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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	)	Subcase Numbers: See attached Exhibits A
	)	and B
	)	
Case No. 39576	)	UNITED STATES' RENEWED
	)	OPPOSITION TO MOTIONS TO FILE
_____	)	LATE OBJECTIONS

I. INTRODUCTION

On April 7, 1999, over nine months after the time for filing objections had elapsed, Bruce Byron Bedke and Jared K. Bedke (the "Bedkes") filed documents purporting to object to the water right claims listed on attached Exhibits A and B. The Special Master considered the documents to be Motions to File Late Objections in the subcases listed on attached Exhibits A

and B. On June 2, 1999, the United States filed its Memorandum in Opposition to Motions to File Late Objections in the subcases listed on attached Exhibits A and B. On July 2, 2001, the Special Master entered an order staying all proceedings in the subcases listed on attached Exhibits A and B. On January 5, 2005, the Special Master filed an Order Vacating Stays, Order Denying Motions to File Late Objections and Recommendation of Permissive Review in the subcases listed on attached Exhibit A. On January 19, 2005, the Snake River Basin Adjudication ("SRBA") District Court filed an Order Granting Permissive Review of Special Master's Order Denying Motion to File late Objection; AO19e.; Scheduling Order and Notice of Hearing on Permissive Review in the subcases listed on attached Exhibit A. On March 15, 2005, the Bedkes filed Objectors' Opening Brief in the subcases listed on attached Exhibit A arguing that the Special Master erred in denying Motions to File Late Objections to claims for stock water filed by the United States Department of the Interior, Bureau of Land Management (the "BLM"). The United States' Responsive Brief in the subcases listed on attached Exhibit A was filed on April 6, 2005 and oral argument was heard by the District Court on June 15, 2005. On August 3, 2005, the District Court filed its Order on Permissive Review And Order of Recommitment in the subcases listed on attached Exhibit A denying permissive review because the Special Master applied an incorrect standard of review to the Bedkes' Motions to File Late Objections, and the subcases were remanded for findings of fact and application of a different standard of review.

Through this memorandum, the United States hereby renews its opposition to the Bedkes' Motions to File Late Objections in the subcases listed on attached Exhibits A and B. Even though Bruce Bedke had actual notice that the BLM's stock water claims were reported by the Idaho Department of Water Resources (the "IDWR") and that objections had to be filed by July

3, 1998, the Bedkes' did not review the Basin 45 Director's Report and file timely objections. According to Idaho's statutes, the objections are time-barred. Moreover, the facts and the totality of the circumstances do not show good cause for filing untimely objections and the Bedkes did not allege a meritorious defense. Therefore, the Bedkes' Motions to File Late Objections must be denied. Attachments 1 through 14 ^{1/} in support of the United States' Renewed Opposition to Motions to File Late Objections are filed herewith.

II. FACTUAL BACKGROUND.

The BLM filed numerous *de minimis* stock water claims in Basin 45 for water sources located on public lands^{2/} that were reported in the IDWR's Director's Report Reporting Area 10 (IDWR Basin 45) (hereinafter "Attachment 1" or alternatively "Basin 45 Director's Report").

See generally, Attachment 1. Five of Bruce Bedke's *de minimis* stock water claims were reported in the Basin 45 Director's Report.^{3/} On March 23, 1998, IDWR filed an "Affidavit of

^{1/} True copies of relevant pages of documents in the District Court's official record and the official record established by the District Court in specific subcases are filed herewith as Attachments for the convenience of the Special Master. In this memorandum, each document filed as an Attachment is first identified by a complete citation, and thereafter identified as Attachment 1, Attachment 2, *etc.*

^{2/} "The term 'public lands' means any land and interest in land owned by the United States . . . and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership" 43 U.S.C. § 1702(e).

^{3/} 45-02810 was reported as disallowed. Attachment 1 at 207 (B-1), 219 (C-3) and 340 (D-19). 45-10332 was reported as disallowed. Attachment 1 at 211 (B5), 235 (C19), and 340 (D19). 45-10506 was reported as recommended. Attachment 1 at 9 (A-23), 240 (C-24) and 340 (D-19). 45-10505 was reported as recommended. Attachment 1 at 25 (A-133), 240 (C-24), and 340 (D-19). 45-04050 was reported as recommended. Attachment 1 at 142 (A-2088), 219 (C-3), and 340 (D-19). 45-10488 was reported as recommended. Attachment 1 at 143 (A-2089), 240 (C-24), and 340 (D-19).

