common among all of the
20 subcases whether reported or not. And I would leave it
21 to the United States to speak to whether the
22 26 subcases that we've sought to object to are
23 representative enough of the other 156 subcases in
24 Basin 45 that we sought to -- as to whether that's a
25 sufficient ball of wax to deal with, if that's a big

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1 enough ball of wax to deal with the issue and set, I
2 guess, precedent for the others.

3 Although if they're not consolidated, that's not
4 going to be the case. The subcase will, I imagine,
5 stand on its own until the others are litigated later.

6 And that, now standing here and reasoning it
7 through, still means we litigate it twice; we argue it
8 twice; we brief it twice; we discovery schedule it
9 twice; and use a lot of our clients' resources twice.
10 So it may not be the best way to go. But certainly if
11 it was going to happen, it would have to be 14923, I
12 think.

13 THE COURT: Well, I hate to have the court
14 choose which case to go ahead with. And it would be
15 better if the claimants themselves could make that
16 decision. But that's at least a possibility.

17 MR. SEMANKO: Well, again, my suggestion
18 would be at least to wait until August 2nd, see where
19 we are on the motions to file late objections, and then
20 talk about the status of this case and whether we can
21 schedule it now or decide what to do with it. But I
22 think at this point it's abundantly clear that it's
23 premature until we see what happens with our motions to
24 file objections in Basin 47 and perhaps Mr. Pickett's
25 motion and others that may be filed in the interim.

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1 THE COURT: Okay. That's all I have,
2 Mr. Semanko. Thank you.

3 MR. SEMANKO: Thank you. Sorry I took so
4 long.

5 THE COURT: Mr. Bramer, do you have any
6 initial hearing type statements --

7 MR. BRAMER: Yes, Your Honor.

8 THE COURT: -- rather than arguing the
9 merits?

0 MR. BRAMER: May it please the court, my
1 name is Randy Bramer. I'm here for the United States
2 on behalf of the Forest Service.

3 Your Honor, I have to differ with Mr. Semanko's
4 characterization of what we're doing here today. We
5 have Subcase 47-14923A, B, C, D, and E. They have been
6 reported out in the name of private claimants. We have
7 filed objections.

8 This is not the same situation we had in Basin 45
9 where those claims had not been reported out. This
0 case is perfectly ripe for determination. If we want
1 to go forward on initially the objections we're going
2 to hear today, the late objections will be heard
3 today. They're not scheduled for August 2nd.

4 Once the court makes those determinations, if
5 Mr. Semanko wishes to file a motion to consolidate

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1 those two claims, that would be the appropriate time to
2 do it. I believe we are in an initial hearing, and
3 we're prepared to schedule a hearing and go forward on
4 these claims.

5 Second, Your Honor, I would oppose any oral
6 motion to reclassify as a Class 2 set of subcases at
7 this point. There are several reasons for that
8 concern, Your Honor.

9 Number one, it is unclear who Mr. Semanko even
0 represents. The last hearing Mr. Semanko was
1 representing Mr. Bedke. This hearing he indicated he's
2 representing several other parties. Mr. Pickett
3 indicated he might be representing him. We are not
4 even clear who Mr. Semanko is representing, let alone
5 the issues before the court, both of which, and
6 particularly the latter, is germane to a Class 2
7 subcase designation.

8 We would ask, should Mr. Semanko and his clients
9 wish to have a Class 2 subcase designation, they would
0 make that motion in writing. We would respond
1 appropriately. At this point we simply don't have
2 enough information to take any position.

3 Further, Your Honor, as to the issues, I'm not
4 sure what the issues are. No one has actually told me

1 disputes; I have heard there are factual disputes. The
2 fact is perhaps through the motion to reclassify to a
3 Class 2 subcase we can have in writing the issues as
4 the parties see them.

5 Again, we've made some attempts to initiate
6 settlement discussions to, at a minimum, define those
7 issues. But at this point in time I cannot say that
8 there are clear issues we can resolve that will govern
9 all these cases or would not govern all these cases.

10 Finally, Your Honor, I do have a difference of
11 opinion on how many late objections we have. By my
12 count, by the time we get to 3 o'clock we have well
13 over 700 subcase late objections that have been filed
14 in the three months since April 7th when we first
15 appeared before this court on Mr. Bedke's 60
16 objections.

17 Your Honor, I have nothing further at this point
18 unless you have any questions.

19 THE COURT: Do you have any suggestions of
20 where we go from here?

21 MR. BRAMER: Your Honor, I think we hear the
22 late objections. Should the court choose to grant
23 those late objections and if the court did grant those,
24 we may wish to have them consolidated.

25 The United States, of course, is not going to

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1 take the step. If Mr. Semanko believes that's the
2 appropriate step, he can file the appropriate motions.

3 At this point, Your Honor, I do not know the
4 court mediated settlement -- or having a settlement
5 mediator come into this process would not be a useful
6 thing to have. I feel like we are attempting to
7 initiate settlement discussions. All due fairness to
8 Mr. Semanko, he has had a group of people he's trying
9 to represent; and it has not been easy to join that
10 group together. So I think that's an alternative we
11 may wish to explore.

12 As far as the August 2nd date, the only thing we
13 have on August 2nd right now is Mr. Pickett's late
14 objections and an initial conference concerning
15 Mr. Pickett. None of these claimants in this
16 particular case are before the court on August 2nd.

17 MR. SEMANKO: That's correct.

18 THE COURT: We've got an independent expert
19 sitting in the court. And we also, of course, have the
20 State available, State of Idaho.

21 Would either of them be good for moderation of a
22 settlement conference?

23 MR. BRAMER: Your Honor, I think what we
24 would like to do, if possible -- I would need to

1 discuss it directly to him. But I believe some attempt
2 to get the parties to the table together and to discuss
3 these issues would be useful.

4 If the best vehicle would be the use of IDWR and
5 perhaps one of their administrative judges, we have
6 Mr. Spackman as well as a couple other folks, that may
7 be a good vehicle to do it. Then you would not put the
8 pressure on the department, who are the people who are
9 appearing in court as the court's experts, to have to
10 mediate that sort of dispute. But I think something
11 along that procedure would be something that would be
12 worth pursuing.

13 THE COURT: What I was thinking about,
14 having somebody with some expertise in these fields,
15 you know, that could let everybody know what state law
16 is or isn't.

17 MR. BRAMER: The people I'm suggesting,
18 Your Honor, are the administrative law judges for the
19 department that would hear water rights cases.

20 THE COURT: Sure. Mr. Spackman, I'm sure,
21 has a real wealth of experience.

22 MR. SPENCER: Yes, Your Honor.

23 THE COURT: Another benefit of having a
24 state person moderate, we don't have to pay him
25 anything, do we?

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1 MR. SPENCER: Your Honor, I believe the
2 department would do its best to accommodate any
3 reasonable requests by the parties.

4 THE COURT: Well, on another matter, what
5 do you think of my great idea about picking one case
6 and proceeding with that?

7 MR. BRAMER: Your Honor, at this point in
8 time I think we take the cases as they're coming in.
9 And you have a case in front of you right now.

10 You also have another case that presents similar
11 issues. I believe Mr. Brown has a case with the
12 Matthews brothers.

13 But I think at this point in time, given the
14 delay -- and it appears every time we're delaying these
15 proceedings we seem to be receiving not two or three
16 new late objections, but rather hundreds of late
17 objections. I think we should move forward on this. I
18 think the deadlines have passed. And if the parties
19 can make a good showing -- or a good showing of cause
20 as to late objections, they should be granted.
21 However, I do think what we're doing is putting off the
22 inevitable.

23 And Mr. Semanko raised the issue of a claim not
24 being reported out. I think this court focused on it
25 as I did, and that is does that mean we're going to

1 stay all of this. Because the director's report for
2 irrigation and others is 2001 rather than 2000.

3 So, again, if we're talking about staying -- but,
4 again, here we're not talking about the claims that
5 weren't reported. We're talking about a claim or
6 several claims in Basin 47 which are not before the
7 court weren't reported. The claim before the court has
8 been reported, objections have been filed, and it's
9 ripe for determination.

10 THE COURT: Mr. Semanko, what do you think
11 of the idea of having someone like Mr. Spackman
12 moderate some kind of settlement? Or a special
13 master?

14 MR. SEMANKO: As a court-ordered mediation
15 or --

16 THE COURT: Yes.

17 MR. SEMANKO: I think that's an appropriate
18 subject for a rule 16 settlement conference which -- or
19 a scheduling conference which we would have if this was
20 a Class 2 subcase. I'm not opposed, if we sit down for
21 settlement, to having the department do it, obviously
22 because they would be someone presumably we wouldn't
23 have to pay.

24 But frankly I'd have to ask my clients. I think
25 I said during my comments that we would communicate

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1 what we thought was a reasonable settlement proposal to
2 the United States; and then if they thought it was
3 worth sitting down to talk about it, we'd do that.

4 That's more than we've done so far. We've just
5 talked over the phone so far.

6 I'd need a couple minutes to talk to my clients
7 to see if they're interested in doing that. I can't
8 make that decision for them, whether they'd like to go
9 to a settlement conference right now or not. I
10 certainly could see its value and benefit.

11 THE COURT: Can you think of someone else
12 who might be able to moderate such a settlement?

13 MR. SEMANKO: There's some guy who is
14 marrying Miss Chenowith. I think he could do a good
15 job.

16 THE COURT: For free?

17 MR. SEMANKO: I'm sure he would do it for
18 free. But I'm not sure we could get the United States
19 to agree to having Wayne Hage moderate the case,
20 mediate the case.

21 THE COURT: Does he happen to live in
22 Nevada?

23 MR. SEMANKO: Yes. He lives out of state,
24 too. But he does have a daughter who lives in Boise,
25 so he does travel here quite often.

1 To be serious, my experience with the special
2 masters has been good. I don't know if they all have
3 experience in this and would not want to participate.
4 And my experience with the department has been
5 good. Mr. Spackman has been one who seems to encourage
6 settlements; and I think he would do a good job if we
7 decide to go that route.

8 I can't think of anyone else other than the
9 special masters at this point that we wouldn't incur
0 additional expense going that route as well as
1 litigation and maybe twice as well.

2 THE COURT: Sure. Well, Mr. Bramer, what
3 do you think we should do next in these five subcases?

4 MR. BRAMER: Your Honor, my suggestion to
5 the court would be: I will submit an initial
6 scheduling order to Mr. Semanko in the next week. We
7 will see if we can jointly agree to a scheduling order
8 for this case. If we cannot, we can submit separate
9 scheduling orders. We can then evaluate, depending on
0 this court's ruling on late objections, whether a
1 motion to consolidate is necessary, and to move forward
2 along those lines.

3 MR. SEMANKO: All I can say is that is not
4 consistent with the conversation that I had with
5 Mr. Bramer this morning. If that's the way he wants to

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1 proceed, that will be fine.

2 I would just as soon set this off. I can just
3 from the April 7th transcripts cite several instances
4 where the United States asks for 30 days and 60 days to
5 do nothing more than explore whether an SF5 can be
6 entered into, whether a report can be generated by the
7 department. And to suggest that we're trying to delay
8 this thing by asking for a mere 30 days or so to see
9 how this thing proceeds on our motions to file late
0 objections is unbelievable to me.

1 But if we want to go ahead and submit scheduling
2 orders, we can do that. I think it's pretty much a
3 waste of time when we don't have a decision on motions
4 to file late objections yet, and don't know what the
5 train is going to look like yet.

6 Again, this is the tail wagging the dog. This
7 allotment does cover this entire area. There are 12
8 private water right claims that have been claimed,
9 de maximus claims. Only one of those in five parts has
0 been recommended. So -- again, not to mention all the
1 federal claims that we tried to object to.

2 So I think it would be very premature to move
3 forward with this, the same as it was in Mr. Pickett's
4 case to move forward. I mentioned August 2nd not

1 August 2nd, but that I had heard that there were some
2 hearings on similar matters going on that day. And it
3 might be a good day to have a status conference or a
4 scheduling conference or whatever the court might want
5 to have. But I think it would be premature to submit
6 scheduling orders at this time.

7 MR. BRAMER: To address Mr. Semanko's
8 concern, if I may, Your Honor, and to clarify, I
9 believe I talked to Mr. Semanko. And what we had
10 agreed to is it seemed sensible for the court to rule
11 on the late objections prior to setting schedules.

12 What I am suggesting here is that we get together
13 and think about a schedule in this subcase, try to
14 agree to dates pending the court ruling on those late
15 objections. Should the court rule and allow those late
16 objections, nonetheless we would be prepared to submit
17 an order to this court to move forward in this
18 subcase.

19 THE COURT: Sure. It sounds like you're
20 right about getting, me getting my order out on the
21 late objections.

22 MR. SEMANKO: With that clarification, that
23 is what we discussed this morning. And that makes
24 sense.

25 THE COURT: Sure.

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1 MR. SEMANKO: At that time we may decide
2 ourselves whether we want to move to stay until the
3 other report comes out or whatever. But certainly I
4 don't think we can take the next step, whether it's
5 scheduling or us filing a motion to consolidate or
6 whatever, until we see what happens with the late
7 objections. So I agree with that assessment that we --
8 THE COURT: I don't think Mr. Bramer, and I
9 didn't take it to mean that he was trying to delay the
10 matter or you were trying to delay the matter. So I
11 never took it that way.

12 Just a point of clarification, the boundary
13 between 47 and 45 is Goose Creek?

14 MR. SEMANKO: And this is where we could use
15 some technical expertise. No, the boundary between the
16 West Side and the East Side Allotment is Goose Creek.
17 The boundary -- and I don't have it marked on here, but
18 it's somewhere over on the very west side of the map
19 for Basin 45 and 47.

20 I know that, for example, Piney Creek is in
21 Basin 47. It's not included on the claims for
22 Basin 47. So it at least goes over as far as about to
23 where 19 East is shown on the bottom of the map.
24 But I don't have that line -- I didn't use that

1 smaller part of basin -- or of that allotment that's in
2 47. That's why there's only two claims filed, whereas
3 there are 10 claims filed in Basin 45 in the same
4 allotment, 10 here and 2 here. And one of the 2 has
5 been chopped up into five pieces.

6 And then Jared and Bruce Bedke's late objections
7 pertain just to the purple area. And then they also
8 have them in the blue area.

9 SCOTT BEDKE: If I may, Your Honor, the line
10 is the Trout Creek Ridge there that differentiates --
11 this is Scott Bedke -- between 47 and 45.

12 THE COURT: Good. Thank you. Is that near
13 Piney Creek?

14 SCOTT BEDKE: Right. Piney Creek would be in
15 47.

16 MR. SEMANKO: So it would be about where that
17 450 is on the bottom, working up from there, maybe a
18 little to the left of that along the line. In any
19 event, it's not all in one basin unfortunately.

20 MR. BRAMER: If I may, Your Honor, I think
21 the court should be careful not to be focused on where
22 the Forest Service draws its grazing allotment
23 boundaries, but rather where the claims at issue have
24 been filed and are before the court. In Basin 45 this
25 court was asked to stay the proceedings on competing

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1 claims until they were ordered out. That's on that
2 map, too. Basin 47 is on that map, too.

3 But as soon as we get into the administrative
4 boundaries the Forest Service uses and trying to
5 evaluate this process, it gets hopelessly complex. So
6 I would try to caution the court against mixing those
7 things up.

