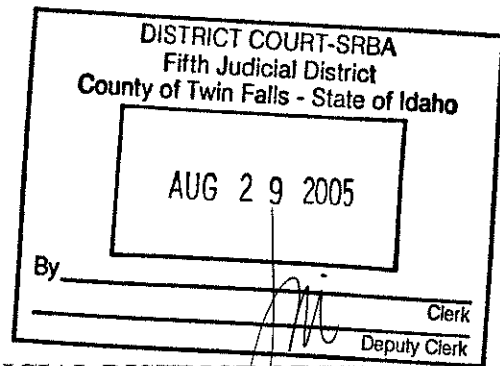




IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA) Subcases: 47-16433 *et al.* (See Exhibit A)
Case No. 39576)
ORDER ON MOTION FOR
RECONSIDERATION
_____)

I. BRIEF PROCEDURAL BACKGROUND

- A. On March 22, 2005, this Court issued a *Memorandum Decision and Order on Challenge and Order of Recommitment* in the above-captioned matter.
- B. On May 20, 2005, the United States Department of Agriculture, Forest Service filed a *Motion for Reconsideration of Presiding Judge's Memorandum Decision and Order on Challenge*.
- C. On June 15, 2005, Bruce and Jared Bedke filed a *Response to United States' Motion for Reconsideration of Presiding Judge's Memorandum Decision and Order on Challenge*.
- D. On July 19, 2005, argument was heard on the matter. The Court required no further briefing, therefore, the matter is deemed fully submitted for decision the next business day, or July 20, 2005.

II. ISSUE RAISED

In the *Motion* the United States asserts that the Court erroneously concluded that the Bedke's stockwater claims had not been reported at the time the Bedke's filed the

motions to file late objections, when in fact the Bedke's stockwater claims were reported in the same director's report as those of the United States.

III. DISCUSSION

The United States asserts the Court relied on the erroneous fact that the Bedke's claims, which competed with the claims of the United States, had not been reported at the time the Bedkes filed their motions to file late objections. The United States contends that the Bedke's claims were reported at the same time as those of the United States and therefore any confusion over the bifurcated reporting of stockwater claims as alleged by the Bedkes is not supported by the facts.

The Court properly relied on the factual representations contained in the various stay orders issued by the Special Master, and specifically the *Order Vacating Stays and Order Denying Motions to File Late Objections*, from which this challenge was brought. The Bedkes filed the motions to file late objections on June 4, 1999. On June 29, 1999, the United States filed a *Memorandum in Opposition to Motions to File Late Objections*, noting among other things that the Bedkes were served notice of the filing of the director's report, the implication being that some or all of Bedke's claims had been reported. Nonetheless, on August 6, 1999, the Special Master entered an *Order Partially Staying Subcases* for the United States' twenty-six subcases in Basin 47 to which the Bedkes and others sought to object. According to the Special Master, the entire reason for the stay was unfairness resulting from the bifurcated reporting process and to wait until the Bedke's and Poulton's claims were reported by IDWR. In the *Order Partially Staying Subcases* the Special Master specifically states:

Whether the various motions to file late objections were timely and whether good cause has been shown need not be decided now. The fundamental issue is whether the bifurcated process of reporting domestic and stock water claims in Basin 47 was fair to the claimant (Forest Service), the late objectors (Bedkes and Poultons) and the SRBA Court. It was not.

...

Because the SRBA is analogous to an interpleader action (I.R.C.P. Rule 22), all interested parties and their claims must be reviewed together—especially where the claims are or may be in conflict. Only in that way can IDWR and the SRBA Court ensure that all claims are accurately adjudicated. Otherwise, the small domestic and stockwater claimant is

burdened with defending the claim, the larger and more complex claimant (maybe of the same water) bears the expense of objecting and the SRBA Court is left to sort through an incomplete record.

...

The only sure relief from this "little bit of pain" caused by the bifurcation process in Basin 47 is to stay the twenty-six (26) contested *de minimus* stock water claims filed by the United States until the remaining stock water claims are reported by IDWR. Whether the United States claims must be further investigated and re-reported by IDWR will be left to the discretion of the Director. In the meantime, there is not reason to proceed further with the Bedke and Poulton Motions to File Late Objections. They will be stayed as well.

Order Partially Staying Subcases, Subcases 47-16433 *et. al* (Aug. 6, 1999) at 11.

In a subsequent *Order Staying Subcases* filed on July 2, 2001, the Special Master notes that "[W]hile the United States' claims have been reported, and in some cases decreed, the Stockmen's claims have not yet been reported." *Order Staying Subcases*, Subcases in Basins 45 and 47 (July 2, 2001) at 1. In the *Order*, the term "Stockmen" specifically includes "Bruce and Jared Bedke." *Order Staying Subcases* at 1, fn. 1. In referring to the previous *Order Partially Staying Subcases*, the Special Master also states:

The Special Master reviewed IDWR's bifurcation procedures, the various motions and the standards applied by the SRBA Court for late objections. In the end, it was clear that late objections were not the critical issues in those subcases. Rather, the critical issue was the fairness of the bifurcation process – to the claimant, the late objectors and the SRBA Court. The Special Master concluded it was not fair. Therefore, the appropriate remedy was to stay further consideration of the United States' claims until the remaining stockwater claims are reported by IDWR. Only then would the SRBA Court have a complete record by which to judge the relative merits of the potentially competing claims and pending motions. .