Service: Notice of Director's Report for Domestic and Stockwater for Reporting Areas 7 and 10 (IDWR Basins 41, 43, and 45)," (hereinafter "Attachment 2"). IDWR's Adjudication Bureau Chief attested that "[t]he Notice and IDWR's individual recommendation for each claimant's domestic and stockwater right(s), were served on each of the persons on the Affidavit of Mailing, attached as Exhibit 2 and incorporated by this reference" Attachment 2 at 2. Bruce Bedke was served with the Notice of Director's Report Reporting Areas 7 and 10 for Small Domestic and Stock Water Rights[#] on March 2, 1998. See Attachment 2 at 9.

Jared Bedke became an SRBA party on May 28, 1999 when he filed water right claim numbers 45-12891 and 45-12892. See Notice of Claim to a Water Right, In Re SRBA, Case No. 39576, Identification No. A45-12891 (May 28, 1999) (hereinafter "Attachment 3"); see Notice of Claim to a Water Right, In Re SRBA, Case No. 39576, Identification No. A45-12892 (May 28, 1999) (hereinafter "Attachment 4"). Jared Bedke filed these claims nearly 15 months after the Basin 45 Director's Report was filed with the SRBA Court. Compare Attachment 2 at 2 ("March 2, 1998") to Attachments 3 at 3 (dated "5/28/99") and 4 at 3 (dated "5/28/99").

The Notice states:

INSTRUCTIONS FOR REVIEWING THE RIGHTS OF OTHERS

The complete Director's Report contains recommendations to the SRBA Court on your water right and all other small domestic and stock water rights in your area. The Court will decide how it will decree all water rights. The Director's recommendations in the full report are listed in two sections of the report:

[#] Attachment 2 at 5-8 is Exhibit 1 to the Affidavit of Service and is hereinafter referred to as the "Notice."

- 1) **List of Recommended Water Rights - -**
Water right recommendations are listed alphabetically by source and then chronologically by priority date within each source.
- 2) **List of Claims Recommended to Be Disallowed - -** Water rights recommended to be disallowed are listed numerically by water right number. A short statement of the reason for IDWR's recommendation for disallowance is provided.

Also included in the complete Director's Report are descriptions of the United States' claims for domestic and stockwater under federal law. The Director does not investigate these claims and makes no recommendation whether they should be granted or not. Sometimes the United States claims one right under both federal and state law. These are called "dual based" claims.

If you want to review someone else's water right you need to look at the complete Director's Report, which is available at the SRBA courthouse in Twin Falls and the locations listed on the third page of this notice. Copies of the report can be made, but you may be charged for copying and mailing.

INSTRUCTIONS FOR TAKING A WATER RIGHT CLAIM TO COURT

What do I do if I disagree with a recommendation or a federal water right claim?

If you disagree with any element of the recommendation for your water right or anyone else's water right and want to be heard in court, file an objection with the SRBA Court. Objections must be made on the standard objection form available from any IDWR office or from the SRBA Court.

Your objection must be **received** by the SRBA Court on or before **July 3, 1998**.

What do I do if someone else objects to my water right recommendation?

If someone files an objection to your water right, or anyone else's water right, you may file a response to that objection. Responses to objections must be made on the standard response form available from any IDWR office or from the SRBA Court.

Your response must be **received** by the SRBA Court on or before **September 1, 1998**.

What do I do if I want to participate in the court case on someone else's water right?

If you want to be involved in the court case on any water right in the Director's Report, you must file either an objection or a response by the dates listed above.

What happens if there are no objections to a water right?

After the deadline for filing objections, IDWR will file a list of all water right recommendations with no objections. The SRBA Court will hear the uncontested recommendations on **September 1, 1998**, at **10:00 A.M.** at the **SRBA Courthouse**. Partial decrees will be issued following this hearing.

How will I know about the proceedings on water right recommendations to which objections were filed?

A notice will be mailed to you for court dates on your water right or for those where you filed an objection or response. You will not receive notice of court dates on any other water right recommendations. (See Note on following page.)

Note: The SRBA Court publishes a monthly Docket Sheet listing all objections and responses filed. It does not list court dates for individual water right cases, but provides general information helpful to all participants in the SRBA.

The Docket Sheet is available at your county courthouse and all IDWR offices, or you may subscribe by contacting the SRBA Court or IDWR. The annual subscription is \$7.50.

Attachment 2 at 5-8; see also Attachment 1 at 2-4. Objections had to be filed not later than "**July 3, 1998**." Attachment 2 at 6. It is undisputed that the Bedkes did not file timely objections to any of the BLM's Basin 45 *de minimis* stock water claims that are at issue here.