8 I think the department would probably agree with
9 that assessment. They've had to look at these
10 watersheds before.

11 Your Honor, one final comment. You asked about
12 what should you do. And I think a 16(k) order would be
13 appropriate. And if the court wishes to ask the
14 parties to submit their rationale why that would be
15 appropriate, I think it would get settlement
16 discussions off of square one.

17 I don't know that by August 2nd Mr. Semanko may
18 send me a letter; we may say that's not acceptable; he
19 may say too bad or that's not what we want to do.
20 That's that. I don't consider that to be constructive
21 settlement dialogue. I consider parties sitting down
22 across the table from each other potentially with a
23 mediator -- which I think will give some of the
24 claimants a little bit better feeling of fairness, and
25 Mr. Semanko can tell them this is a person who is

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1 impartial, this is not an United States person, this is
2 not somebody who's got an axe to grind with us -- I
3 think that's a much more constructive dialogue. And I
4 would encourage the court to send us down that road, if
5 we can.

6 MR. SEMANKO: Let's assume we do that. What
7 are we going to be talking about in settlement
8 discussions is my question. They have filed objections
9 to us. We have tried to file objections to them. But
10 certainly we cannot resolve something that we haven't
11 even -- the court hasn't decided whether we can be in
12 on yet.

13 So if we can discuss our objections to the
14 United States, that would certainly be a productive
15 discussion. But short of that, I'm not sure what we'd
16 order under 16(k) at this point. Just these subcases
17 and not anything dealing with the United States claims
18 is my problem, and doing it more than once again.

19 MR. BRAMER: Your Honor, we will be arguing
20 those late objections today. I'm assuming the court
21 will have a decision relatively soon on that. To set
22 up a 16(k) mediation, to make sure the mediator is
23 available, to set up some procedures to do that
24 certainly is going to take 30 to 45 to 60 days.

25 My point is if the process gets started, we may

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1 get to a result. If we fail to do that, I think we're
2 going to be back in this court on August 2nd with the
3 same arguments, looking at the same issues.

4 I don't believe a Class 2 subcase designation is
5 in any way required to have a 16(k) mediation. And I
6 think what we're going to do there is bog down in
7 additional paper. Now, should Mr. Semanko decide
8 that's the procedure he wants to utilize for whatever
9 other purposes, that's his choice.

10 MR. SEMANKO: My only concern was it didn't
11 look like a Class 1 subcase. And that's the only
12 reason I suggested Class 2. It's a little more
13 complicated than the run-of-the-mill Class 1. But I
14 could be wrong.

15 THE COURT: Well, frankly I'm not sure that
16 differentiation between classes 1 and 2 has a lot of
17 meaning when you get into a contested matter like
18 this. I think that was just for convenience for
19 administration purposes the reason that distinction was
20 made.

21 But when you talk about scope of the issues, we
22 are here. The court will do whatever it has to do
23 resolve the issues. And if it means handling it as you
24 would a Class 2 or Class 1, whatever it takes, we'll
25 take care of that.

1 Mr. Spencer, does it make any difference from
2 your position as the independent expert to the court of
3 how these are handled basins together or separate?
4 MR. SPENCER: Well, Your Honor, I think that
5 there have been several routes that have been
6 suggested. I would suggest that if it is a matter that
7 we have such common issues that all the rights ought to
8 be considered together, then I would think that it
9 wouldn't mean much weight until the department has had
10 the opportunity to issue its recommendations on all
11 those rights.

12 And in that regard I would like to make a comment
13 about the discussion regarding delay and the concerns
14 being expressed that one side is trying to delay or the
15 other side is trying to delay or that the department,
16 by failing to recommend all of the rights at the
17 present time, is delaying the process. I think that
18 the proper perspective to apply here is that this
19 bifurcation has not caused delay. What the bifurcation
20 in effect has done has resulted in some of these rights
21 being reported two years ahead of where they otherwise
22 would have been.

23 And so it's not a matter that we are delaying the
24 process through the bifurcation. It is a matter that
25 we now have some rights that actually are way out in

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1 initial hearing on April 7th as the basis for filing
2 their objections; and there was some question because
3 there were a number of State-of-Idaho-objected-to water
4 rights on that, whether they really intended to object
5 to all those.

6 Jared has since provided an updated list, I
7 think, of 156 rather than 196 subcases that he intended
8 to object to. And I attached that to Scott Bedke's
9 reply or responsive brief in Basin 45. So I thought
10 that had resolved it.

11 Scott Bedke's motions were filed with a list
12 attached and, I think, speak for themselves. He didn't
13 intend, and our briefing indicates he didn't intend to
14 file objections to the breadth that the other Bedkes
15 had because he's not in the purple area. Scott is not
16 in the East Side Allotment; he's only in the West
17 Side.

18 So I think -- and we can resubmit that list from
19 what's on the objection that he filed. But that is his
20 list.

21 I understand the Poultons have an updated list;
22 and we can provide that at the 3 o'clock hearing, I
23 believe, if I can check with them. I think it's very
24 similar to Jared and Bruce's list.

25 THE COURT: Okay. What I just want to make

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1 front of where they would have been had there not been
2 a bifurcation.

3 So I think that the department's perspective here
4 is that we aren't really talking about delay. We're
5 talking about are these proceedings premature at this
6 point. And therefore the department does not share the
7 concerns that we have to hurry up and get all this
8 stuff resolved right now. And I think we have complex
9 issues here that need to be looked at long and hard in
10 terms of how to posture them for the most efficient
11 possible resolution.

12 THE COURT: Well, before we close here, for
13 the record, do we have all of the Bedkes and the
14 Poultons to give me the list of the -- an exact list of
15 all of the claims they're filing a late objection to?
16 Because I think there's some confusion on that.

17 And then we found out our web site was down.
18 We're back up now. Everybody is up to speed.

19 MR. SEMANKO: Yes, Your Honor. And
20 Randy Bramer and I talked about this this morning. I
21 had understood that incorrectly, I guess, from the face
22 of what you asked for at the hearing from reading the
23 transcript.

24 I had understood that the confusion arose because

1 sure is I've got the current list and they're
2 accurate --

3 MR. SEMANKO: Well, I apologize for the
4 confusion. I thought the confusion was only with
5 regard to what Jared and Bruce had filed, and not with
6 the others. But we'll get that straightened out.

7 THE COURT: Okay. On these five that we're
8 considering now at the initial hearing, I'll certainly
9 take some of these ideas under consideration. And I'll
10 come up with a terrific plan that's going to solve all
11 the problems here. And I'm hoping everybody agrees
12 with it. But if you don't, maybe we can come up with
13 some other later on. But the point is we've got to get
14 these water rights moved along. They can't sit
15 forever.

16 MR. SEMANKO: I agree with that, Your Honor.
17 I just don't want to have to litigate things more than
18 once is all we're asking for.

19 THE COURT: Sure. Well, counsel, is there
20 anything further on these five?

21 MR. BRAMER: Your Honor, I have nothing
22 further.

23 THE COURT: Mr. Semanko?

24 MR. SEMANKO: No. Thank you.

1 MR. SPENCER: Nothing further, Your Honor.

2 THE COURT: You're pretty independent
3 today, aren't you? Well, if there's nothing further,
4 then we'll go off the record. Thank you, counsel.

5 (PROCEEDINGS ADJOURNED)

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1 TRANSCRIBER'S CERTIFICATE

2 STATE OF IDAHO)
3)
4 County of Twin Falls)

5

6

7 I, DUANE J. SCHNEBERGER, duly appointed,
8 qualified and acting official reporter of the Fifth
9 Judicial District of the State of Idaho, DO HEREBY
10 CERTIFY that the foregoing constitutes a complete
11 transcription of the requested portion of the
12 proceedings in the foregoing matter from electronic
13 recording tapes, to the best of my ability, said
14 transcript consisting of pages 1 through 41, inclusive.

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 this 8th day of July, 1999.

17 
18

19 DUANE J. SCHNEBERGER, Idaho CSR No. 5, Twin Falls, ID

20

21

22

23

24

25

1 special master who won't be hearing your case, to
2 moderate it to help settlement.

3 But in this case here it sounds like Mr. Bramer
4 is willing to meet with you. And he hasn't suggested
5 that we need a special master to help you out. So
6 whatever your preference is, we can accommodate you.
7 We're trying to resolve these water right claims as
8 fairly as we can to everybody, and give everybody a
9 chance to save money and time.

10 But if it has to go to trial, we'll accommodate
11 you there, too. We'll set them for trial, and we'll
12 give you a full chance to present your cases.

13 So, Mr. Bramer, is there anything else we need to
14 do on 11978?

15 MR. BRAMER: I have nothing further,
16 Your Honor, except to thank Mr. Gardner and
17 Mr. Matthews, as well as Mr. Whiteley, for
18 participating in this and not having any of the prior
19 notice of the issues that would come up. I think it's
20 useful to have them here and to address these issues.

21 THE COURT: Sure. But right now I guess
22 what we're doing is we're vacating the initial
23 hearing. We're going to take a step back, get this
24 sorted out; and then once we get Miss Brown's report,
25 then we'll go forward and probably set another initial

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1 hearing and, okay, now we know who is on first and
2 third, where do we go from here.

3 But if any of you have any questions, you know,
4 you know the major players here. Ask the questions
5 now. And if Miss Brown has any information in her
6 files, IDWR has been more than willing to share their
7 information with everybody. They're public records.
8 You own them. So if you want to take a look at
9 anything, she can give you the copies. And she might
10 even be willing to meet with you or maybe somebody else
11 from IDWR's southern office.

12 Because one of the things obviously, Mr. Whiteley
13 pointed out, what are we talking about? One spring?
14 Two springs? Where is it? That's the first thing, I
15 think, I'd want to know is are we talking about the
16 same thing.

17 So if there's -- do you have any questions about
18 what's happened this morning or where we go from here?

19 VOICE: No.

20 THE COURT: Good. Mr. Bramer?

21 MR. BRAMER: Nothing further, Your Honor. I
22 believe that there are some ownership issues that will
23 come up here -- Mr. Bedke's hearing on claims that were
24 made that were not reported out. It may be appropriate
25 for these gentlemen that are going to be able to stay

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1 until 1:30 or 2 o'clock today, 1:30, to address those
2 issues at the same time. I think there's some concern
3 with claims that were filed and not reported out.

4 Now that the department is going to proceed on
5 those three gentlemen and have agreed to meet, we have
6 a case record of all (inaudible). In fact we have a
7 proposal there. As soon as the other parties are in
8 front of the court at this point on those other claims,
9 it may be useful to have (inaudible) here and give them
10 an opportunity to talk about the claims that were not
11 reported out.

12 THE COURT: If you folks are willing to do
13 that, stay around and talk, we can accommodate you. I
14 can leave the room, or we can maybe find another room
15 in the building if you want to talk. Whatever your
16 preference is.

17 Well, counsel, in hopes that there's nothing
18 else, then we'll go off the record. Thank you.

19 (DISCUSSION HAD OFF THE RECORD)

20 THE COURT: Good afternoon, counsel, ladies
21 and gentlemen. We're now on the record.

22 This is the SRBA court sitting in Burley, Idaho.
23 My name is Terry Dolan, special master for the SRBA.

24 We're here to consider four subcases in
25 basin 45. The four subcases are 4050, 10332, 10505,

Page

1 and 10506.

2 And the record shows that the claimants are the
3 BLM and the Forest Service. And they're represented by
4 Larry Brown and Randy Bramer. And we have some
5 objectors -- Bruce Bedke, Ray Bedke, Gary R. Poulton,
6 and, let's see, that's Winston Whiteley --

7 VOICE: Winslow Whiteley.

8 THE COURT: Winslow Whiteley.

9 MR. BRAMER: Your Honor, if I may, this is
10 Randy Bramer for the record. I don't believe we are
11 claimants in these cases.

12 THE COURT: Oh, you're not?

13 MR. BRAMER: No, we're not.

14 VOICE: I don't believe the BLM is
15 either, Your Honor. I think --

16 THE COURT: Who are the claimants then?

17 VOICE: Bruce Bedke is the claimant in
18 45-1050 and the 10506. The other two cases you named,
19 I'm not aware of.

20 THE COURT: Let's see. 10332, we show the
21 claimant is, right, Winslow Whiteley. But then there's
22 also or Ray Bedke, or Gary Russell Poulton, or
23 Bruce Bedke. None of them relate to each other.

24 VOICE: Correct. As I understand it,
25 their objecting to the place.

Exhibit 6

Page

1 THE COURT: Well, not according to this.
 2 This is an amended notice of claim. It shows up here
 3 in the part for claimant Whiteley, Bedke, Poulton, and
 4 Bedke. So we got four different people claiming the
 5 same water rights.
 6 Miss Brown.
 7 MS. BROWN: Yes. These are the Bedkes
 8 (inaudible) water right claim was disallowed in favor
 9 of a licensed right and in the name of the Forest
 10 Service.
 11 THE COURT: Oh, this is one of those we
 12 talked about —
 13 MS. BROWN: 10332.
 14 THE COURT: Is this one we were talking
 15 about earlier this morning?
 16 MS. BROWN: No, it's not.
 17 THE COURT: It had to do with 11978?
 18 MS. BROWN: That's a different (inaudible).
 19 THE COURT: Oh.
 20 MS. BROWN: This is a claim to a, to a
 21 (inaudible) the department felt was already under
 22 license to the Forest Service, 45-07446.
 23 MR. BRAMER: Your Honor, may I clarify for
 24 the record?
 25 THE COURT: Please.

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1 MR. BRAMER: Subcase 45-10332, which the
 2 court correctly referred to in the director's report,
 3 is an objection by a party to four other parties, not
 4 including the Forest Service. That is the objection
 5 that's in front of the court on that case.
 6 Mrs. Brown's reference is to another water right
 7 that the Forest Service filed for a similar source, I'm
 8 not sure if it's identical, which no objection was
 9 filed to. And we have agreed on resolving that other
 10 Forest Service water right.
 11 There's not an objection, and the Forest Service
 12 is not a party to these cases. The objection is rather
 13 to the disallowance of claim by a private party to a
 14 private party.
 15 THE COURT: But you're saying Whiteley,
 16 Bedkes and Poulton are not claimants to 10332?
 17 MR. BRAMER: I believe, Your Honor, that the
 18 claim — does that look right to you?
 19 VOICE: I could look it over —
 20 MS. BROWN: (Inaudible).
 21 MR. BRAMER: This is, Your Honor, this is
 22 the claim that we had, the domestic and stock water
 23 objection which lists it as this court indicated
 24 earlier.
 25 VOICE: (Inaudible) Owens Corral, we

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1 know where that's at. It's Owens Corral Springs. And
 2 I'm not sure why it was set out without the others. So
 3 I'm really confused myself.
 4 MR. BRAMER: The objection to the claim, I
 5 believe, by — the objector in this case, I believe, is
 6 listed as Ray Bedke. And I believe his objection is to
 7 the claimant of the water right as Ray C. Bedke,
 8 Winslow Whiteley, Gary Russell Poulton and
 9 Bruce Bedke. And they're objecting to disallowance of
 10 that claim.
 11 The Forest Service claim is not at issue in this
 12 proceeding at this time. And if the court would like,
 13 we can make copies of this domestic and stock water
 14 objection so the folks that are present have a copy of
 15 that, if they would like that.
 16 THE COURT: Do we have a copy of the
 17 objection in the court file?
 18 MR. BRAMER: Your Honor, I don't know.
 19 THE COURT: Yes, we've got an objection for
 20 (inaudible). Now, this is for 10332.
 21 VOICE: (Inaudible) like I say,
 22 Your Honor, (inaudible) I know the location; but I'm
 23 not sure quite —
 24 MR. BRAMER: Yes, why don't you make us
 25 (inaudible) first of all, make a copy of the

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1 United States — (inaudible) Ray filed the objection.
 2 VOICE: (Inaudible).
 3 MR. BRAMER: Well, Ray filed the objection.
 4 And I believe, for the record, Mr. Ray Bedke is
 5 deceased.
 6 For the record, Your Honor, Mrs. Bruce Bedke —
 7 can we have the record show, the recording — has just
 8 indicated that Winslow Whiteley is also deceased. And
 9 I believe he has been succeeded in his interest by
 10 Robert Whiteley.
 11 VOICE: Your Honor, I'm not sure that
 12 it's in order at this time; but I would like to put my
 13 son on as well as myself. Is that possible?
 14 THE COURT: Well, anyone who has filed an
 15 objection in this case is a party.
 16 VOICE: Yes.
 17 THE COURT: And anybody who wants to file
 18 an objection after it's initially filed then has to
 19 file a motion to file a late objection. And then that
 20 has to go to a hearing on whether that late objection
 21 is going to be allowed or not.
 22 VOICE: Mr. Bedke, were you asking
 23 (inaudible) —
 24 VOICE: Yes.
 25 THE COURT: As a claimant.