..

Id. at 3.

(T)he Stockmen's claims are only part of the picture – the director's reports due in 2002 and 2003 are the rest. When the Court has before it both the Stockmen's claims and IDWR's Reports and recommendations concerning their claims, the Court will be able to properly determine the pending motions. Until then, any decision concerning the merits of the Stockmen's claims and motions would be speculative, at best.

Id. at 6.

Finally, in the *Order Vacating Stays and Order Denying Motions to File Late Objections*, Subcases 47-16433 *et. al* (July 3, 2003), from which the motion to alter or amend and the instant challenge was brought, the Special Master specifically states:

The stay was entered because of IDWR's bifurcated process of reporting domestic and stockwater claims in Basin 47 was deemed to be unfair to the claimant (USDA/FS), the late objectors and the SRBA Court.

...

In the bifurcated process, IDWR reported the USDA/FS 'de minimus' claims for individual sources separately and ahead of the late objectors' larger 'de maximus' claims for multiple sources filed by allotment. IDWR has yet to report the late objectors' claims in basin 47. All of the late objectors' unreported 'de maximus' claims were settled in the August 29, 2002 Stipulation, except for Bruce and Jared Bedke's claims. For a more complete discussion of IDWR's bifurcated process, see the Special Master's *Amended Order Partially Staying Subcases*, subcases 47-16433, *et. al* dated August 19, 1999. . . IDWR does not expect to report the 'de maximus' claims in Basin 47 until the fall of 2004.

Id. at 2-3, fn. 4 and fn. 5 (emphasis added).

None of the facts or assertions contained in the two *Stay Orders* or the *Order Vacating Stays and Order Denying Motions to File Late Objections* were put at issue by the United States in either a motion to alter or amend or by objecting to the proceedings being stayed at least with respect to the Bedke's *Motion*. The entire procedural posture of the Bedke's *Motion* was premised on the basis that the Bedke's claims had not yet been reported. Accordingly, the Court appropriately relied on not only the Special Master's repeated statements that the Bedke's claims had not yet been reported, but also the fact that the Bedkes were even included in the stay which extended almost four (4) years. As such, the Court had no reason to believe other than that the Bedke's claims had yet to be reported.

It was not unreasonable for the Court to believe that had the Bedke's claims already been reported then the Special Master would have ruled on their *Motion* from the outset.¹

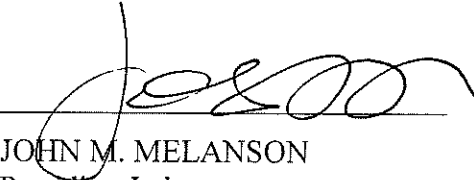
¹ In fact, after the other parties entered into a stipulation but before the 'de maximus' rights in Basin 47 were reported, the Special Master ruled on the motion to file the late objection, despite nothing having changed with respect to the issues which gave rise to including the Bedke's in the stay in the first place. In the *Order Denying the Bedke's Motion to Reconsider*, the Special Master states "the Bedke's cannot

IV. CONCLUSION

The fact that the Bedke's claims were already reported does not change this Court's ruling. The entire procedural posture of the Bedke's *Motion* was predicated on the fact, albeit erroneous, that the Bedke's claims had yet to be reported. The motion was stayed for a period of almost four (4) years and would have been stayed longer had the other late objectors not reached an agreement with the United States. The director's report for the "*de maximus*" claims in Basin 47 still has not been filed. Again, by not specifically contesting these facts from the outset, this Court had no reason to question the findings of the Special Master or the underlying purpose for including Bedkes in the stay.

For the above-stated reasons the United States' *Motion for Reconsideration* is Denied.

Dated 8/29/05


JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

reasonably argue that the bifurcated process of reporting *de minimus* and *de maximus* stock water claims somehow avoids the requirement to file timely objections." *Order on Motion for Reconsideration*, Subcases 47-16433, *et. al* (Jan. 7, 2004). This being the case the Court questions the purpose of including the Bedkes in the stay in the first place.

EXHIBIT A

Subcase Nos:

47-16433
47-16434
47-16435
47-16437
47-16438
47-16440
47-16441
47-16442
47-16443
47-16444
47-16445
47-16446
47-16447
47-16448
47-16449
47-16458
47-16459
47-16460
47-16461
47-16463
47-16464
47-16465
47-16466
47-16470
47-16471
47-16474

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON
MOTION FOR RECONSIDERATION was mailed on August 29, 2005, with
sufficient first-class postage to the following:

GARY R POULTON
MICHAEL A POULTON
SCOTT C. BEDKE

Represented by:
TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
TWIN FALLS, ID 83301-6167
Phone: 208-733-0700

UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

BRUCE BEDKE
JARED BEDKE
42 E BASIN RD
OAKLEY, ID 83346
Phone: 208-862-3679

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