Bruce Bedke's *de minimis* stock water claims 45-10505 and 45-10506 are listed in the Affidavit of Service, Attachment 2 at 9, and IDWR's Adjudication Bureau Chief attested that

IDWR's individual recommendations for these claims were properly served on March 2, 1998, Attachment 2 at 2; see Attachment 1 at 9 (A-23) and 25 (A-133). Water right claim numbers 45-10505 and 45-10506 are Bruce Bedke's *de minimis* stock water claims that designate public lands as places of use. See Domestic and Stock Water Right Objection, In Re SRBA, Case No. 39576, Subcase Number 45-10505 (June 23, 1998) (hereinafter "Attachment 5") at 2 and 5; see Domestic and Stock Water Right Objection, In Re SRBA, Case No. 39576, Subcase Number 45-10506 (June 23, 1998) (hereinafter "Attachment 6") at 2 and 5. On July 2, 1998, the BLM mailed original objections to Bruce Bedke's stock water right claim numbers 45-10505 and 45-10506 to the SRBA District Court for filing. See Attachment 5 at 4; see Attachment 6 at 4. On July 2, 1998 copies of the objections were mailed to Bruce Bedke. See Attachment 5 at 4; see Attachment 6 at 4. "Reasons Supporting Objection" are: "The United States of America, through the Bureau of Land Management, is the owner of the land upon which use is claimed. The claimant does not have a valid water right with the elements claimed." Attachment 5 at 2; Attachment 6 at 2.

On April 7, 1999, over nine months after the mandatory date for filing objections had elapsed, the Bedkes filed their objections in the subcases listed on attached Exhibit A. See Domestic and Stock Water Right Objection, In Re SRBA, Case No. 39576, Subcase Numbers 45-12475 *et al.* (hereinafter "Attachment 7"); see Domestic and Stock Water Right Objection, In Re SRBA, Case No. 39576, Subcase Numbers 45-12475 *et al.* (hereinafter "Attachment 8"). The Bedkes' "Reasons Supporting Objection" are: (1) "Priority Date Discrepancy; Cannot Claim Stockwater under Idaho Statute (42-114); License's (sic) issued on prior appropriated waters," Attachment 7 at 2; and, (2) "Priority Date Discrepancy; Beneficial use (Stockwater) cannot be

claimed under Idaho Statute (42-114); Licenses Issued on prior appropriated waters," Attachment 8 at 2. In letters to the District Court, also dated April 7, 1999, the Bedkes stated:

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

Bruce Bedke's Letter "To the Honorable Judge Barry Wood" date stamped by the District Court April 7, 1999 (hereinafter "Attachment 9") at 1; Jared Bedke's Letter "To the Honorable Judge Barry Wood" date stamped by the District Court April 7, 1999 (hereinafter "Attachment 10") at 1. Jared Bedke became an SRBA party by filing water right claims in the SRBA about six weeks after he filed his letter and objections to BLM's claims with the District Court. Compare Attachment 10 at 1 (date stamped April 7, 1999) to Attachments 3 at 2 ("Date Received 5/28/99") and 4 at 2 ("Date Received 5/28/99"). The Special Master considered the letters to be Motions to File Late Objections. See Order Setting Hearing On Joint Motion and Motions to File Late Objections, In Re SRBA, Subcase Numbers 45-12475 *et al.* (May 3, 1999). Bruce Bedke and Jared Bedke each filed a Basin 45 Late Objection Revised Subcase List. See Bruce Bedke's Letter to Clerk of the District Court, Snake River Basin Adjudication, RE: Basin 45 Late Objection Revised Subcase List (July 1, 1999) (hereinafter "Attachment 12"); see Jared Bedke's

Letter to Clerk of the District Court, Snake River Basin Adjudication, RE: Basin 45 Late
Objection Revised Subcase List (June 16, 1999) (hereinafter "Attachment 13").

III. ARGUMENT

A. The Legislature Intended Untimely Objections To Be Time-Barred

The Idaho legislature provided specific instructions governing the filing of objections to water rights recommended in IDWR's Director's Reports:

(1) Any Claimant who desires to object to a water right . . . shall file an objection with the district court within the time specified in the notice of filing of the director's report.

IDAHO CODE § 42-1412 (emphasis added); see Administrative Order 1 (hereinafter "AO1") § 4.d.(1)(d) ("The objection or response must be received by the court by the deadline specified."). "Ordinarily in construing a statute, words will be given their common and ordinarily understood meaning. . . . This Court has interpreted the meaning of the word 'may' appearing in legislation, as having the meaning or expressing the right to exercise discretion. . . . When used in a statute, the word 'may' is permissive rather than the imperative or mandatory meaning of 'must' or 'shall.'" Rife v. Long, 908 P.2d 143, 150 (Idaho 1995) (citations omitted). "The word *shall*, when used in a statute, is mandatory." Goff v. H.J.H. Co., 521 P.2d 661, 663 (Idaho 1974). "A statute should be construed so that effect is given to its provisions, and no part is rendered superfluous or insignificant." Petersen v. Franklin County, 938 P.2d 1214, 1219 (Idaho 1997). The words "shall file" leave no doubt that the Idaho legislature specifically and purposefully provided a short time frame for SRBA parties to review Director's Reports and file objections. Moreover, the Idaho Supreme Court recognized that "A.O.1 § 4b provides an *absolute* rule for

responses: 'The objection or response must be *received* by the court by the deadline specified.'"