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1 VOICE: I want him, I want him
 2 alongside my name in case I should expire for some
 3 reason or other. He can, you know, he is familiar with
 4 it.
 5 THE COURT: Well, we could file -- I guess
 6 IDWR -- what you do is file -- what is the form
 7 number? Do you have --
 8 MS. BROWN: (Inaudible) enter an affidavit
 9 of.
 10 VOICE: Okay.
 11 THE COURT: But now this 10332 has been
 12 recommended for disallowal?
 13 MS. BROWN: Yes, Your Honor, it's
 14 recommended in favor of 45-07446.
 15 VOICE: 45 what?
 16 MS. BROWN: 45-07446.
 17 THE COURT: Everybody get that? Subcase
 18 No. 45-07446. And that's recommended and claimed by
 19 the Forest Service?
 20 MS. BROWN: That's correct, Your Honor.
 21 THE COURT: Have all these four water
 22 rights that we're now considering, are all four of
 23 those recommended for disallowal?
 24 VOICE: No, Your Honor. 10505 and
 25 10506 are claims made by Mrs. Bedke which BLM filed

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1 objections on.
 2 THE COURT: Okay.
 3 VOICE: To Bruce Bedke.
 4 THE COURT: What about 4050?
 5 VOICE: I have no knowledge of that
 6 particular claim or particular claimant.
 7 VOICE: (Inaudible).
 8 THE COURT: The only thing we have in 4050,
 9 we have an objection filed by Bruce Bedke. And in
 10 Mr. Bedke's objection, he says that Bruce Bedke is the
 11 claimant. That's listed in the director's report.
 12 VOICE: (Inaudible). I really couldn't
 13 find it, sir. I don't know what --
 14 THE COURT: We don't have a copy of the
 15 claim in the file. All we have is a copy of the notice
 16 that we sent out of the hearing. But then the
 17 objection filed by Bruce Bedke --
 18 VOICE: (Inaudible) I'm sure I can
 19 enlighten (inaudible).
 20 VOICE: I wonder if those were filed by
 21 Ray Bedke (inaudible).
 22 MS. BROWN: Your Honor, could I see a copy
 23 of the (inaudible).
 24 THE COURT: In 4050?
 25 We can go off the record now if we need to take a

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1 look at these records.
 2 (DISCUSSION HAD OFF THE RECORD)
 3 THE COURT: Back on the record. We're
 4 going to take these one at a time. And that is
 5 45-05050 -- 04050, sorry. And we've got a little
 6 confusion here.
 7 4050 looks like it was claimed by Bruce Bedke and
 8 then objected to by Bruce Bedke. And it doesn't appear
 9 the United States is a party to that subcase.
 10 And Mr. Bedke doesn't have his records here. He
 11 doesn't show that he was a claimant on that or not. So
 12 we're going to have to set that one off.
 13 Do you folks need to have --
 14 VOICE: (Inaudible).
 15 THE COURT: -- additional time to take a
 16 look at this or --
 17 VOICE: Perhaps. I guess we ought to
 18 investigate it.
 19 THE COURT: Miss Brown, you said that you
 20 don't have that 40505 file here.
 21 MS. BROWN: I'd be glad to call Mr. Bedke
 22 and see what (inaudible).
 23 THE COURT: Okay.
 24 MS. BROWN: Once he has his records and I
 25 have the department's records in front of me, we can

Page

1 (inaudible).
 2 THE COURT: Well, how about this? Could
 3 you submit a report to the court, say, within 30 days
 4 of what you find and then what your discussion with
 5 Mr. Bedke?
 6 MS. BROWN: I certainly could do that, or
 7 would a Standard Form 5 (inaudible).
 8 THE COURT: Oh, sure. The reason I'm
 9 saying instead of report within 30 days, that's kind of
 10 a deadline to do something. But an SF5, that takes
 11 care of the lawsuit altogether, the subcase claim
 12 altogether.
 13 Do you have Mr. Bedke's address and phone
 14 number?
 15 MS. BROWN: I'll be checking with him
 16 (inaudible).
 17 THE COURT: Okay. And you might want to
 18 check your records, Mr. McCanlin (sic), and let us know
 19 what you find out. But that's on 4050.
 20 Now let's go to the next one, 10332. And that's
 21 one where we have the multiple claimants; and we show
 22 it objected to by Ray Bedke. And I think we've been
 23 told that Ray Bedke is now deceased.
 24 VOICE: Yes.
 25 THE COURT: It has nothing to do with the

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1 SRBA? We didn't drive him to his grave?

2 VOICE: Maybe. I think it had a lot to
3 do with it. (Inaudible).

4 VOICE: Extenuating circumstances there
5 (inaudible).

6 THE COURT: But who is the successor in
7 interest to Ray Bedke?

8 VOICE: Scott Bedke.

9 VOICE: Scott Bedke.

10 THE COURT: So now we have Scott Bedke as
11 the person who is objecting to the claim filed by
12 Winslow Whiteley, Ray Bedke, Gary Poulton and
13 Bruce Bedke.

14 Where are we on this one now? This is 10332.

15 VOICE: That doesn't make sense,

16 Your Honor. Here Ray is supporting the objections.

17 The particular claim should be (inaudible) BLM

18 Forest Service claim. The BLM Forest Service has filed

19 (inaudible) and therefore should not hold a claim for

20 stock water. That doesn't, I think (inaudible) with

21 Ray's objection to Ray, Winslow, Gary Russell Poulton

22 and Bruce Bedke's claim. That doesn't, that doesn't

23 seem right.

24 THE COURT: Well, Mr. Bedke, take a look at

25 the notice of claim to water right; and you'll see who

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1 the claimants are.

2 MS. BROWN: (Inaudible) confusion because
3 this water right claim number was reported as
4 45-07446.

5 VOICE: This is the same one.

6 VOICE: This is generally the one we
7 (inaudible) this is a similar type situation.

8 VOICE: You said this was --

9 MS. BROWN: This was reported as water

10 right No. 45-7446 which is (inaudible) U.S.

11 Forest Service for this particular pipeline. The

12 department's understanding of this water right claim

13 was for the pipeline that runs along Owens Corral

14 Spring.

15 VOICE: And that's the same -- 07446

16 was (inaudible).

17 MS. BROWN: (Inaudible).

18 VOICE: So he had to object on the fact
19 that the license was in the Forest Service name is not

20 correct. That should have been in the four claimants'
21 names rather than the USDA Forest Service and BLM.

22 THE COURT: Where is 7446? What's the
23 status of that one?

24 MR. BRAMER: My understanding, Your Honor,
25 is that an SF5 was filed with this court on Monday. We

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1 were the only objecting party to that claim.

2 THE COURT: And it looks like we've --

3 April 5th the Standard Form 5 was filed. And that

4 indicates 7446 has been settled; and it's in the USDA

5 Forest Service. And when an SF5 like this is filed, it

6 indicates to us everybody is in agreement; there's no

7 problem; we can go ahead and issue a partial decree.

8 But it sounds like we're back in the same

9 situation we had earlier this morning. We've got this

10 filed; but it sounds like until we get it straightened

11 out with 10332, maybe we're going to have to hear both

12 of them together.

13 VOICE: Correct. They are on the same
14 spring. And that's where (inaudible).

15 THE COURT: And, Mr. Bedke, you think we

16 can -- the best thing would be to hold these two

17 together to consider the two of them together?

18 VOICE: I (inaudible) yes. I would

19 think so.

20 THE COURT: Mr. Bramer?

21 MR. BRAMER: Well, Your Honor, I guess there

22 was no objection filed to the Forest Service claim.

23 And if this court is to entertain an objection,

24 wouldn't the court have a late objection filed to a

25 claim that we submitted an SF5 on?

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1 THE COURT: Our records show that 7446 was

2 claimed by the Forest Service and was objected to by

3 the Forest Service. And the Forest Service has filed

4 an SF5.

5 VOICE: Your Honor, now (inaudible),

6 these other numbers here, can we -- this is also going

7 to be subcase 45-02789. They're all the same place.

8 THE COURT: That was 45-02 --

9 VOICE: 02789.

10 THE COURT: -- 789.

11 MS. BROWN: Okay. Now (inaudible) forest

12 land on Owens Corral Creek. The one we're talking

13 about (inaudible) pipeline only.

14 VOICE: Well, in our (inaudible) we

15 filed on the ponds, collector boxes, pipelines, troughs

16 and (inaudible).

17 MS. BROWN: From Owens Corral Spring.

18 VOICE: They're the same with different

19 names. Creek and spring, it would be the same.

20 (Inaudible) it interchange the creek, and the other

21 time it interchanges the spring. This is the way the

22 USDA -- the United States acting through the BLM

23 (inaudible) Forest Service. It's not listed here.

24 They filed on Owens Corral Creek. And we filed on the

25 Owens Corral Spring. And so you've got what seems to

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1 be two different names, but the same place.

2 MS. BROWN: Okay. And what you're telling

3 me is that some of these co-owners or cooperatives

4 (inaudible) Owens Corral Creek.

5 VOICE: Owens Corral Spring would be

6 the head where we trap the collection boxes and the

7 (inaudible) and also surface water that doesn't get

8 into the head (inaudible). But these descriptions

9 would show that we're tracking it down through its

10 course as well as the, where the (inaudible) and the

11 collection box. You aren't going to get all the water

12 in the pipeline, so --

13 THE COURT: Miss Brown, do you know the

14 status of 02789?

15 VOICE: It should be (inaudible) right

16 now. Because Scott Bedke has filed an objection to

17 it.

18 MS. BROWN: I'll have to look at that.

19 THE COURT: And who is the claimant of

20 that --

21 VOICE: The United States acting

22 through --

23 THE COURT: 02789?

24 VOICE: Yes.

25 VOICE: There's no private objection to

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1 And so when the Forest Service filed, they filed

2 on each one separately, a separate claim, rather than

3 have -- and I don't know if that's called de minimis or

4 non de minimis. But whatever they did, we did the

5 other one. And so therefore they were all set -- you

6 know, they were all set aside. And I think these all

7 add to the confusion that we're experiencing right

8 now.

9 MS. BROWN: This particular water right is

10 marked set aside. And this particular water right was

11 recommended as (inaudible) in the Forest Service under

12 their pipeline.

13 VOICE: Correct.

14 MS. BROWN: (Inaudible).

15 VOICE: All of ours were set aside.

16 All the private ones were, but the Forest Service's

17 were put on the director's reports. And so that's

18 where our objection kinda comes in. Because ours are

19 still out there in the ozone somewhere to be included

20 on a subsequent director's report, we were told, when

21 they were going to handle the irrigation cases.

22 MS. BROWN: In this particular case,

23 Your Honor, 45-10332 was recommended in this director

24 report. It did not (inaudible) to be reported later.

25 THE COURT: How was it recommended?

Page

1 that claim.

2 THE COURT: No private objection, but has

3 it been decreed, partially decreed?

4 (Inaudible).

5 VOICE: There is too a private

6 objection (inaudible).

7 THE COURT: We're just looking at our

8 calendar here. 02789, that was set for hearing at

9 2 o'clock in another batch.

10 VOICE: Oh, okay.

11 THE COURT: 02789 (inaudible). But you

12 think these three water rights, 10332, 02789 and 07446,

13 they're all to the same water right?

14 VOICE: Correct.

15 MS. BROWN: Your Honor, I believe that the

16 Forest Service filed individual claims to individual

17 water rights (inaudible). And this here, what the

18 Bedkes intended to do was to file for all of those

19 (inaudible) under one claim.

20 VOICE: It goes back to what I tried to

21 bring up earlier and yesterday, is that -- and one of

22 the same points that Mr. Whiteley brought up this

23 morning, is that we filed under the old method, you

24 know, led through the process by IDWR. And then that

25 method was changed.

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1 MS. BROWN: It was recommended as 45-7446

2 (inaudible).

3 THE COURT: But 10332 was recommended for

4 disallowal because it was recommended under 7446.

5 MS. BROWN: Yes.

6 THE COURT: Okay.

7 MS. BROWN: And (inaudible) four claims on

8 this claim (inaudible) pipelines and Forest Service as

9 (inaudible).

10 THE COURT: Mr. Bramer, do you want to add

11 something?

12 MR. BRAMER: Your Honor, we filed a claim.

13 We filed an objection. We worked with the department.

14 We filed an SF5. Normally that would resolve this

15 matter.

16 However, I think given the confusion that these

17 folks have had with their water rights in the

18 South Hills, Mr. Bedke, Mr. Whiteley, you're going to

19 hear over and over again there's a great deal of

20 confusion. I think in all fairness to them, even

21 though we've jumped through all the technical hoops in

22 this court and should have our water right decreed,

23 that I'm more than willing, if they would like to file

24 a late objection and make the objection to our claims

25 so we can sit down and work through this, that would

Page 4

1 give them a full and fair opportunity to make the
2 objection. I think there's some confusion here. And
3 rather than drawing a technical line of the law and
4 saying you should decree this right to us, I think in
5 all fairness to the claimants we should give them an
6 opportunity to come in and make an objection here if
7 that's what they like to do.

8 THE COURT: I think it's a very generous
9 offer of yours. But do you want all three of these
10 handled together?

11 MR. BRAMER: We only --

12 THE COURT: Or is there a fourth one?

13 MR. BRAMER: I think our only one is 07446
14 involved here. I think there's a pipeline with a bunch
15 of other points.

16 THE COURT: But I heard --

17 MR. BRAMER: We only have one claim at
18 issue.

19 THE COURT: But I heard that 2789 and 10332
20 are to parts of that.

21 MS. BROWN: Your Honor, it's very difficult
22 for the department to tell because the way that these
23 claims were made, the claims were in specific
24 (inaudible). I understand that (inaudible) Bedkes are
25 (inaudible). That is not what they thought they were

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1 asking (inaudible) at the time they made the claim.

2 I'd like some time with them to figure out
3 exactly what it is they intended to claim and make sure
4 that we have that on paper correctly. So far, I'm not
5 impressed that the department had all of the
6 information it needed to be making its recommendation.
7 THE COURT: Well, how about this? As the
8 independent expert to the court, again, could you
9 submit a supplemental report to the court on all water
10 rights related and objections and claims related to
11 7446?

