

Names of Parties Filing Document:

UNITED STATES OF AMERICA

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

In Re SRBA

Case No. 39576

) Subcase Number: 45-02810A
)
) **MOTION TO VACATE ORDER**
) **SETTING DEADLINE and ORDER**
) **SETTING HEARING, MOTION TO**
) **CONSIDER BEDKE'S LATE**
) **OBJECTION TO BE A TIMELY**
) **FILED RESPONSE, MOTION TO SET**
) **SCHEDULING CONFERENCE**
) **INCLUDING MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT**

MOTION

The United States, by and through the undersigned attorney, respectfully moves the Special Master for the following:

1. In the interest of judicial economy, for an order vacating the Special Master's Order Setting Deadline and Order Setting Hearing on the issue of whether Jared Bedke's objection was timely filed in the above-captioned subcase;

2. in the interest of justice and judicial economy, for an order considering Jared Bedke's Standard Form 1 Objection, In Re SRBA, Case No. 39576, Subcase Number: 45-02810A (January 7, 2005) (hereinafter "Bedke's Objection") to be a timely filed response to the United States Department of the Interior, Bureau of Land Management's ("BLM") Standard Form 1 Objection, In Re SRBA, Case No. 39576, Subcase Number: 45-02810A (November 25, 2004) (hereinafter "BLM's Objection"); and,

3. in the interest of judicial economy, for an order setting a scheduling conference.

MEMORANDUM OF POINTS AND AUTHORITIES

On October 8, 2004, the Idaho Department of Water Resources ("IDWR") filed a Notice of Completed Administrative Proceeding and Amended Director's Report that recommended 45-02810A be disallowed. The Register of Actions for October 14, 2004 states that Objections to the Amended Director's Report were due on November 26, 2004. On November 26, 2004, the BLM filed a timely objection to IDWR's recommendation that 45-02810A be disallowed. The BLM's objection states:

I object because . . . [t]his water right was not recommended, but should be recommended with the elements described above. . . . This license was disallowed in the Amended Director's Report. IDWR should have recommended this right.

BLM's Objection at 2.

On November 26, 2004, for reasons that are unknown, IDWR filed another Notice of Completed Administrative Proceeding and Amended Director's Report that are identical to those filed on October 8, 2004. That Amended Director's Report likewise recommended that 45-02810A be disallowed.

On January 7, 2005, Jared Bedke filed an objection to IDWR's recommendation that 45-02810A be disallowed. Bedke's Objection states:

I object because . . . [t]his water right should not exist. . . . This water right should not exist. This water right is filed on the basis of IC 42-501 which provides that the BLM may appropriate for the purposes of watering livestock and water not otherwise appropriated on the public domain. The diversion is capturing a live stream that is fully appropriated water. Furthermore this location of the water claim does not lie within the public domain (Bardon v Northern Pacific Railroad Company 145 U.S. 535 holding that land to which any claims or rights of others have attached does not fall within the designation of public land).

Bedke's Objection at 2.

According to the date set for filing objections in the Register of Actions, Bedke's Objection is unquestionably late because it was filed on January 7, 2005, 42 days after the time for filing objections elapsed. However, the schedule for filing objections and responses probably should have been determined in accordance with AO 1 §§ 4.d.(2) (i) and (j), which states objections must be filed within 21 days from the appearance of an amended director's report on the docket sheet and responses must be filed within 14 days following the close of the objection

period. The Notice of Completed Administrative Proceeding and Amended Director's Report filed on October 8, 2005 did not appear on any docket sheet. The Notice of Completed Administrative Proceeding and Amended Director's Report filed on November 26, 2005 appeared on the December Docket Sheet (December 7, 2005). Therefore, under docket sheet procedures, the objections should have been filed not later than December 28, 2005, in which case Bedke's Objection was still untimely because it was filed on January 7, 2005, 10 days after the time for filing an objection had elapsed.

However, from the language contained in Bedke's Objection, it is apparent that Jared Bedke did not intend to object to the Amended Director's Report that recommended 45-02810A be disallowed. It is apparent that Jared Bedke intended to respond to BLM's objection, become a bona fide party to the subcase, and contest the BLM's entitlement to 45-02810A. See Bedke's Objection at 2 ("water right should not exist." "[D]iversion is capturing a live stream that is fully appropriated water."). Given this unique set of circumstances, the United States would not object if the Special Master considered Bedke's Objection a response. Under docket sheet procedures, a response was due not later than January 11, 2005. Therefore, if the Special Master considers Bedke's Objection to be a response, such response was timely filed.

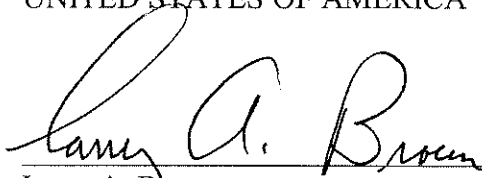
For good cause shown, the Special Master should grant the United States' Motions by considering Bedke's Objection to be a timely filed response, vacating the Order Setting Deadline and Order Setting Hearing, In Re SRBA, Case No. 39576, Subcase Number: 45-02810A (October 13, 2005) on the issue of whether Jared Bedke's objection was timely filed , and set 45-02810A for a scheduling conference.

The undersigned counsel discussed these Motions with Mr. David J. Barber, counsel for the State of Idaho, and Mr. Barber does not object. The undersigned counsel tried to call Jared Bedke on October 27, 2005 to discuss these Motions, but was not able to speak with Mr. Bedke before filing these Motions.

DATED this 27th day of October, 2005.

Respectfully submitted,

UNITED STATES OF AMERICA



Larry A. Brown
Of Attorneys for the United States

CERTIFICATE OF SERVICE

I certify that on Oct. 22, 2005, that I served a true and correct copy of foregoing **MOTION TO VACATE ORDER SETTING DEADLINE and ORDER SETTING HEARING, MOTION TO CONSIDER BEDKE'S LATE OBJECTION TO BE A TIMELY FILED RESPONSE, MOTION TO SET SCHEDULING CONFERENCE INCLUDING MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; SUBCASE NUMBER 45-02810A** upon the following individuals by placing the document in the United States Mail in Washington D.C., postage paid, and addressed as follows:

Original to:

Clerk of the Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Copy to:

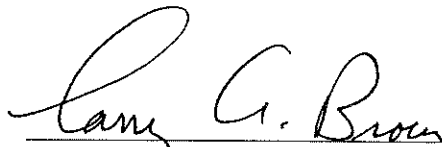
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