State v. United States, 996 P.2d 806, 809 (Idaho 2000) (quoting AO1). Therefore, the legislative requirement to file a timely objection is unquestionably mandatory.

Furthermore, the District Court unequivocally stated that:

Any objections which a de minimis claimant or any other claimant may have to any and all claims being adjudicated in this proceeding must be timely raised in this proceeding in accordance with Idaho Code § 42-1412 (Supp. 1988) or forever be barred.

Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses, In Re SRBA, Case No. 39576 (Jan. 17, 1989) at 3. Thus, under the standards established by the Idaho Supreme Court (State v. United States, 996 P.2d at 809 ("absolute rule")), Idaho statute (IDAHO CODE § 42-1412 ("shall file an objection . . . within the time specified in the notice")), and by the SRBA District Court in 1989 (Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses, In Re SRBA, Case No. 39576 (Jan. 17, 1989) at 3 ("objections . . . must be timely raised . . . or forever be barred.")), the Bedkes' Motions to File Late Objections must be denied because they are time-barred and because the Bedkes have not provided any reason for tolling the mandatory requirement to timely file objections.

B. The Bedkes Have Not Established Good Cause For Filing Untimely Objections

Even though the Idaho Legislature enacted a mandatory short duration time requirement for filing objections, the SRBA District has traditionally applied the following more lenient standard to motions to file late objections:

In subcases for which partial decrees have not been entered, the legal standard for filing a late objection to a water right claim in the SRBA has been historically determined pursuant to the standard set forth in AO1 for filing late claims since AO1 does not expressly provide a standard for reviewing late objections. A motion to file late claim is determined pursuant to I.R.C.P. 55(c), which provides the standard for setting aside the entry of a default. *See* AO1 § 4(d)(2)(d) (sic) (late claims reviewed under I.R.C.P. 55(c) criteria) and (k) (leave to amend a notice of claim shall be freely given when justice so requires). In determining whether to set aside the entry of a default under I.R.C.P. 55(c), Idaho courts apply a “good cause” for untimeliness standard. I.R.C.P. 55(c). The “good cause” standard is a more lenient threshold than the Rule 60(b) standard. [*McFarland v. Curtis*, 854 P.2d 274, 279 (Idaho 1993)]. The I.R.C.P. 55(c) standard takes into account the following factors:

- (1) Whether the default was willful;
- (2) Whether setting aside the judgment would prejudice the opponent; and
- (3) As with a Rule 60(b) motion, whether a meritorious position has been presented.

Memorandum Decision and Order on Motion to Set Aside Partial Decrees, In Re SRBA, Case No. 39576, Subcases 55-02373 *et al.* (hereinafter “LU Ranching”) (May 1, 2001) at 12; see also Order on Motion to Set Aside Partial Decrees and File late Objections; Order of Reference to Special Master Cushman, In Re SRBA, Case No. 39576, Subcases 65-07267 *et al.* (hereinafter “A.L. Cattle”) (January 31, 2001) at 6-7; Memorandum Decision and Order on Challenge; Order of Recommitment, In Re SRBA, Case No. 39576, Subcases 47-16433 *et al.* (hereinafter “Bedke I”) (March 22, 2005) at 6; and Order on Permissive Review And Order of Recommitment, In Re SRBA, Case No. 39576, Subcases 45-12475 *et al.* (August 3, 2005) at 5-6 (hereinafter “Bedke II”). Even under this standard, the Bedkes are not entitled to relief from the time requirements for filing objections imposed by IDAHO CODE § 42-1412(1) and AO1 § 4.d.(1)(d).

The facts show that the Bedkes’ failure to file timely objections was willful. Bruce Bedke filed *de minimis* claims for stock water located on public lands in Basin 45, and those claims

were reported in the Basin 45 Director's Report alongside the BLM's *de minimis* stock water claims that are at issue here.^{5/} Bruce Bedke was served with the Notice and the Notice specifically state^d that United States' claims were reported in the Basin 45 Director's Report. The Notice stated that in order to be heard in court, a timely objection "must" be filed, and the "objection must be **received** by the SRBA Court on or before **July 3, 1998.**" Attachment 2 at 6. Jared Bedke was not even an SRBA party until May 28, 1999, which is nearly 15 months after the Basin 45 Director's Report was filed with the SRBA District Court. In addition, IDWR had erroneously named Bruce Bedke a co-owner of 45-02810, see Attachment 1 at 207 (B-1), therefore Bruce Bedke must have received the same February 27, 1998 letter from IDWR that was received by the BLM.^{9/} See Attachment 14. Indeed, Bruce Bedke filed an objection to one of his own claims that had not even been reported, and he stated that "BLM or State do not own livestock - water right should belong to the users." Domestic and Stock Water Right Objection, In Re SRBA, Case No. 39576, Subcase Number A45-10492 (March 12, 1998) (hereinafter "Attachment 11") at 3.^{7/}