12 MS. BROWN: This year, Your Honor? Yes, I
13 can do that. It will take some time.

14 THE COURT: Like, say, Sunday morning?

15 MS. BROWN: Sure.

16 MR. BRAMER: Your Honor, we would, on behalf
17 of the Forest Service, we would ask that the court hold
18 the SF5 and not decree that right until we make sure
19 everybody has had a full and fair opportunity to file
20 any objection they want to.

21 THE COURT: And I think you're being more
22 than fair in offering that. We'll take the 7446
23 Standard Form 5 -- this sounds more like the military
24 every day, all of these initials and numbers. But
25 this, the SF5 that settles 7446, the Forest Service

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1 says they're done with the case; and normally we would
2 take this and I'd recommend that the court decree the
3 water right.

4 But Mr. Bramer has offered to hold up on that.
5 We'll take it and put it in the file, but treat three
6 of these water rights -- 10332, 2789 and 7446, handle
7 it as a package until we can figure out what we're
8 talking about here. So you folks are going to get a
9 chance to air your complaints or your claims or your
10 objections, whatever they happen to be. And then we'll
11 get that --

12 VOICE: 2789 is not a Forest Service
13 right. That's BLM land.

14 THE COURT: Yes. But it's somehow tied
15 into this. That's why I guess I wanted --

16 MS. BROWN: (Inaudible).

17 VOICE: The Forest Service line or the
18 BLM line is just right there along the corrals. It's
19 really quite close. Let's put it that way. So the
20 upper end is in the Forest Service reach. The lower
21 end is in the BLM reach. We filed on the entire
22 reach. The Forest Service filed on the upper reach.
23 The BLM filed on the lower reach.

24 So in this case 02789 is a BLM filing to the
25 lower reach. 07446 would be the forest filing to the

Page 5:

1 upper reach. Yet they're all in conflict with ours of
2 the entire reach, if that makes sense.

3 MR. BRAMER: I can only represent the
4 Forest Service here. We're comfortable waiting and
5 letting him to look at that and figure out the best way
6 to go. I don't know what you want to do on --

7 VOICE: There are already objections
8 filed to 2789; is that correct?

9 VOICE: (Inaudible).

10 VOICE: Yeah, there are late

11 objections. And they are filed by Mr. Scott Bedke, I
12 believe. And we were going to discuss that one this
13 morning. So there's no reason to hold that one up as
14 far as the BLM is concerned. Because it's a different
15 water right. And there have been no SF5 filed on that
16 one.

17 THE COURT: But I think the report that,
18 the supplemental report I was asking of IDWR is going
19 to inevitably involve that. Because it relates to
20 objections that have already been filed.

21 VOICE: Yes. But Scott Bedke and his
22 (inaudible) objectors -- and I was intending to try and
23 resolve those with Mr. Bedke today one at a time.

24 THE COURT: Oh, if you can, oh, that would
25 be great.

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1 VOICE: Your Honor, we were told by the
2 court clerk over there that we all didn't have to file
3 an additional late objection if we were all
4 co-claimants in the same case, i.e., Winslow
5 (inaudible), Gary Russell and Bruce Bedke sought to
6 file. As long as we didn't have a different objection,
7 we would all have a seat at the same table. That's
8 what the court clerk told us as recently as last week.
9 So that's what we were going on. That's why we
10 didn't file a late objection. If we still can, we
11 would like to --
12 VOICE: Which court clerk were you
13 (inaudible).
14 VOICE: Diana Delaney.
15 THE COURT: Well, the fact that you're
16 already a party to the lawsuit doesn't -- let's forget
17 about the motions to file late objections for now.
18 Now, depending on how IDWR finds their report and --
19 reports back to us, at that point we may have to tell
20 you, okay, now here's how we're going to have to get
21 you postured to become the correct claimants,
22 objectors, or whatever your status may be.
23 VOICE: Correct.
24 THE COURT: As a practical matter, you may
25 turn out to be a co-claimant.

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1 VOICE: Right.
2 THE COURT: You know, we're talking about
3 the same thing. It's just a matter of plugging in the
4 right words.
5 How long would it take you to get a report in?
6 MS. BROWN: I would like to ask the court
7 to (inaudible) return that report the first week of
8 May.
9 THE COURT: Let's see. So if we say 30
10 days? Okay.
11 Okay. Anything further on those --
12 VOICE: (Inaudible).
13 THE COURT: Yeah, those -- well, let's see,
14 we've already taken care of -- so 4050 is not involved
15 in these three as far as we know.
16 MS. BROWN: Your Honor, I said 4050 is
17 being (inaudible) objection by Mr. Bedke for his own
18 private property.
19 THE COURT: But that's not involved in
20 these three that we're --
21 MS. BROWN: No.
22 VOICE: No.
23 THE COURT: Okay.
24 VOICE: Not that we're aware of.
25 THE COURT: Okay. But the 4050, that's the

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1 one we're going to -- did we set a deadline on that
2 one?
3 MS. BROWN: (Inaudible).
4 THE COURT: A deadline for an SF5?
5 MS. BROWN: Right. I think that would be
6 appropriate.
7 THE COURT: SF5 in 04050, an SF5 within 3
8 days?
9 MS. BROWN: Yes.
10 THE CLERK: Or a report.
11 THE COURT: Or a report. I think you know
12 who is running the show here.
13 VOICE: (Inaudible).
14 THE COURT: By the way, does everybody know
15 my lovely assistant, Debbie Lash? She's the one who
16 tells me to do all these things. If you want to know
17 where the paperwork is, don't call me. Call her.
18 Okay. Anything further on those four water
19 rights?
20 In that case, we'll go off the record. Thank
21 you, folks.
22 (DISCUSSION HAD OFF THE RECORD)
23 THE COURT: Counsel, ladies and gentlemen,
24 we're now back on the record. And we've separated out
25 two subcases in basin 45 for separate consideration

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1 because of various reasons. And those two are 45-1050
2 and 10506. The claimant in that case is the Bureau of
3 Land Management. And the objector is -- no, do I have
4 that right?
5 VOICE: The claimant in that case is
6 Mr. Bruce Bedke. And the objector is the United States
7 Department of Interior, Bureau of Land Management.
8 THE COURT: Okay. I had it close. Now,
9 you've had a chance to talk with Mr. Bedke about his
10 claim and your objection.
11 Do you have anything you wanted to put on the
12 record here or --
13 MR. BROWN: Yes, Your Honor. For the
14 United States, Larry Brown representing the Department
15 of Interior.
16 We've discussed the issues with Mr. Bedke. And
17 we would like to postpone for 60 days, at which time we
18 will report to the court by phone or however the court
19 chooses. And then if not (inaudible) after that
20 (inaudible).
21 THE COURT: So it's kind of like what we
22 did this morning -- just set it off, the initial
23 hearing, and do it by phone --
24 MR. BROWN: What we would like, Your Honor
25 is an opportunity to report to the court on the status

Page

1 of these discussions between Mr. Bedke and the
 2 United States, and then set up an initial hearing, if
 3 necessary, after we report.
 4 THE COURT: You plan on a written report?
 5 MR. BROWN: However you choose,
 6 Your Honor. We can contact you by phone, or we can
 7 submit a written report. A written report would
 8 probably be easier. That way, we could copy the IDWR.
 9 THE COURT: Now, a written report by
 10 Mr. Bedke. Which Mr. Bedke? Bruce Bedke.
 11 MR. BROWN: It would be a joint report
 12 between the United States and (inaudible).
 13 VOICES: (Inaudible).
 14 MR. BROWN: Your Honor, it would be a joint
 15 report signed by both Mr. Bedke and myself as a
 16 representative of the United States.
 17 THE COURT: And that will be a written
 18 report on the status of your negotiations?
 19 MR. BROWN: That's correct, Your Honor, and
 20 either requesting an initial hearing or a submittal of
 21 settlement documents, whichever, or perhaps even
 22 (inaudible) of the cases and issues (inaudible).
 23 THE COURT: If you have just the two and
 24 you submit your written report and you're essentially
 25 saying we can't settle it, let me suggest you put in

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1 your report that here's the dates we think we can go to
 2 trial and here's -- so, in other words, you might be
 3 able to save one of the steps down that road.
 4 MR. BROWN: Yes, Your Honor.
 5 THE COURT: Another hearing.
 6 MR. BROWN: We'll consider that in our
 7 discussions down the road here a little bit
 8 (inaudible).
 9 THE COURT: Well, with a little luck,
 10 you'll be able to just file an SF5 and we'll be done
 11 with it. And you can go about your business, and Larry
 12 will get back to his golf game.
 13 VOICE: With a little luck, maybe I can
 14 retire.
 15 THE COURT: No such luck. Okay. Is there
 16 anything further on 10505 and 10506?
 17 MR. BROWN: Not from the United States,
 18 Your Honor.
 19 THE COURT: Mr. Bedke, do you agree with
 20 that summary and the plan?
 21 VOICE: I agree with his summary,
 22 yeah. I understand these dates will be given to me as
 23 well. I mean if anything, any of these dates that the
 24 court will decide on will be forwarded to me.
 25 THE COURT: Oh, yeah. Like any lawsuit --

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1 VOICE: All right.
 2 THE COURT: -- all the parties to the
 3 lawsuit get written copies of everything.
 4 VOICE: All right. Fine. Fine. I
 5 can't expect more than that.
 6 THE COURT: And what I'll do is just send
 7 out an order postponing the initial hearing for 60
 8 days; and I'll set a particular date that you have to
 9 file a written, a joint written report on the status of
 10 the negotiations.
 11 MR. BROWN: I do have one question for
 12 Mr. Bedke on the record.
 13 Is your ranching operation incorporated, sir?
 14 VOICE: No. Not at this time.
 15 MR. BROWN: Not at this time. Very well.
 16 VOICE: It may be, though, by the time
 17 the 60 days rolls by.
 18 VOICE: What importance does that
 19 have?
 20 MR. BROWN: It would make a difference on
 21 whether you had to be represented by counsel or you can
 22 represent yourself.
 23 VOICE: If I'm an L.L.C., I don't need
 24 representation. Is that true?
 25 MR. BROWN: I'm not sure about the laws of

Page 6

1 the State of Idaho. I'm not --
 2 VOICE: (Inaudible).
 3 VOICE: An individual has --
 4 VOICE: As an individual, I'll still be
 5 a claimant. Is that the way it works?
 6 MR. BROWN: I'm not sure. I believe that
 7 that's true, but --
 8 THE COURT: An individual can represent
 9 themselves, yes.
 10 VOICE: Okay. I guess until it's
 11 closed, who knows. I guess we'll go that way.
 12 THE COURT: Sure. You might become a
 13 nonprofit corporation, too.
 14 VOICE: That's true. It is. It is.
 15 MS. BROWN: (Inaudible).
 16 THE COURT: Or a charitable corporation, if
 17 you like.
 18 VOICE: (Inaudible) if we may.
 19 THE COURT: Well, if there's nothing
 20 further, Mr. Bedke or Mr. Brown, we'll go off the
 21 record.
 22 MR. BROWN: Thank you, Your Honor.
 23 THE COURT: Thank you.
 24 (DISCUSSION HAD OFF THE RECORD)
 25 THE COURT: We're back on the record now.

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1 This is the SRBA court sitting in Burley, Idaho. I'm
2 Terry Dolan, special master for reporting area 45.
3 This afternoon we're considering 157 subcases in
4 this next batch. It's an initial hearing. The
5 subcases -- and I'll just give you the one instead of
6 reading 157 numbers, 45-02769 and others.
7 In court this morning, this afternoon, we have
8 Scott Bedke. And I understand we're going to have
9 multiple parties in here. So Scott Bedke and others as
10 the objectors. And we have representing the
11 Forest Service, one of the claimants to some of these,
12 Randy Bramer. We also have Peter Ampe representing the
13 State of Idaho.
14 And, Mr. Ampe, your role is as an objector?
15 MR. AMPE: Yes, Your Honor. The State has
16 objected to (inaudible) of those rights listed on
17 (inaudible).
18 THE COURT: Okay. Then we also have
19 Larry Brown representing the BLM. They're a claimant
20 to some of these as well.
21 Do we have all the players listed here now? Did
22 I miss anybody?
23 Well, Mr. Bramer, I think you had a plan of how
24 we could address all of these.
25 MR. BRAMER: Yes. Thank you, Your Honor.

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1 My name is Randy Bramer. I regret to inform this court
2 that, notwithstanding my best attempts, after six years
3 I've finally appeared in a subcase hearing where an
4 objection has been filed.
5 However, I hope that we can resolve this through
6 negotiation. We're taking the necessary steps to do
7 that. We had fairly critical conversations with
8 Mr. Bedke today, and we will plan on moving forward to
9 discuss negotiations as well as pursue a litigation
10 track.
11 There are 48 objections. We're providing a list
12 to the court of objections Mr. Bedke filed to
13 Forest Service claims. It is my understanding that
14 these objections were largely to claimed -- or to
15 sources of water on a grazing allotment that Mr. Bedke
16 has a permit on, a permittee on and has in 1989 filed
17 claims for. Those claims were filed in Mr. Bedke's
18 name, I believe, as well as three other individuals and
19 have not yet been reported out by the department.
20 In discussions with Mr. Bedke, we determined that
21 if the court were to proceed on our objections today
22 without having the original claims by Mr. Bedke
23 reported out we would be placed in a position of having
24 litigation on his objections to our claims at this
25 point in time and then, in turn, having additional

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1 litigation in the year 2000 concerning our objections
2 to Mr. Bedke's claims. And rather than undertake that
3 effort which we both believe would be duplicative, we
4 agreed that we would propose to the court through the
5 filing of a joint motion that the court hold a hearing
6 to determine if the department of water resources could
7 report out those claims filed in 1989 by Mr. Bedke and
8 the three other individuals. Once those are reported
9 out, at that time we feel we could move forward with
10 this case; and it would be a much more efficient
11 procedure.
12 Mr. Bedke, does that accurately --
13 VOICE: Yeah, that's it.
14 THE COURT: How long will it be before you
15 file your motion?
16 MR. BRAMER: I could have that to the court,
17 if Mr. Bedke is available -- I know it's that time of
18 the year when things are getting busy; but I could have
19 somebody draft it within a week and fax it down to
20 you. Probably if you give us 10 days, that would be
21 sufficient.
22 VOICE: That would be fine.
23 MR. BRAMER: You'll probably have to submit
24 it to the other folks (inaudible).
25 VOICE: Right.