^{5/} In fact, both of Bruce Bedke's stock water claims on public lands were reported on pages right next to the BLM's stock water claims. See Attachment 1 at 8 (A-22) (BLM Claim 45-12558), 9 (A-23) (Bruce Bedke Claim 45-10506), 25 (A-133) (Bruce Bedke Claim 10505), and 26 (A-134) (BLM Claim 45-12779).

^{9/} The letter states that "you have 120 days in which to file any objection to our recommendation and to review the domestic and stock water rights of other claims, including those of the United States." Attachment 14 at 1 (emphasis added).

^{7/} Bruce Bedke was erroneously named as a co-owner of 45-02810 and his March 12, 1999 objection to 45-10492 was filed in response to IDWR's disallowance of 45-02810. See Response to Joint Statement of Respective Positions, In Re SRBA, Case No. 39576, Subcase No. 45-02810 (July 13, 1999) at 4-5 (Bruce Bedke's intention was to object to 45-02810). It logically follows that Bruce Bedke was aware of the BLM's *de minimis* stock water rights and the issue of BLM's entitlement to such *de minimis* stock water rights on March 12, 1998.

Given the totality of the circumstances, the Bedkes' contention that they remained ignorant of the BLM's *de minimis* stock water claims has little merit. The Bedkes should have heeded the plainly stated directions in the Notice by reviewing the Basin 45 Director's Report and filing timely objections, as required by IDAHO CODE 42-1412(1) and AO1 § 4.d.(1)(d). They did not. Therefore, the "*absolute* rule" in AO1, State v. United States, 996 P.2d at 809, and the mandatory legislative requirement to file timely objections, see IDAHO CODE 42-1412(1), should be applied to the Bedkes' Motions to File Late Objections because the facts demonstrate that their total failure to review the Basin 45 Director's Report and file timely objections was willful and inexcusable.

Furthermore, the BLM filed and served timely objections to Bruce Bedke's *de minimis* Basin 45 stock water claims located on public lands, and stated that because the United States owns the land on which the claims are located, the claims are not valid. In LU Ranching at 27, the District Court confronted exactly the same set of facts. The District Court stated:

Furthermore, although LU did not file objections to the United States' claims, the United States filed objections to fifteen of LU's claims to water rights located on grazing allotment lands. In accordance with SRBA procedure, LU was served with actual notice of the United States' objections. The stated basis for the objections was that [the] United States owned the land on which the grazing allotments were situated and therefore LU did not have valid water rights as to those particular lands. The objections were filed December 5, 1997. Based on the reasoning contained in the United States' objections, it should have become apparent to LU that the ownership of water rights on all of LU's grazing allotments in basin 55 would be at issue.

Id. LU Ranching appealed this decision to the Idaho Supreme Court alleging that the SRBA notice provisions violated due process and that the District Court erred in denying a relief under IDAHO R. CIV. P. 60(b). See LU Ranching Co. v. United States, 67 P.3d 85 (2003). The Idaho

Supreme Court unanimously denied the appeal holding that "LU Ranching received adequate and timely notice of the materials it needed to act [in filing an objection]. It was advised in the notice of how to proceed with questions and offered technical assistance if necessary. It found the information when it looked." Id. at 89 - 90.

The same reasoning - and virtually the same facts - apply here. Based upon BLM's objections to Bruce Bedke's *de minimis* stock watering claims on a BLM grazing allotment, it should have become apparent to the Bedkes that the ownership of stock watering rights on all grazing allotments would be at issue. Thus, the Bedkes have no excuse for waiting over nine months from the date the BLM's objections to Bruce Bedke's claims were served to review the Basin 45 Director's Report, discover BLM's stock watering claims, then file untimely objections.

In sum, Bruce Bedke was notified that stock water claims in Basin 45 had been reported; he was notified of the proper process for filing objections; he was notified of the date objections had to be filed; he was notified that the claims of others, including the claims by the United States, were reported; he was notified of where he could review copies of the Basin 45 Director's Report; he was notified where he could obtain objection forms; as a named co-owner with BLM and the State of Idaho, he was aware that 45-02810 had been recommended as disallowed; he filed an objection to 45-10492 on March 12, 1999 stating that the BLM was not entitled to stock water rights; and, he was aware that the BLM had filed timely objections to his *de minimis* stock water claims on public lands. Jared Bedke was not even an SRBA party at the time objections had to be filed. The Bedkes' conduct shows indifference to actual notice, unreasonable delay in reviewing the Basin 45 Director's Report, and a complete lack of diligence in promptly seeking relief. The Bedkes' indefensible failure to file timely objections was a

willful disregard of the requirements set forth in the Notice, the absolute rule set forth in AO1 § 4.d.(1)(d) and the mandatory deadlines set forth in IDAHO CODE § 42-1412(1). Thus, the Bedkes' conduct lacks the requisite showing of good cause for filing late objections. See IDAHO R. CIV. P. 55(c). Therefore, the Special Master should summarily deny the Bedkes' Motions to File Late Objections and recommend that the BLM be awarded partial decrees for the stock water claims at issue here.

**C. The Bedkes' Motions Should Be Denied Because
They Failed To Allege A Meritorious Position**

1. Introduction

Idaho law has long required a party seeking to set aside a default judgment to "plead facts, which if established, would constitute a defense to the action." Thomas v. Stevens, 300 P.2d 811, 813 (Idaho 1956). The Idaho Supreme Court required that:

The facts constituting the defense, whether disclosed by answer, affidavit or both, must also be detailed and must be sufficient, when established, to constitute a defense to the action on its merits. The conclusion of the party or his attorney that the defendant has a good defense is not sufficient.

Id. at 814; see Fisher v. Bunker Hill Company, 528 P.2d 903, 906 (Idaho 1974) ("In Idaho, a party in default must present detailed facts showing a meritorious defense in order to be entitled to have the default set aside."). In addition, the Idaho Supreme Court has required that the "party seeking to set aside a default judgment must show a meritorious defense going beyond the mere notice requirements which would be sufficient if plead before default." Reeves v. Wisenor, 629 P.2d 667, 668 (Idaho 1981).

In 1993, the Idaho Supreme Court extended this requirement to parties seeking to set aside entry of default:

It is clear that Idaho case law requires a party seeking to set aside a default judgment to show a meritorious defense. . . . The reason for the requirement in default judgment cases is that, “[i]t (sic) would be an idle exercise for the court to set aside a default [judgment] (sic) if there is in fact no real justiciable controversy.” *Hearst Corp v. Keller*, . . . [592 P.2d 66, 68 (Idaho 1979)]. The reasoning in *Hearst* applies to cases where the moving party seeks to set aside the order of default as well; therefore, parties moving to set aside the entry of default must also allege facts which would constitute a defense to the action. This conclusion is supported by the application of this rule in other jurisdictions as well. . . .

McFarland v. Curtis, 854 P.2d 274, 277 (Idaho 1993). In the SRBA, the District Court has considered Motions to File Late Objections equivalent to a motion to set aside entry of default.

See e.g., A.L. Cattle at 6 (“In subcases for which partial decrees have not been entered, the legal standard for filing a late objection to a water right claim in the SRBA has been historically determined . . . pursuant to I.R.C.P. 55(c) . . .”). In the SRBA, *pro se* litigants, such as the Bedkes, are held to the same standards and rules as those represented by attorneys. *Id.* at 7. Thus, in addition to satisfying the “good cause” requirement of IDAHO R. CIV. P. 55(c), the Bedkes, even though they are *pro se* litigants, are also required to allege detailed facts, going beyond the mere notice requirements of normal pleading, that would constitute a meritorious defense. Even if the Bedkes had demonstrated the requisite “good cause,” IDAHO R. CIV. P. 55(c), which they did not, they wholly failed to allege any detailed facts whatsoever that could constitute a meritorious defense.

2. The Bedkes did not plead detailed facts that constitute a meritorious defense to the BLM’s stock water claims that are based upon Idaho’s law of prior appropriation

The allegations in the Bedkes’ untimely objections and the statements made by the Bedkes in letters to the District Court state mere conclusions that completely fail to satisfy the meritorious defense requirement. The Bedkes alleged, “Priority Date Discrepancy; Cannot Claim

Stockwater under Idaho Statute (42-114); License's (sic) issued on prior appropriated waters," Attachment 7 at 2, and "Priority Date Discrepancy; Beneficial use (Stockwater) cannot be claimed under Idaho Statute (42-114); Licenses Issued on prior appropriated waters," Attachment 8 at 2. In their letters to the District Court, the Bedkes stated: "At this time I am requesting permission to file late objections to these disputed claims in order to show the court that these Federal claims are disputed and should not be decreed as a matter of course." Attachment 9 at 1; Attachment 10 at 1. None of the Bedkes' late objections filed in the subcases listed on attached Exhibits A and B are to BLM stock water claims based upon license. Likewise, none of the Bedkes' late objections filed in the subcases listed on attached Exhibits A and B are to BLM stock water claims based upon IDAHO CODE § 42-114. Thus the Bedkes' allegations regarding IDAHO CODE § 42-114 and licenses cannot apply to any of the water right claims at issue here. The Bedkes' statement regarding priority date is a bare conclusion that has no meaning because detailed facts are not alleged. The Bedkes' statement that the BLM's claims are disputed and should not be decreed is also a bare conclusion that lacks detailed facts.