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1 MR. BRAMER: Your Honor, why don't you give
2 us 14 days. That will give Mr. Bedke some time to --
3 and we will include in that list, Your Honor, a list of
4 the affected case numbers.
5 One other point of clarification for the record,
6 Your Honor, is I'm accounting for 48 Forest Service
7 claims that are objected to by Mr. Bedke, 12 objections
8 by Mr. Bedke to BLM claims; and if Mr. Ampe is correct
9 and there's only six BLM-State of Idaho objections, we
10 are somehow coming up with roughly somewhat in excess
11 of 90 other claims on Exhibit A which aren't
12 addressed.
13 So -- if we could go off the record for a
14 second?
15 (DISCUSSION HAD OFF THE RECORD)
16 THE COURT: Okay. We're now back on the
17 record.
18 Mr. Ampe, do you have anything you wanted to --
19 MR. AMPE: Yes, Your Honor. I didn't
20 realize that we had skipped the 1:45 hearing and moved
21 it all to the 2 o'clock, so my statement that there
22 were six cases where the State objected is incorrect.
23 There are substantially more than six cases. And I'm
24 not even going to try to give you an estimate. This is
25 the one I'm thinking of that was our (inaudible)

Page

1 Mr. Bramer to make sure we can figure out which goes to
2 these.

3 THE COURT: It looks like maybe 50
4 different subcases?

5 MR. AMPE: It could be.

6 THE COURT: And the first one is 45-12468,
7 according to this one list that we got here.

8 MR. AMPE: Yes.

9 THE COURT: Okay. Good. Now, are you --
10 do your -- that's the ones that you objected to.

11 Do they involve Mr. Bedke's claims that have not
12 been reported yet?

13 MR. AMPE: I don't think so. I think you
14 would have to ask Mr. Bedke that. There's also an
15 overlap here. We have no knowledge of his claim,
16 (inaudible) object to claims (inaudible) have no reason
17 to --

18 THE COURT: Your understanding is the State
19 only objected to BLM claims?

20 MR. AMPE: Correct.

21 THE COURT: Okay. So it sounds like you
22 wouldn't be involved in the joint motion that
23 Mr. Bramer talked about.

24 MR. AMPE: No, only because we're roped
25 into the same initial hearing.

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1 THE COURT: Okay. By the way, if anybody
2 hasn't met Peter Ampe, he represents the State of
3 Idaho.

4 Mr. Bramer, anything further?

5 VOICE: Have you received the State's
6 attorney's claim?

7 THE COURT: Oh, Peter Ampe? Did I say
8 Anderson or Ampe? (Inaudible).

9 THE COURT: A-m-p-e.

10 VOICES: (Inaudible).

11 MR. BRAMER: Your Honor, I don't think we
12 have anything more on behalf of the Forest Service.

13 Mr. Bedke, is there anything else you want to
14 raise to the court on our particular objections?

15 VOICE: No.

16 THE COURT: Okay. Thank you.

17 VOICE: We have similar objections on
18 other filings that follow the same type of format.
19 Ours are not with the Forest Service. It would be just
20 with the BLM on cases that they filed that we weren't
21 aware that ours was set aside at the time. So they
22 made the director's report and ours didn't.

23 So we prepared a late, motion to file a late
24 objection. And I've got all the subcases listed on
25 this motion to file a late objection. They fall under

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1 the same type scenario. At this time I'd like to move
2 that we make some sort of a filing to bring ours onto
3 the table so we don't have to go through a double -- I
4 would have to file an objection --

5 MS. BROWN: (Inaudible).

6 VOICE: I don't have to, you know, we
7 don't have to file a late objection to theirs and then
8 they file an objection to ours when ours make the
9 subsequent director's report.

10 Does that make sense?

11 THE COURT: Well, you're essentially
12 planning to file a similar joint motion to ask the
13 State to be ordered -- IDWR, that is, to be ordered to
14 report out early your claims for stock water rights?

15 VOICE: Correct.

16 THE COURT: And you would be joining, I
17 suppose, with Mr. Brown --

18 VOICE: I haven't discussed this with
19 Mr. Brown because this little parlay went on while we
20 were out discussing another case.

21 THE COURT: Okay.

22 MR. BROWN: And, Your Honor, Mr. Whiteley,
23 Mr. Gardner and Mr. Matthews that were here this
24 morning are in the exact same position.

25 THE COURT: So you would include their

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1 claims on your joint motion with the Forest Service?
2 SCOTT BEDKE: See, everybody in that, the
3 Oakley area filed in 1989 under the old or non de
4 minimis format. And then when the adjudication was
5 bifurcated in '97 and they changed to a de minimis
6 method, and that's, therein lies the rub.

7 So they will have the same problem in the Oakley
8 Valley allotment, those gentlemen that were here this
9 morning, that we just tried to solve with our joint
10 motion that they, that share it on his other allotment
11 will need to do on the BLM.

12 THE COURT: Our deputy clerk reminded me I
13 should have everybody say your name first before you
14 speak, so when we listen to the tape recorder we can
15 tell who it was.

16 VOICE: That was Scott Bedke.

17 THE COURT: Okay. Thank you, Mr. Bedke.
18 But those people you mentioned in Oakley, are those to
19 the Forest Service claims, or Forest Service and BLM?

20 VOICE: (Inaudible) possibly both,
21 possibly both.

22 THE COURT: Mr. Bramer, is there a way to
23 work them in there, too?

24 MR. BRAMER: Your Honor, I think what we
25 want to do is figure out what -- what I would propose

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1 to do is file a motion with this court suggesting that
 2 any of the basin 45 claims that were filed in 1989
 3 under whatever names, assuming the four parties, that
 4 the department has indicated to me would be reported
 5 out in a supplemental -- an irrigation and other
 6 reports in December, 2000, that those claims be
 7 investigated; the department provide a report to this
 8 court as to when those could be reported out, or have
 9 them reported out. I think that would --
 10 VOICE: Well, it would catch us; but
 11 you're going to have the same argument. You're going
 12 to have the same problem with Mr. Gardner, Mr. Whiteley
 13 and Mr. Matthews.
 14 VOICE: Because they all fall from the
 15 same basin 45.
 16 MR. BRAMER: So they filed claims in 1989 as
 17 well.
 18 VOICE: Yes. So I would say that your
 19 joint motion should say that all of, everything, all
 20 stock water claims that were made in basin 45 that
 21 haven't been reported ought to be reported.
 22 MR. BRAMER: Well, I'll sit down and look at
 23 that, Your Honor. If we could do it that way -- and
 24 Mr. Brown has to address the BLM claims rather than the
 25 Forest Service. Certainly with respect to Forest

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1 Service, I don't have a problem with that.
 2 Again, these are going to come out and be
 3 reported out later is my understanding. So I think we
 4 can work with it. We will sit down and talk with these
 5 folks. If we do not reach some sort of clear
 6 resolution on a joint motion, what would happen is
 7 we'll get on the phone with you. I think, as far as
 8 the Forest Service claims, we can work this out
 9 (inaudible) the court 14 days.
 10 THE COURT: Maybe just to get a handle on
 11 it, maybe we'll need to separate it out by
 12 Forest Service; and then maybe something separate can
 13 be worked for the BLM? I'm not sure --
 14 MR. BRAMER: And it would be (inaudible).
 15 MR. BROWN: If I could address the BLM
 16 beneficial use claims, I have no problem at all with
 17 what these folks are discussing with the BLM.
 18 THE COURT: Good.
 19 MR. BROWN: There are six licenses that
 20 need to be addressed, though. And Mr. Bedke has
 21 objected to all six of those licenses. And we could
 22 bifurcate six objections and six claims from this
 23 entire process and handle them separately and quickly.
 24 VOICE: (Inaudible) at the same time
 25 there will be some other licensed cases that I will be

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1 objecting to as well.
 2 MR. BROWN: Again, Your Honor; I would
 3 object to any further objections on those licenses.
 4 There has been plenty of time. But if they wish to
 5 submit a motion, we can argue that to the court.
 6 THE COURT: Miss Brown, you might want to
 7 let your boss know what may be coming down the line
 8 here -- a hearing on whether IDWR should be ordered
 9 submit --
 10 MS. BROWN: We've had discussions with
 11 Mr. Bramer (inaudible).
 12 THE COURT: Okay. But no decision is going
 13 to be made without a hearing and we get a chance to
 14 hear from your counsel of how we should do this, what
 15 the most efficient way to do this without disrupting
 16 your entire operation. Because my guess is there's
 17 some other claimants in this SRBA that will be a little
 18 mad if their dismissed had to be set aside just to do
 19 these. We're trying to balance 150,000 claimants here,
 20 and so somebody gets squeezed.
 21 MS. BROWN: Maybe the department
 22 (inaudible) that the water rights that are reported
 23 (inaudible) and that the water rights and objections
 24 before the court now may have nothing to do with
 25 whatever we intend to report in the future. The water

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1 right either (inaudible).
 2 THE COURT: Well, one of the things I was
 3 thinking about talking about at the hearing would be
 4 can we determine these without waiting for you to
 5 report out. And Mr. Bramer indicated that they're not
 6 absolutely sure whether the Forest Service claims are
 7 identical to Mr. Bedke's claims or whether they really
 8 are separate. And until we get the report out, we
 9 won't know that. So that's the reason that we almost,
 10 from their position, they almost have to be reported
 11 out -- to find out if there is any difference.
 12 So, Mr. Ampe, do you have anything further on the
 13 State's position?
 14 MR. AMPE: No, Your Honor.
 15 THE COURT: Mr. Brown?
 16 MR. BROWN: No, Your Honor. (Inaudible)
 17 bifurcate on the licensed rights and beneficial use
 18 claims and see what the court is going to (inaudible).
 19 THE COURT: Well, can you prepare a joint
 20 motion asking the court to order IDWR to supplementally
 21 report out --
 22 MR. BROWN: I'll join with the
 23 Forest Service motion, the joint motion that they had
 24 with the prior claims.
 25 THE COURT: Then will that have a list that

Page

1 will say Forest Service on one list and BLM on
2 another?

3 MR. BROWN: Certainly (inaudible).

4 THE COURT: And if you might also mention
5 in your joint motion of what your position is, maybe in
6 a footnote --

7 MR. BROWN: I'll do a separate motion for
8 these six licenses.

9 THE COURT: -- for these six -- okay. Can
10 you do that within -- Mr. Bramer was brave. He said he
11 could do it in 14 days.

12 MR. BROWN: I'll join with the Forest
13 Service on whatever they do. (Inaudible), I'll just be
14 a second part on that motion. And for the six licensed
15 rights, I'll try to have those done within seven days.

16 MS. POULTON: Your Honor, Your Honor --

17 THE COURT: If you would identify yourself,
18 please.

19 MS. POULTON: Kathy Poulton. We are going to
20 object to those licenses as well as the way that
21 that -- and these should have our name on those
22 (inaudible).

23 Is there some way that we can do that?

24 THE COURT: Well, one way to join --

25 MS. POULTON: We can copy -- he basically

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1 objected for all of us. And we need to get our names
2 on there. Because our names were on the original
3 objections to begin with and never got recorded on this
4 second batch.

5 THE COURT: Sure. Well, Mrs. Poulton, any
6 time any party to the SRBA wants to join in a subcase,
7 if the objection period has run, then your remedy is to
8 file a motion to file a late objection.

9 MS. POULTON: Is (inaudible).

10 THE COURT: Yes. Any time you can file
11 a -- now, that motion to file a late objection has to
12 be set for a hearing. And then the court has to decide
13 whether you're allowed to file that late objection. If
14 you are, then the court will take your late objection
15 and consider you a party to the subcases.

16 MS. POULTON: So how do we get on that? We
17 have to file a motion; and then you set a date; is that
18 how --

19 THE COURT: Yes. Unless all the parties
20 agree to it.

21 MS. POULTON: Pardon?

22 THE COURT: For instance, if you were to
23 file a motion to file a late objection and all the
24 parties to the subcase agree to it, say, sure, come on
25 in, then we wouldn't have to set it for a hearing. But

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1 if there is -- if you don't file a joint motion letting
2 us know that everybody is in agreement, then we have to
3 set it for hearing and give everybody a chance to say
4 no, they shouldn't come in; or if they do come in,
5 their role should be limited somehow.

6 MS. POULTON: Is that (inaudible).

7 THE COURT: With the SRBA court. I
8 think -- do we have -- do we have a standard form for
9 motion to file a late objection? Is that an SF4? 3?
10 2? Oh, we don't have it. Okay. Sorry. I'm thinking
11 of a late claim.

12 MS. POULTON: I'd like to (inaudible) right
13 now (inaudible).

14 THE COURT: Well, do you have a list of all
15 of the subcases that you want to --

16 THE CLERK: You're going to have to list
17 out the subcases on there.

18 THE COURT: You see, you can't just say I
19 want to object. You have to say I object to these
20 water rights. And if you can (inaudible) who the
21 claimants are and --

22 VOICE: (Inaudible).

23 THE CLERK: Yes, I can take it today, if
24 you want to file one. It has to be notarized. Is
25 there's a verification page on the back?

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1 THE COURT: I'll bet you have a notary here
2 in the courthouse, don't you?

3 MS. POULTON: (Inaudible).

4 THE CLERK: Miss Poulton, you have to file
5 the objections with that motion.

6 MS. POULTON: (Inaudible).

7 THE CLERK: No, the objection itself.
8 You're going to have to also do an objection with the
9 motion in each subcase.

10 MS. POULTON: (Inaudible).

11 THE CLERK: And I don't have -- there's a
12 standard form for the objection.

13 VOICE: (Inaudible).

14 THE COURT: Oh, good. Miss Poulton, the
15 purpose of that attaching your objection is to say --
16 so we know what you're objecting to.

17 VOICES: (Inaudible).

18 THE COURT: Miss Poulton, there is one
19 other possibility. I'm not sure -- and this is the
20 kind of stuff you'd want to talk to an attorney about.
21 Sometimes when you're not involved in somebody else's
22 subcase, you can move to intervene and become a party
23 to that subcase. But then the question is, well, what
24 is your role as an intervenor. My guess is you want to
25 file an objection because you want to be a claimant, so

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1 your role would go beyond an intervenor.
 2 MS. POULTON: Right. What's happening is our
 3 name was left off. The whole deal has to do with all
 4 of these (inaudible).
 5 THE COURT: Sure.
 6 MR. POULTON: Not (inaudible) we were not
 7 there to sign the paper, thinking that we were all
 8 together (inaudible).
 9 THE COURT: Well, I can't give you legal
 10 advice. And it sounds like these things are getting
 11 complicated enough to where you might want to consider
 12 at least talking with a water law attorney.
 13 But at least for now if you file a motion to file
 14 late objection, that's probably your best way to get
 15 into this and be named as a claimant. Because you're
 16 saying you're objecting to who the claimant is or who
 17 the owner is? That's one element of a water right, who
 18 the owner is. Priority date and all of those elements
 19 of a water right. But my guess is you're objecting to
 20 ownership; is that right?
 21 MS. POULTON: (Inaudible).
 22 THE COURT: Okay. But attaching your
 23 objection tells us exactly what you're objecting to.
 24 Now, anything further? Mr. Bramer, are you
 25 already done?