The Idaho Supreme Court has stated that "[the conclusion of a party or his attorney that the defendant has a good defense is not sufficient." Thomas, 300 P.2d at 814. A meritorious defense has not been stated where "[the allegations were all conclusions and set forth no detailed facts." Hearst Corp., 592 P.2d at 68. Likewise, a meritorious defense has not been stated where a "motion is bereft of any facts or legal argument on the issue." LU Ranching at 31. The Bedkes' allegations lack detailed facts and the Bedkes' statements are, at best, bare conclusions that cannot "satisfy the requirement that the moving party present detailed facts showing a meritorious defense." Fisher, 528 P.2d at 906.

In their letters to the District Court, the Bedkes stated:

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

Attachment 9 at 1; Attachment 10 at 1. The problem with these statements is that two of Bruce Bedke's *de minimis* stock water claims on public lands were reported in the Basin 45 Director's Report, thus, the Bedkes' statement is clearly erroneous. Furthermore, it is evident that the Bedkes elected not to defer their own *de minimis* stock water claims because five were reported by IDWR. There was no reason for the Bedkes to believe that the BLM elected to defer any of its *de minimis* stock water claims, and such claims were reported, along with Bruce Bedkes' five *de minimis* stock water claims, in the same Basin 45 Directors Report. Because the Bedkes' and the BLM's *de minimis* stock water claims were reported together, the Bedkes could not have reasonably believed that their stock water claims on public lands that exceeded the 13,000 gallons per day limitation would be reported concurrently with BLM's *de minimis* stock water claims. Thus, the Bedkes' letters are not only erroneous, they are simply not credible and cannot satisfy the requirement to plead detailed facts that constitute a meritorious defense.

3. The Bedkes did not plead any detailed facts that constitute a meritorious defense to BLM's stock water claims that are based upon PWR 107

A number of the subcases listed on attached Exhibits A and B are dual based water right claims for stockwater, based on alternative legal theories of beneficial use pursuant to state law and federal law based on the executive order Public Water Reserve 107 ("PWR 107").[§] As demonstrated above, the Bedkes reasons for supporting their untimely objections go solely to the state law basis for each BLM stock water claim. See Attachments 7 and 8 at 3 ("Priority Date Discrepancy; Cannot Claim Stockwater Under Idaho Statute (42-114); Licenses issued on prior appropriated waters"). The Bedkes did not mention PWR 107 in their untimely objections, and

[§] The following BLM claims listed on attached Exhibit A were reported as recommended in the Basin 45 Director's Report as dual based claims:

45-12475	45-12550	45-12780	45-12797	45-12813
45-12493	45-12551	45-12781	45-12801	45-12814
45-12495	45-12613	45-12782	45-12802	45-12819
45-12499	45-12615	45-12783	45-12803	45-12820
45-12515	45-12632	45-12786	45-12808	45-12821
45-12517	45-12636	45-12787	45-12809	45-12822
45-12527	45-12654	45-12788	45-12810	45-12823
45-12549	45-12656	45-12790	45-12811	45-12827

See Attachment 1 at 86 (A-1998), 45 (A-1910), 88 (A-2000), 90 (A-2001), 91 (A-2002), 92 (A-2003), 93 (A-2004), 97 (A-2008), 98 (A-2009), 99 (A-2010), 101 (A-2012), 102 (A-2013), 105 (A-2016), 107 (A-2018), 109 (A-2020), 110 (A-2021), 113 (A-2024), 114 (A-2025), 115 (A-2026), 116 (A-2027), 117 (A-2028), 118 (A-2029), 119 (A-2030), 120 (A-2031), 122 (A-2033), 123 (A-2034), 124 (A-2035), 125 (A-2036), 126 (A-2037), 127 (A-2038), 128 (A-2039), 129 (A-2040), 131 (A-2042), 132 (A-2043), 135 (A-2046), 136 (A-2047), 137 (A-2048), 138 (A-2049), 139 (A-2050), and 141 (A-2052). All of the BLM claims listed on attached Exhibit B were reported as recommended in the Basin 45 Director's Report as dual based claims. See Attachment 1 at 56 (A-1960), 57 (A-1961), 58 (A-1962), 59 (A-1963), 80 (A-1987), 52 (A-1955), 53 (A-1956), 54 (A-1957), 55 (A-1958), 60 (A-1964), 61 (A-1965), 62 (A-1966), 63 (A-1967), 64 (A-1968), 65 (A-1969), 66 (A-1970), 67 (A-1971), 68 (A-1972), 111 (A-2022), 69 (A-1973), 168 (A-2130), 169 (A-2131), 79 (A-1984), 70 (A-1974), 71 (A-1975), 72 (A-1976), 73 (A-1977), 17 (A-68), 74 (A-1978), and 75 (A-1979).

did not mention PWR 107 in their April 7, 1999 letters to the District Court. See Attachments 9 and 10. Nevertheless, the Bedkes have asserted during various hearings, status conferences, and scheduling conferences that their objections to the BLM's stock water claims also go to the federal law PWR 107 basis for the claims, and even argued that they do not believe PWR 107 is a valid basis for a water right. While the Bedkes' new allegation fails to meet even the lenient standards of notice pleading, their new proposed objection does not even remotely suggest a meritorious defense to BLM's stock water claims based upon PWR 107. The Idaho Supreme Court has already determined that claims based upon PWR 107 are valid. See United States v. State, 959 P.2d 449 (Idaho 1998). Furthermore, this Court's extensive review of the scope of PWR 107 concluded that "PWR 107 [] created an appurtenant implied federal reserved water right in the spring or water hole giving rise to the land withdrawal irrespective of whether or not the water flowing from the spring or water hole is tributary to a perennial running stream." Memorandum Decision and Order on Challenge (Scope of PWR 107 Reserved Rights), In Re SRBA, Case No. 39576, Consolidated Subcase Numbers: 23-10872 *et al.* (December 28, 2001) at 35; see also Memorandum Decision and Order on Challenge and Order of Partial Decrees, In Re SRBA, Case No. 39576, Subcase Numbers 25-13635, 25-13637, 25-13653, 65-19960 and 65-19962 (PWR 107) (October 5, 2004) (holding that when read in its entirety, PWR 107 provided that the withdrawal of land was suspended until a land entry failed. When the entry failed, withdrawal attached without subsequent order.) Therefore, even if the Bedkes had met the "good cause" standard for filing untimely objections, which they did not, the Bedkes' motions in the subcases where water right claims are based upon PWR 107 must be denied.

4. Conclusion

In sum, the Bedkes' allegations state bare conclusions that fail to satisfy the requirement to allege detailed facts that constitute a meritorious defense. Therefore, the Bedkes' Motions to File Late Objections must be denied.

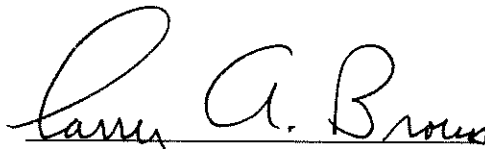
IV. CONCLUSION

As demonstrated above, the Bedkes are not entitled to relief from the mandatory requirements to file objections within the time-frame set forth in the Notice. Moreover, the Bedkes cannot show good cause for filing objections over 9 months after the mandatory date for filing such objections had elapsed, and the Bedkes have completely failed to plead detailed facts that constitute a meritorious defense. Therefore, the Bedkes' motions must be denied.

DATED this 3rd day of November, 2005.

Respectfully submitted,

UNITED STATES OF AMERICA

A handwritten signature in cursive script, reading "Larry A. Brown", is written over a horizontal line.

Larry A. Brown
Of Attorneys for the United States

CERTIFICATE OF SERVICE

I certify that on November 3, 2005, I served a true and correct copy of foregoing **UNITED STATES' RENEWED OPPOSITION TO MOTIONS TO FILE LATE OBJECTIONS; SUBCASES 45-12475 ET AL., and ATTACHMENTS 1 THROUGH 14** upon the following individuals by sending the document, postage paid, and addressed as follows:

Original and one copy placed in Federal Express in Washington D.C., overnight delivery, to:

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

Copies placed in United States Mail in Washington D.C. to:

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Boise, ID 83724

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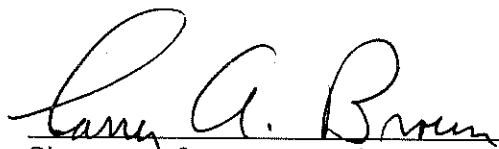

Signature of attorney serving document

EXHIBIT A

45-12475	45-12788
45-12493	45-12790
45-12495	45-12794
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45-12515	45-12796
45-12517	45-12797
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45-12523	45-12802
45-12524	45-12803
45-12525	45-12804
45-12526	45-12807
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EXHIBIT B

45-12477
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Attachments can be viewed in the repository or legal file