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1 MR. BRAMER: I have nothing further,
 2 Your Honor.
 3 THE COURT: Mr. Brown, you're already
 4 finished?
 5 MR. BROWN: I am as far as with this
 6 particular group of subcases.
 7 THE COURT: Mr. Ampe, aren't you going to
 8 say something more?
 9 MR. AMPE: No, Your Honor. I think we're
 10 okay. (Inaudible) my confusion was apparently you
 11 originally had some cases set at 1:45 with a list. Now
 12 those subcases are also a list for the 2 o'clock. So
 13 it looks like we'll just have one hearing (inaudible).
 14 THE CLERK: That was the motions to file
 15 the late objections before we knew that they were
 16 granted.
 17 MR. AMPE: All right. Got it straightened
 18 out.
 19 THE COURT: Now, Mr. Bedke or Mr. Bedke or
 20 Mrs. Bedke, anybody else? Anything further on these
 21 batches?
 22 SCOTT BEDKE: Well, just would reiterate that
 23 maybe that if --
 24 THE COURT: This is Scott Bedke.
 25 SCOTT BEDKE: This is Scott Bedke. If the,

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1 if our original claims had not been set aside, then the
 2 Poultons and the other Bedkes would have been
 3 Bruce Bedke, et al, would have been -- you know, these
 4 licenses would have shown, you know, there was a claim
 5 on those licenses as well, these six.
 6 VOICE: With the BLM.
 7 THE COURT: Well, the basis for BLM's claim
 8 is the fact that they have a license already issued by
 9 the State of Idaho.
 10 VOICE: Okay.
 11 THE COURT: And your claims are based on
 12 beneficial use?
 13 VOICE: Correct. But we understand
 14 that the SRBA expresses over all previous decrees
 15 and/or anything.
 16 THE COURT: Oh, sure. But what I'm saying
 17 is there's a difference between your claim as a
 18 beneficial use and their claim based on a license.
 19 MARTI BEDKE: May I --
 20 THE COURT: Yes.
 21 VOICE: This is Marti Bedke.
 22 THE COURT: Marti Bedke, good.
 23 MARTI BEDKE: The confusion, I think, here is
 24 where they were granted the license evidently, we didn't
 25 not have the opportunity to object to those before the

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1 grantor because we had not received any of this
 2 information. So there was no objection made when the
 3 license had already been granted to the BLM.
 4 THE COURT: When were the licenses issued?
 5 MR. BROWN: (Inaudible) object during the
 6 administrative part of the process. The United States
 7 made an application for a permit, and the license was
 8 granted. And so we have a licensed right. And, of
 9 course, we served those in the SRBA (inaudible).
 10 THE COURT: Sure. What they're saying is a
 11 licensed right was issued outside of the SRBA.
 12 JARED BEDKE: Mr. Dolan, this is
 13 Jared Bedke. The problem we have is these establish a
 14 use for stock water. And if the water dating back to
 15 whenever, priority date, was already prior
 16 appropriated, then the license should not have been
 17 issued in the first place because the water has already
 18 been fully adjudicated.
 19 THE COURT: Sure. Now we're getting to the
 20 substance of the argument.
 21 JARED BEDKE: Correct.
 22 THE COURT: So which (inaudible) we'll do
 23 that right now.
 24 JARED BEDKE: All right.
 25 THE COURT: So hush up.

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1 MR. BRAMER: Your Honor, I'll be happy to
2 report that we have nothing further on this matter.
3 THE COURT: Anything further from anybody
4 else?

5 VOICE: On behalf of the Bedkes, we're
6 done.

7 MARTI BEDKE: Another point of
8 clarification. Just sitting in this room, it is, I
9 guess, quite ironic that we are paying, we are paying
10 the Forest Service attorney, the BLM attorney, the
11 State's attorney -

12 VOICE: And him.

13 MARTI BEDKE: - and you; and perhaps if we
14 have to get litigation, then we also have to singly pay
15 for our own attorney to fight ourselves, which is quite
16 ironic.

17 THE COURT: Well, if you - and, of course,
18 this gets into a debate about why do you do general
19 adjudications. Some states like Wyoming - that's
20 where I began my water law work.

21 The State of Idaho filed a general adjudication
22 of the Big Horn River. And the biggest reason Idaho -
23 or the state of Wyoming filed that proceeding was to
24 give some certainty to water rights. Because every
25 time the state of Wyoming would go to the state of

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1 turn around are you, are you, you need, you need.

2 THE COURT: Well, what I'm saying is
3 consider talking with an attorney. Because these are
4 very complicated matters. They're not simple. But now
5 already today we've talked to how many people who did
6 not have an attorney, and they've done very well.

7 The point is whoever has a water right in this
8 state has got to take an active role in this SRBA to
9 come forth and tell us what their water right is, to
10 prove it up, and to give us some documentation. If
11 nothing else, we're opening everybody's eyes in this
12 state.

13 Because you saw what happened down in
14 Glenns Ferry. We've got a manufacturer down there that
15 says I'm not getting enough water; and I'm going to
16 move my plant out of this town if I don't get more
17 water. You can imagine what that - when we start
18 shutting down farms around here. People have got to
19 realize water is important. You've got to take it
20 seriously. Without water, your land is worthless.

21 And once you have that certainty of your water
22 right, your land, your crops, your loans you're going
23 to get in the future are going to be more assured.
24 You're going to have a better chance of selling your
25 farm, for instance, when you want to move to Florida.

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1 Nebraska and say you can't take any more water out of
2 this state because we're not getting enough, the state
3 of Nebraska would say you don't even know what your own
4 water rights are. You got paper water rights coming
5 out your ears; but we don't know whether they're valid
6 or not. Plus you got a tribe sitting in the middle of
7 your state that has some claim to water rights. You
8 don't know anything about your water rights.

9 And it was true. The same thing is here in
10 Idaho. You have to get some certainty to your water
11 rights. We've had these adjudications here and there.
12 And the problem is those adjudications only bind those
13 parties. They don't bind the rest of the state. So we
14 don't know with any certainty what the water rights are
15 in this state.

16 And a general adjudication is to nail that down.
17 That's the reason we're doing this. And that certainty
18 is going to make your property go up in value.

19 MARTI BEDKE: If we're still there after we
20 (inaudible).

21 VOICE: (Inaudible).

22 THE COURT: Well, the point that
23 Judge Hurlbutt has made in this case from the very
24 beginning is you don't have to have a lawyer.

25 VOICE: But you tell us every time we

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1 MARTI BEDKE: No, we have a better chance
2 (inaudible).

3 VOICE: Your Honor, is this on the
4 record?

5 THE COURT: Yes.

6 VOICE: I'll (inaudible)

7 THE COURT: We can go off the record if you
8 want to say something off the record.

9 VOICE: Well, I was just curious - I
10 have certain thoughts that I'm curious to know about.
11 And I guess it bothers me that the government is not an
12 entity, it's not a business. Why are they entitled to
13 hold property rights?

14 I'm bothered by the process that they were able
15 to file in the beginning here. It upsets me that they
16 were able to file. I don't mind them objecting to my
17 filing. But as a filer, as somebody that filed on
18 these water rights, that bothers me. Because they're
19 not an entity. It's not a business.

20 If they're going to treat the government as a
21 business, we call that socialism. It doesn't work in
22 our country any better than it does anywhere else.

23 THE COURT: Well, my guess is that the
24 argument that the United States is going to be
25 making - and I don't mean to second-guess them here.

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1 Randy, jump in when you want.
 2 But the United States represents the ownership,
 3 for instance, of land, of wildlife. They have water
 4 right claims. They have a lot of things in this state
 5 that they have to protect because they represent
 6 America as opposed to Idaho.
 7 For instance, when you kill a deer in this state,
 8 you may think it's your deer. But that deer was taken
 9 from wildlife that are considered sometimes owned by
 10 the State of Idaho; sometimes the claim is made that
 11 they belong to the United States of America. All of
 12 the citizens own those things.
 13 VOICE: I understand that. But as a
 14 prior-appropriation doctrine here, our water law was
 15 based on the mining claims, first-in-time
 16 first-in-right. And I guess inasmuch as they cannot
 17 put it to beneficial use, I'm bothered by the whole
 18 process.
 19 THE COURT: Well, there are some claims
 20 made by the United States, like they make a claim on
 21 behalf of the tribe. And the tribe claims they own the
 22 water right before the white man even showed up. How
 23 would you explain that?
 24 The United States' claims, they're based on the
 25 fact that they owned the land before the State of Idaho

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1 was even created. So they have a duty, a trust
 2 responsibility to protect those rights owned by the
 3 people of the United States of America. Their role is
 4 a little bit larger then. If they didn't protect those
 5 rights, that would be even more sad.
 6 MR. BRAMER: If I may, Your Honor --
 7 THE COURT: Mr. Bramer.
 8 MR. BRAMER: I'm going to suggest that we
 9 are going to try to arrange a meeting with Mr. Bedke
 10 and the other Bedkes, several of the people in this
 11 room. I would be happy to sit down and discuss
 12 (inaudible) that issue. But it is God-awful hot in
 13 here. I think we've already gone through our matters
 14 today; and I think in the interest of all of the
 15 parties if we can proceed -- we have one more matter
 16 before the court with respect to Mr. Ampe and Mr. Brown
 17 on the state claims that have not yet been addressed --
 18 Is that correct?
 19 MR. AMPE: Yes.
 20 VOICE: (Inaudible).
 21 MR. AMPE: I believe it would take 30
 22 seconds.
 23 THE COURT: Okay. We'll go off the record
 24 now.
 25 (DISCUSSION HAD OFF THE RECORD)

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1 MR. AMPE: On this one, Your Honor --
 2 THE COURT: Well, Peter, let me get through
 3 an introduction here a second. We're back on the
 4 record now. This is the SRBA sitting in Burley -- are
 5 we still in Burley -- Burley, Idaho.
 6 It concerns water right No. 02810. Now, the
 7 claimant is Bruce Bedke as I understand it. Mr. Ampe,
 8 you represent the State of Idaho. I assume you're an
 9 objector?
 10 MR. AMPE: No, Your Honor. I think this
 11 is maybe another one where Mr. Bedke may have a claim
 12 that wasn't reported. 45-2810 as reported was claimed
 13 by the State and BLM jointly for a project which covers
 14 both state and BLM land.
 15 The department of water resources then split the
 16 right into an A and a B, giving part A and apparently
 17 (inaudible) portion to BLM; part B simply disappeared.
 18 So the purpose of the State's objection was just to
 19 make sure that the B portion here is somewhere along
 20 the line.
 21 THE COURT: Will the State be the owner of
 22 the B portion?
 23 MR. AMPE: Yes.
 24 THE COURT: And the BLM is the A portion.
 25 MR. AMPE: I believe so. I'm not sure of

Page

1 the A and the B, exactly what was (inaudible).
 2 MS. BROWN: (Inaudible).
 3 MR. AMPE: BLM will get B. The State
 4 would be the other portion.
 5 THE COURT: Oh, Mr. Brown. We're just
 6 talking about 02810.
 7 MR. BROWN: Yeah.
 8 THE COURT: You represent the Bureau of
 9 Land Management. Peter Ampe here represents the
 10 State.
 11 He was just saying the right has been split into
 12 A and B. The A portion is going to be owned by the
 13 State of Idaho, and the B portion is going to be owned
 14 by BLM. And I assumed that the Bedkes are going to be
 15 filing a claim not on the State portion, but only -- or
 16 on both portions.
 17 MR. AMPE: Well, it's up to them.
 18 VOICE: (Inaudible).
 19 VOICE: Where is this located?
 20 VOICE: This is one of our set-aside
 21 filings. I believe it's in Worthington Creek.
 22 VOICE: This is the (inaudible) creek
 23 property. This is one of the --
 24 VOICES: (Inaudible).
 25 MR. AMPE: Yes, Worthington Springs?

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1 Yeah.

2 THE COURT: Let's see, I just got a
3 correction on that for the second time. The A portion
4 will be the BLM. The B portion will be the State of
5 Idaho.

6 VOICE: Okay.

7 THE COURT: But now, Mr. Ampe, how do we
8 resolve this? How do we get from here to there?

9 MR. AMPE: Well, it depends on -- I was
10 going to work with Mr. Bedke. As far as the State and
11 the BLM, we can just simply file an SF5 between the two
12 of us. There's no real dispute between the two of us.
13 That should be split with, in the individual portions.
14 (Inaudible) with the State's portion (inaudible).

15 MR. BROWN: Is there a pending objection in
16 the file for this particular water right?

17 THE COURT: Unfortunately we don't have the
18 file here.

19 THE CLERK: And I don't show an A and B.

20 MR. AMPE: Yes.

21 MR. BROWN: Yes.

22 MR. AMPE: Because the 2810 was
23 recommended as disallowed because it was split into A
24 and B. So I filed the objection and asked for the
25 disallowal of the 2810 until we can get apparently the

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1 B back (inaudible). I did not file an objection to
2 2810A which was, of course --

3 THE CLERK: A and B was not reported to the
4 court. A was.

5 MR. AMPE: A was. B was not. And so I
6 didn't --

7 THE CLERK: As unobjected to.

8 MR. BROWN: As far as I know, this
9 particular water right has no pending objection.

10 MR. AMPE: Correct. The State did not
11 object --

12 MR. BROWN: There's nothing in my file.

13 THE CLERK: In the A.

14 MR. BROWN: In the A.

15 THE COURT: Well, without our file here, we
16 show that Bruce Bedke is a party to the case. So that
17 must mean you guys included --

18 JARED BEDKE: As we understand it, somehow
19 our filing -- I'm Jared Bedke.

20 THE COURT: Thank you.

21 JARED BEDKE: Somehow our filing got lumped
22 in with all of theirs when it went to the DWR. So
23 that's how come our name shows up along theirs. They
24 took all the filings on that particular source and
25 lumped them in as one filing. And they left the

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1 State's portion off in the original filing.

2 So it's kind of a misnomer for us, too. Because
3 we didn't -- we don't have -- we didn't -- how can I
4 put this? We don't have a separate filing registered
5 so far. But it will be because it was set aside as per
6 we discussed on the previous cases.

7 THE COURT: So 2810 is somewhere, you
8 claimed it.

9 BRUCE BEDKE: That is correct.

10 THE COURT: And it's going to be part of
11 that supplemental report if we can get it out early.

12 BRUCE BEDKE: That's correct. This is
13 Bruce Bedke. And we made several filings on May 24th
14 of 1989 that were never given to the director. And
15 it's my contention here that they should have gotten it
16 in order to have had equal footing here on these
17 cases. There's several of them that went that way,
18 that same direction.

19 VOICES: (Inaudible).

20 BRUCE BEDKE: Whether or not we can get it to
21 the table with them, I guess, basically.

22 THE COURT: Well, according to our records,
23 you're at the table now.

24 BRUCE BEDKE: Sure. Sure, on this particular
25 one.

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1 THE COURT: So you're a party to 28010.

2 BRUCE BEDKE: Yeah, yes.

3 THE COURT: Well, counsel, Mr. Ampe, do you
4 want to -- do we need more time to report this out
5 or -- Miss Bedke.

6 MARTI BEDKE: This is Marti Bedke. The thing
7 we don't understand here on these filings now is when
8 previously our section 45 that we were going to do the
9 supplemental with the attorney from the forest,
10 Randy Beamer, Mr. Beamer --

11 VOICE: Bramer.

12 MARTI BEDKE: -- Bramer and Mr. Brown on the
13 BLM filings, we're going to work that out among us?
14 That is on a different allotment and section. This is
15 in a different area. This is strictly with the BLM.

16 VOICE: It's all in basin 45.

17 MARTI BEDKE: It's all basin 45, okay, okay.

18 VOICE: The problem we had is this was
19 one of our only filings that was included on the
20 current director's report because it was lumped in and
21 compiled with the State's and BLM's and the Department
22 of Lands, et cetera.

23 THE COURT: So this has been reported out
24 on the director's report. We can hopefully resolve
25 this thing here real soon.

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1 VOICE: Possibly. 2 THE COURT: Do you need additional time 3 to -- 4 MR. AMPE: Sure, why don't you do that. 5 And we'll sit down and talk with the Bedkes. This is 6 kind of -- this is the first I've heard about their 7 filing on it. So seeing as how it (inaudible) State 8 portion of it. 9 THE COURT: Mr. Brown? 10 MR. BROWN: I'm trying to get the facts of 11 this thing straight, Your Honor. 12 THE COURT: I'll look at it. 13 MR. BROWN: (Inaudible). 14 THE COURT: We'll go off the record just 15 for a few minutes. 16 (DISCUSSION HAD OFF THE RECORD) 17 THE COURT: We're back on the record. 18 Mr. Brown, do you have something to offer? 19 MR. BROWN: Okay. This is Larry Brown for 20 the United States, U.S. Department of Interior, Bureau 21 of Land Management. And I've been researching the 22 facts on this. And I think this is the way that it 23 went. 24 Mr. Bedke made a filing that was numbered 25 45-10492 for this particular source.	1 disallowed. Mr. Bedke objected to 10492 because it w 2 disallowed. 3 Now, because of BLM's objection, 2810A was 4 eventually reported. 2810B, the State's right, was not 5 reported. And the State and the United States would - 6 like to settle that part of the objection. 7 And Mr. Bedke is saying that he filed an 8 objection; and he is a party to this case even though 9 he made his objection to 10492. And in my opinion he 10 made the objection to the wrong claim number, so it's 11 not an objection at all. He should have made it to 12 2810A and/or B. But on -- 13 VOICE: I'd like (inaudible). 14 MR. BROWN: Okay. So, anyway, the State 15 and the BLM agreed to split the claim because the point 16 of diversion is on the State; and there are places of 17 use on the State and on BLM under the D permit. So -- 18 THE COURT: Under the D permit? 19 MR. BROWN: Under the D permit, under 42 - 20 under Idaho Code 42-501. 21 THE COURT: You're not talking about 22 splitting the D part? 23 MR. BROWN: No. No. All I'm saying is 24 that's the type of permit that it is. 25 And the basis of Mr. Bedke's objection is,
1 THE COURT: What's the number again? 2 MR. BROWN: 10492. Now, the United States 3 and the State also made claims on this. Now, those 4 claims were based on what's called a D permit. And 5 that permit is allowed under Idaho Code 42-501. And 6 that part of the code states that the United States 7 doesn't need to own cattle to have this kind of a 8 permit. All right. 9 THE COURT: All right. 10 MR. BROWN: So eventually the State's and 11 the BLM's were reported out under 02810A and 02810B. 12 And then Mr. Bedke's claim was also changed to 02810. 13 Is that correct, Fred? Okay. Fred says yes. 14 Okay. 15 And now Mr. Bedke's filing was disallowed. The 16 State's -- 17 THE COURT: Just back up a second. You 18 said Bruce Bedke's claim was reported by IDWR under 19 water right No. -- 20 MR. BROWN: 10492. 21 THE COURT: 10492. 22 MR. BROWN: Okay. Now, and to begin with, 23 the BLM's claim was disallowed; and the State's claim 24 was disallowed. Now, the BLM objected to 2810A. And 25 the State objected to 2810B because they were	1 correct me if I am wrong, is that since the 2 United States and the State don't own cattle, we can't 3 have this. And we're saying that under this statute, 4 yes, we can. And it's a joint project. And these 5 water rights belong to both the State and the BLM under 6 the split right that we've agreed to. 7 Is that basically it? Is that right, Fred? Was 8 it clear? Okay. 9 So here we are with the State and the BLM willing 10 to settle. But then we have an objector who has 11 objected to the wrong number, but an objector 12 nonetheless. 13 MR. AMPE: Well, Mr. Bedke is not entirely 14 sure whether he has, runs the cattle on the State lands 15 because it's the typical kind of messy pattern. 16 Surprisingly there's no quarter quarter sections to 17 delineate it. 18 THE COURT: Well, is this section 36 land? 19 Is that why the State owns it? 20 MR. AMPE: Maybe -- 21 THE COURT: Oh, that's right. You've got 22 two sections. 23 MR. AMPE: Yeah, I've got 16 and 36. 24 Yes. It is section 16; but that by itself does not 25 answer the question as there's been various trades or

1 in lieu of such things to take care of. The State
 2 doesn't (inaudible) 16 and 36.
 3 So we'll have to get out and check whether or not
 4 they actually have a lease with the Department of
 5 Lands. They're not entirely sure. I need to
 6 double-check with the Department of Lands to see what
 7 their records show. It could be that between
 8 Department of Lands and the Bedkes there's not an issue
 9 because you don't run the cattle on the state land.
 10 And so even though the water comes from there, if
 11 it's piped off you'll still have a right to use it; but
 12 the water rights are at (inaudible), yes.
 13 BRUCE BEDKE: This is Bruce Bedke. Not
 14 knowing where these state lands are, we can't say
 15 that.
 16 MR. AMPE: Right.
 17 VOICE: We don't know geographically if
 18 that's --
 19 MR. AMPE: Of course. As I said, we're
 20 going to take a look and make sure (inaudible).
 21 THE COURT: Do we need some additional time
 22 here --
 23 MR. AMPE: Yes, Your Honor.
 24 THE COURT: -- to explore this?
 25 MR. AMPE: Yes, Your Honor.

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1 THE COURT: Mr. Brown, do you agree with
 2 additional time?
 3 MR. BROWN: That's fine with me,
 4 Your Honor.
 5 THE COURT: Okay. How much more time --
 6 MR. BROWN: It only took me a half hour
 7 just to figure out the facts there. We need a little
 8 more time to --
 9 THE COURT: Thank you for the advice.
 10 MR. BROWN: Fred knew the facts. I
 11 didn't.
 12 THE COURT: So how about an SF5 or a report
 13 within -- how many days?
 14 VOICE: 30?
 15 JARED BEDKE: Your Honor, Jared Bedke here.
 16 How will the SF5 address our claim if we find out we
 17 have some?
 18 THE COURT: Well, the SF5 can only be
 19 filled out when you're in agreement with everything.
 20 MR. BROWN: Well, only if he's a proper
 21 objector, Your Honor. You have to decide that.
 22 THE COURT: That's true. That's the other
 23 issue.
 24 But my guess is if Mr. Ampe decides to file an
 25 SF5, it will probably be with your concurrence saying

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1 yes, we're in agreement with this. Otherwise an SF5
 2 really shouldn't be filed because there remains other
 3 parties maybe to the case that haven't signed off on
 4 it.
 5 VOICES: (Inaudible).
 6 THE COURT: When someone gets this split
 7 business straight, if there is an A and a B, you may
 8 say to the State yeah, we're in agreement; we're done
 9 with them; now our battle is with Mr. Brown and the
 10 United States on the B portion.
 11 MR. BROWN: Not a problem with us,
 12 Your Honor.
 13 THE COURT: On the other hand, you might
 14 agree with the United States.
 15 VOICE: But they can do that in all
 16 fairness -- you handed me the statute, Your Honor. And
 17 I would like to read it. Maybe you can interpret it
 18 for me.
 19 It says, "The Bureau of Land Management of the
 20 Department of Interior of the United States may
 21 appropriate for the purpose of watering livestock any
 22 waters not otherwise appropriated."
 23 I guess our claim is based on the fact that these
 24 are appropriated waters by virtue of my claim. And so
 25 when he tells me that they have a right to these

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1 waters, I question that.
 2 MR. BROWN: But that wasn't the basis for
 3 your objection, Mr. Bedke. The basis for your
 4 objection was that the BLM wasn't allowed to own a
 5 water right.
 6 VOICE: By this statute, as I read it,
 7 that's exactly what it says. The water has already
 8 been appropriated.
 9 MR. BROWN: But your claim was disallowed.
 10 Your beneficial use claim was disallowed. So --
 11 VOICE: That's the rub perhaps. And
 12 I'm not sure that that's my fault. I'm not sure that
 13 that's your fault:
 14 MR. BROWN: We didn't do anything, just
 15 lodged our claims.
 16 VOICE: I question the IDWR's validity
 17 here in arbitrarily setting them aside.
 18 THE COURT: Well, that was based on their
 19 preliminary look at things. So no decisions have been
 20 made yet. Like, for instance, I could file a claim on
 21 this one, too.
 22 VOICE: Sure, sure.
 23 THE COURT: So then we've got three
 24 claimants for the same thing, four claimants. But, you
 25 know, then it still has to go through court to

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1 determine who has the valid claim.
 2 VOICE: I understand that. But --
 3 VOICE: How we became a party to this
 4 particular objection is still a mystery to us.
 5 THE COURT: Sure.
 6 VOICE: So we'll try to get that worked
 7 out, and then get together with our Standard Form 5 as
 8 we discussed earlier and either decide if we're clear
 9 with both, or clear with one, or --
 10 THE COURT: Sure. It sounds like you need
 11 to find out where the fence is:
 12 VOICE: Yeah.
 13 VOICE: Yeah.
 14 THE COURT: And if it doesn't fit, you move
 15 the fence, right?
 16 VOICE: Have in the past.
 17 THE COURT: Well, is there anything further
 18 we need to consider on this one? I'll send out an
 19 order setting it for an SF5 with everybody's signature
 20 or a report on the status of negotiations within
 21 30 days.
 22 VOICE: Yes. Do you have a subdivision
 23 on that? Do you have a legal on it in any way?
 24 VOICE: I don't have one that I'm aware
 25 of.

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1 THE COURT: Okay. We'll go off the record
 2 now. Thank you.
 3 (DISCUSSION HAD OFF THE RECORD)
 4 THE COURT: Good afternoon, counsel, ladies
 5 and gentlemen. We're now on the record. And we're in
 6 Burley. It's, what, April 7th, 1999.
 7 And the case before us now, the claimant is
 8 listed as John A. Pierce --
 9 MR. PIERCE: Yes, correct.
 10 THE COURT: And the basin number is, it's
 11 43, is that correct, or is it 45?
 12 THE CLERK: 43.
 13 THE COURT: Okay. Basin 43-04236. And
 14 it's here on a motion to set aside a partial decree
 15 entered by Judge Hurlbutt. Let's see, that was entered
 16 back in 1998. Let's see.
 17 Are you Mr. Pierce?
 18 MR. PIERCE: Yes.
 19 THE COURT: Are you representing yourself?
 20 MR. PIERCE: Yes.
 21 THE COURT: Okay. And also present, we've
 22 got Larry Brown representing the United States.
 23 MR. BROWN: Bureau of Land Management,
 24 Your Honor.
 25 THE COURT: Are you a party to the

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1 lawsuit?
 2 MR. BROWN: Not yet.
 3 THE COURT: Do we have anybody else here
 4 appearing in the case with an interest?
 5 MR. BROWN: Steve, do I need to appear for
 6 the United States Forest Service?
 7 VOICE: Randy mentioned to me out in
 8 the hall as we discussed this. I can have --
 9 (inaudible) we need to get a legal determination of who
 10 the party is. But if it's just an agency discussion,
 11 which I think is what we want to do, I can take part
 12 there. If you are all right with that.
 13 MR. BROWN: I feel that's fine. And I am
 14 not here representing the Forest Service in this
 15 particular case. The United States Department of
 16 Interior Bureau of Land Management has no interest at
 17 all. So I'm here to listen to see how this may affect
 18 the United States.
 19 THE COURT: But the Forest Service may be a
 20 party.
 21 MR. BROWN: The Forest Service may be. The
 22 BLM may be. We'll see.
 23 THE COURT: Now, we've got the
 24 introductions out of the way. Mr. Pierce, go ahead.
 25 You can be a lawyer now.

Page

1 MR. PIERCE: I sold my ranch to --
 2 VOICE: Skarr Cattle Company (sic).
 3 MR. PIERCE: We call it Arimo, and it's
 4 Chris Robinson out of Salt Lake City.
 5 THE COURT: Oh, Arimo. You're down near
 6 Malta?
 7 MR. PIERCE: Yes. That's where I live.
 8 THE COURT: Okay. Sure, I'm familiar with
 9 that area.
 10 MR. PIERCE: And I still have an equity in
 11 the operation.
 12 THE COURT: Oh, you sold it under
 13 contract?
 14 MR. PIERCE: Yes.
 15 THE COURT: Okay.
 16 MR. PIERCE: And my position is I want to
 17 stand on the original cooperative agreement which I'll
 18 leave a copy with you --
 19 THE COURT: Sure.
 20 MR. PIERCE: -- signed by the forest
 21 supervisor. And in this agreement it said Mr. Pierce
 22 will file on behalf of the water.
 23 THE COURT: Okay.
 24 MR. PIERCE: The spring flows unevenly
 25 during the spring, summer, also from year to year. So

Page



STATE OF IDAHO

IDAHO STATE POLICE



COLONEL R. DAN CHARBONEAU
Director

IDAHO BRAND BOARD

DIRK KEMPTHORNE
Governor

LARRY A. HAYHURST
State Brand Inspector

DuWAYNE SKAAR
Board Chairman

April 9, 2004

Mr. Jared K. Bedke
42 East Basin Rd.
Oakley, ID 83346

Dear Mr. Bedke:

This letter is written in response to your letter of April 1, 2004, regarding a United States cattle brand and if the Idaho Brand Department has ever inspected any cattle with such a brand.

After a thorough research of our recorded brands, we cannot find where there has ever been a cattle brand recorded to the United States here in the state of Idaho, nor has the Idaho Brand Department ever inspected any cattle for them.

If you have any further questions, please feel free to contact our office at 208-884-7070.

Sincerely,

Lucille White
Management Assistant
Idaho Brand Board

LW



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 3, 1997

Lee Leininger
P. Fritz Holleman
Dept. of Justice
General Litigation Section
Environmental and Natural Resources Division
P.O. Box 663
Washington, D.C. 20044-0663

BY FAX

Dear Mssrs. Holleman and Leininger:

This letter is the response to your request for a written summary of the Department's current policy for recommending competing claims. The Department arrived at this new point after considering many possible alternatives and receiving input from several parties, including the United States. As you are aware, after Special Master Haemmerle issued the Order on Second Summary Judgment in the Joyce Livestock subcases, the Department initiated a re-evaluation of its policy for recommending water rights to the landowner when the landowner and a third party such as a lessee file competing claims to the same water right.

The Department's policy at the time it published the first five Director's Reports was to recommend the water right to the landowner and recommend the court disallow the competing claim. At the monthly informational conference on May 20, 1997, the SRBA District Court expressed strong concerns over the Department's policy in this regard. Both the Department and the court found the chief deficiency with the Department's policy was that it did not include a detailed investigation into the possibility of lesser estate owners having valid water rights on another person's land. In fact, the Department has expended very little of its resources investigating the legitimacy of either competing claim. Along the way, given the adjudication scheme of the SRBA, the Department's recommendation created an unfair advantage for landowner-claimants because their water right recommendations carried *prima facie* weight despite the lack of investigation. The Department explored alternatives with the potential to remedy this problem that also would not become a large drain on Department resources.

With these goals in mind, the Department currently is expecting to apply a new procedure when publishing Director's Reports in upcoming reporting areas. The new procedure works for *de minimis* claims as follows: If competing claims are identical with respect to every element except ownership, the Department will recommend one right identifying both competing claimants as potential owners. If a claimant files a claim where no other claims assert identical elements, the

Department normally will consider and recommend the claim independent of any other claim or claimant. This way the Department may avoid making possibly arbitrary judgments as to whether two claims are for the same water right. However, the Department will consider evidence in its possession that may indicate that claims truly are to the same water right. For example, if the United States, acting through the Bureau of Land Management, files a claim for a stock water right licensed in the name of the BLM, and a private individual files a claim to the same license, the Department may recommend the court disallow the private claim, because the license identifies the appropriator. Aggrieved parties still may work out ownership issues through the objection process, but by applying the additional evidence, the Department is spared endorsing multiple claims from one beneficial use in those situations where the Department does have sufficient information to identify when claims represent a single beneficial use.

Where claims assert some non-*de minimis* use, such as irrigation or power production, the Department may perform a more considered investigation into ownership. Because of the smaller number of these claims and the larger quantities diverted, there is greater justification for the expense. Generally, better records exist detailing the historical use of these lands, which allows the Department to make more accurate and complete recommendations.

The Department expects this new policy to produce generally more fair litigation, with each party subject to identical standards of proof before the court, which will proceed in a manner consistent with a common quiet title action. Also, the Department can produce such recommendations without excessively depleting its resources. In Reporting Area Six, (Basins 51, 55 and 61) the Department anticipates about 500 of such potentially competing claims, most of which are small domestic and stock water claims. The long term impact of this policy should be minimal. All of the other basins appear to contain significantly fewer competing claims. This means that once the small domestic and stock claims in Reporting Area 6 are completed, the new policy will have diminishing impact over the course of the SRBA.

By recommending water rights to lesser estate owners, the Department gives greater recognition to what has been long-standing law in Idaho - that lesser estate owners may hold title to water rights independent of the title to the appurtenant real estate, even in the cases of lessees and licensees on the federal public lands. The Department, however, will not prevent any potential theory of water right ownership available to the landowner-claimant. This procedure also does not appear to contravene any of the Department's obligations under Idaho Code Title 42.

Although your suggestion to delay reporting these competing rights holds some appeal, the Department will not pursue that option at this time. After careful consideration, I do not believe that such a delay is in the best interests of the Department. One important reason with going forward with the domestic and stock water right Director's Report in Reporting Area 6 is that it allows the Department to spread out its future work load. Because the Western Region office is already committed to a reporting schedule, a delay now only will add work on top of the projects scheduled later. The Western Region office is already operating at its resource limit, and will be while producing the following non-*de minimis* report.

You should be aware that you will have an opportunity to construct pre-negotiation

settlements with claimants during the 120 day objection period after publication of the Director's Report recommendations. During this period, claimants may withdraw claims or change the listed owner to "United States," whatever your settlement entails. Regardless of how much time you have to reach these settlements, however, there could be potential hold-out claimants that will litigate the ownership issue.

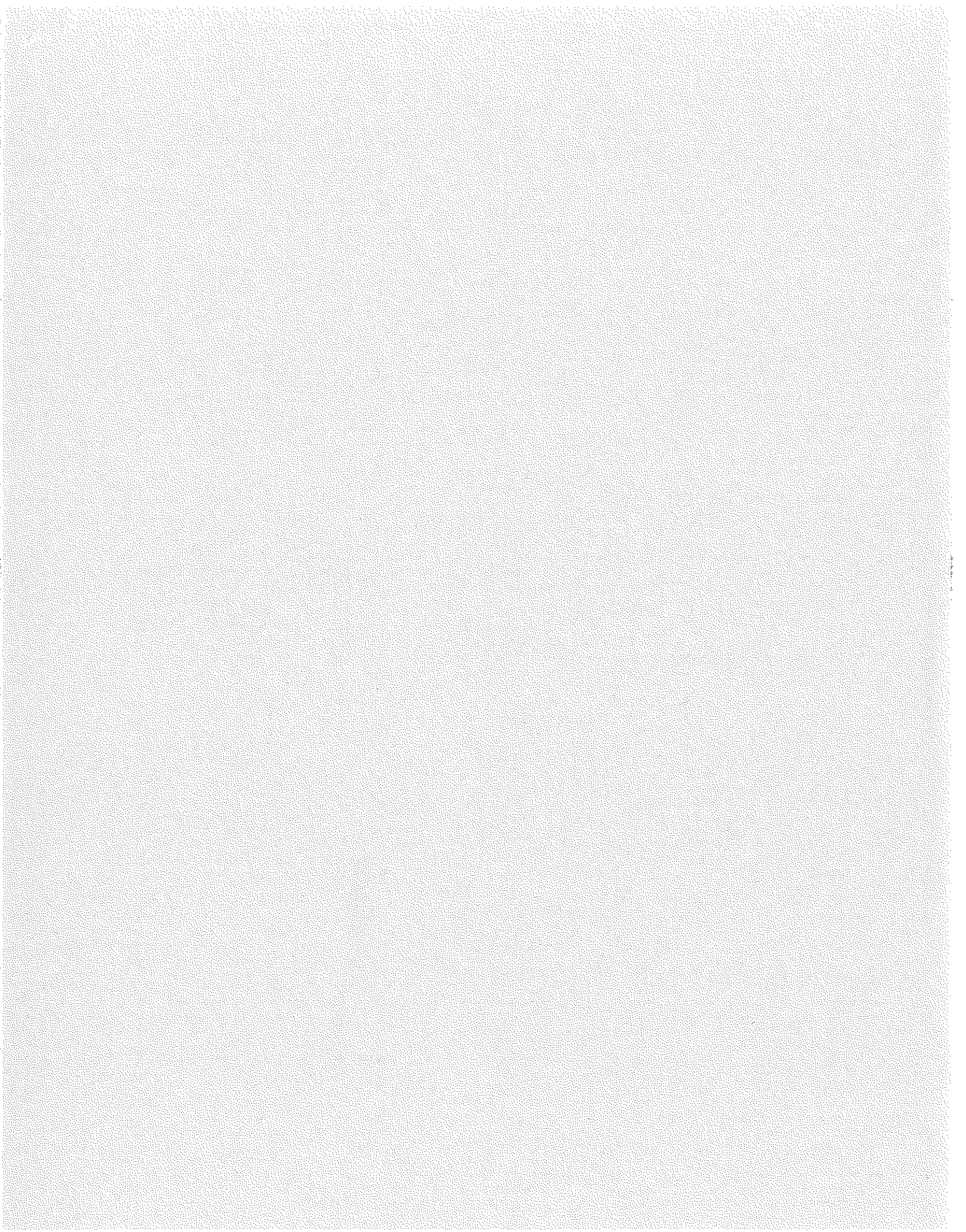
As always, comments or suggestions on this process or any IDWR action may be directed to myself or Peter Anderson, at (208) 327-7929 and (208) 327-7975 respectively. Because the Department is working to meet established deadlines for the completion of the domestic and stock water recommendations for Reporting Area 6, you should submit your comments or suggestions prior to July 12, 1997 or as soon as otherwise possible. I hope this satisfies your request for a written statement.

Sincerely,

A handwritten signature in dark ink, appearing to read "David R. Tuthill, Jr.", with a stylized, cursive script.

David R. Tuthill, Jr.
IDWR Adjudication Bureau Chief

cc: Bill Ferry
Randy Bramer





U.S. Department of Justice

Environment and Natural Resources Division

PFH
90-6-2-63C

Fritz Holleman
General Litigation Section
P.O. Box 663
Washington, DC 20044-0663

Telephone (202) 305-0494
Facsimile (202) 305-0506

July 31, 1997

Dave Tuthill *DN*
Adjudication Bureau Chief
Idaho Department of Water Resources
1301 N. Orchard Street,
P.O. Box 83720
Boise, Idaho 83720-0098

RECEIVED

AUG 05 1997

Re: IDWR Stockwater Policy Change

Department of Water Resources

Dear Mr. Tuthill:

Thank you for your letter of July 3rd. It is helpful for us to see IDWR's new policy for reporting ownership of water rights claimed in the SRBA in writing.

We were disappointed to learn that IDWR will not postpone its recommendations for competing claims to stockwater in Reporting Area 6. We think that we could have successfully settled many disputes regarding ownership of stockwater rights in Reporting Area 6 if IDWR had been willing to wait a few months before implementing its new policy. We believe that IDWR's new policy will result in many more contested subcases and accordingly much more work for the parties in the SRBA, the Court and IDWR.

We still question the need for a new policy. You cite Special Master Haemmerle's decision in the Joyce Livestock cases and Idaho's "long-standing law - that lesser estate owners may hold title to water rights," as the reasons for the change in policy. Neither reason is persuasive. There is nothing in Special Master Haemmerle's decisions that is inconsistent with the old policy that gave the benefit of the doubt to the landowner. Nor is there any Idaho law which recognizes that a mere grazing permittee, having nothing more than license to use federal public land for some limited purpose, may initiate a water right on that land.

The old policy of recommending the water right to the owner of the land as opposed to a non-landowner claiming a competing right was well defended in the recent 706 report produced by your

agency. In those few instances where someone other than the landowner is the proper owner of the water right, the prima facie presumption established by the director's report could have been easily overcome. In short, we feel the old policy was well grounded in the law, and was an efficient and fair method of reporting.

As we have explained in the past, we have a number of concerns with your new policy. First, we read Idaho Code Title 42 to require IDWR to investigate all of the claims made in the SRBA. This includes some analysis of ownership for the water rights claimed and analysis of the claimed priority dates. IDWR appears to recognize these obligations as your July 3rd letter explains that the agency will conduct an investigation of ownership for non-de minimis uses such as irrigation and power production. The statutes give IDWR no basis for conducting a less thorough investigation regarding ownership of de minimis water rights. The reasons given in your letter, that such investigations would be expensive and time consuming, are not exceptions to the obligations set forth by the legislature in Title 42. The proposed new policy of reporting water rights with more than one owner seems an abrogation of the duties imposed by Title 42.

More troubling, however, is your selective application of Special Master Haemmerle's decisions in the Joyce Livestock subcases. You cite his decision as the basis for the new policy, but fail to explain how that decision in anyway supports the new policy. In fact, your new policy appears contrary to the Special Master's ruling that stockwater rights used on the federal public land are appurtenant to the federal public land. Such rights cannot pass under the general appurtenance clause of a deed conveying private property. Special Master Haemmerle concluded that unless specifically described in a conveying document, the earliest priority date any rancher can claim to stockwater on the federal public land is the date that he or she began using the particular stockwater source. See e.g., In Re SRBA Subcase Nos. 57-04028 et.al., Findings of Fact and Conclusions of Law, July 24, 1997, at 3-5.

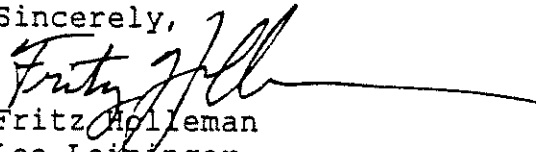
In the adjudication of the test basins, we have yet to encounter a rancher with a clear chain of title to stockwater rights initiated by a predecessor in interest on the federal public land. Any claim to stockwater with a priority date more than thirty or forty years old is suspect under the Special Master's ruling and should not be recommended by IDWR.

The policy regarding what is and what is not a competing claim is also troubling. Under the new policy, IDWR will recognize two claims as competing claims only where every element, including priority date, is exactly the same. IDWR is

on record in the Joyce Livestock subcases as agreeing with the United States' that there cannot be more than one water right for the same beneficial use. To be consistent, IDWR should acknowledge that any two water rights claimed to serve the same stock are in direct competition, regardless of the claimed priority date. Where both the United States and a private rancher have claimed a stockwater right from the same source to serve the same cattle, there can be only one water right. Under Title 42, IDWR is charged with making an initial determination regarding to whom that right should be issued. The investigations conducted by IDWR should at a minimum identify water rights that are claimed from the same source for the same beneficial use.

Thank you again for putting the new policy in writing and for this opportunity to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fritz Holleman", followed by a long horizontal line extending to the right.

Fritz Holleman
Lee Leininger
Attorneys, USDOJ
Environment and Natural Resources
Division

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1 SPECIAL MASTER DOLAN: Mr. Bedke, do you
2 think we can, we can go ahead and rule on your
3 motion to file late objections now without waiting
4 for the, your de maximus claims on Basin 45 to be
5 reported?

6 MR. BEDKE: Well, again, like I say, it's
7 just, it's just a procedural deal, as far as we were
8 concerned. We didn't want to have to argue the same
9 case twice.

10 SPECIAL MASTER DOLAN: Okay.

11 MR. BEDKE: And so we thought -- well,
12 that's -- this was before the stipulation and all
13 and the settlement came about. This was all --
14 everybody was on the same page back then as far as
15 stockwater users were concerned.

16 SPECIAL MASTER DOLAN: Sure.

17 MR. BEDKE: And so that was -- that was
18 the best procedure we had at the time for this
19 court, was that everything was stayed pending the
20 report, when we could look at everything together,
21 because they are competing claims.

22 SPECIAL MASTER DOLAN: Sure. Well, what
23 are the odds of you settling your case as a lot of
24 the other private claimants have done?

25 MR. BEDKE: Well, I couldn't agree with

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1 for -- it's claimed by Bruce Bedke, Gary Poulton,
2 Winslow Whiteley and Greg Bedke, and it is for one
3 spring called Cabin Spring, so that, that would be
4 the one -- that would be -- that would be the only
5 claim in this, in this group that we are waiting for
6 to come out in the Basin 47 Irrigation and other
7 director's report.

8 SPECIAL MASTER DOLAN: Well, I know that
9 since we did those stays way back when, a lot of
10 developments have happened, and I'm aware that Judge
11 Burdick wants a lot of these cases to move along,
12 and stays are not favored any more. So my guess is,
13 I'm going to have to take a look at that motion and
14 rule on it so that we can move these cases along.
15 Because it looks like to me, at least in the
16 drive-by discussion we've had this morning, that
17 there's no reason for not, for us not to go ahead
18 with this motion, even though some of your other
19 claims haven't been reported, because while it may
20 not be efficient for you to argue the same matters
21 twice, if we do decide the matters at this point,
22 that might solve the problems later on when your de
23 maximus claims are reported, and maybe you won't
24 have to argue the same things twice.

25 MR. BEDKE: There is that possibility, but

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1 some of the terms in the settlement, so that was why
2 we didn't opt to settle at that time.

3 SPECIAL MASTER DOLAN: But you've actually
4 seen all of the terms and --

5 MR. BEDKE: Yes.

6 SPECIAL MASTER DOLAN: -- you've had a
7 chance to discuss settlement? Okay. And for, for
8 now at least, you --

9 MR. BEDKE: So we always entertain
10 settlement, but the devil's in the details, as they
11 say.

12 SPECIAL MASTER DOLAN: Sure. But for now
13 you want to pursue your claims that 14923, A through
14 E, and -- or I'm sorry. You want to pursue your
15 objections --

16 MR. BEDKE: Motions to file late
17 objection.

18 SPECIAL MASTER DOLAN: Okay.

19 MR. BEDKE: Yes.

20 SPECIAL MASTER DOLAN: Mr. Negri, anything
21 further?

22 MR. NEGRI: Just one clarification I do
23 have. The IDWR adjudication claim report for
24 47-14924, which is the -- which is the one
25 unreported claim involved in this group, and it is

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1 it still does not stop us from, what -- what it
2 boils down to, just procedurally, if the late
3 objection, the motion to file late objections are
4 granted, then we will be debating not our water
5 rights per se but whether or not the federal
6 government's water rights should proceed.

7 SPECIAL MASTER DOLAN: Sure.

8 MR. BEDKE: And then later on, when ours
9 get reported out, they will have the chance to get
10 to object to theirs, and we will have to resolve
11 their objections to ours.

12 SPECIAL MASTER DOLAN: Sure.

13 MR. BEDKE: So we decided way back when
14 that it would be best to say, hey, okay, you don't
15 like ours, we don't like yours, let's resolve them
16 both at once. So that was the reason for the stay
17 originally. Whether or not that's still pertinent,
18 I guess is up to you, because the court will have to
19 decide when that is, which would be the best use.

20 It's a, it's a, it's a big can of worms
21 here, because it can go -- there's all kinds of
22 things that go on and this, that and the other.

23 SPECIAL MASTER DOLAN: Well, is there
24 anything the court can do to, to aid in the
25 settlement of these Basin 47 subcases that we have