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DEPARTMENT OF
WATER RESOURCES

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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' RESPONSE TO
	)	MEMORANDUM ON BEDKES'
	)	MOTIONS TO FILE LATE
	)	OBJECTIONS

I. INTRODUCTION

This memorandum responds to the Memorandum on Bedkes' Motions to File Late Objections, In Re SRBA, Case No. 39576, Subcase Numbers 45-12475 *et al.* (hereinafter "Bedkes' Memo") (November 4, 2005). The facts in the record divulge that Bruce Bedke had actual notice that United States Department of the Interior, Bureau of Land Management

("BLM") stock water claims were reported by the Idaho Department of Water Resources ("IDWR") and that objections had to be filed by July 3, 1998. Bruce Bedke did not follow the detailed instructions in the notice by reviewing the Director's Report and filing timely objections to the BLM's stock water claims, and there was nothing in the notice, pertinent statutes, or the Snake River Basin Adjudication ("SRBA") Court's Administrative Orders that could have caused confusion. Moreover, even after Bruce Bedke became aware that his own *de minimis* stock water claims in grazing allotments were at issue, he waited nearly nine months to identify BLM stock water claims and file late objections. Furthermore, the Bedkes have not alleged a meritorious position. Therefore, the Bedkes' Motions to File Late Objections must be denied.

II. ARGUMENT

A. The Bedkes' Alleged Confusion Does Not Establish Good Cause For Filing Untimely Objections

The Bedkes argue that the adjudication of *de minimis* stock water rights confused them so much that they failed to file timely objections to the BLM's stock water claims, and such confusion establishes good cause for the SRBA Court to disregard the mandatory time requirements for filing objections adopted by the Idaho Legislature in IDAHO CODE § 42-1412(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."). *See* Bedkes' Memo at 4-7. There are no facts in the record that support the Bedkes' arguments. The statements cited by the Bedkes in transcripts and briefs are unsworn,^{1/} and constitute argument,

^{1/} "Before testifying, every witness shall be required to declare that the witness will testify truthfully by oath or affirmation administered in a form calculated to awaken the conscience of the witness of the duty to do so." ID. R. EVID. 603; *see also* IDAHO CODE § 51-109 (oath or

not facts admitted into evidence. Moreover, the statement the Bedkes attribute to IDWR, “that if claims conflicted with those of the private claims, both would be reported to the court, and the court would determine who owned the water right[,]” is nothing more than inadmissible hearsay^{2/}. Bedkes’ Memo at 5; *see also* Bedkes’ Memo at 6 (“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 part the water right belonged to (*see* Exhibit 3, page 80 *et. seq.*).”).

The documents that are part of the SRBA Court’s official record show that Bruce Bedke filed *de minimis* claims for stock water located on public lands in Basin 45, those claims were reported in the Basin 45 Director’s Report alongside the BLM’s *de minimis* stock water claims, and Bruce Bedke was served with the notice of filing director’s report for Basin 45 that contained detailed instructions on where to locate complete copies of the director’s report, on reviewing water rights of others, on filing objections, and on the consequences of failing to file objections. The notice specifically stated that United States’ claims were reported in the Basin 45 Director’s Report, and that in order to be heard in court, a timely objection “must” be filed. The notice emphasized that the “objection must be **received** by the SRBA Court on or before **July 3, 1998.**”

affirmation requires a certification by notary public) and Evans v. Twin Falls County, 118 Idaho 210, 796 P.2d 87 (1990) (written statements not subscribed and sworn to as an oath or affirmation by notary public are not under oath as required).

^{2/} Hearsay is an oral or written statement made by someone other than the declarant offered to prove the truth of the matter asserted. *See* ID. R. EVID. 801. Hearsay is inadmissible. *See* ID. R. EVID. 802.

United States' Renewed Opposition to Motions to File Late Objection, In Re SRBA, Case No. 39576, Subcase Numbers 45-12475 *et al.*, Attachment 2 at 6 (emphasis in original).^{3/} There is nothing in Idaho's general adjudication statutes or the notice that could have caused confusion. It is apparent from the documents in the record that Bruce Bedke either did not read the notice or he did not understand his legal obligation to review the Basin 45 Director's Report and file timely objections if he wished to be heard in court.

"The law cannot excuse willful ignorance but imposes an obligation on such a person to seek out assistance of legal counsel." Newbold v. Arvidson, 105 Idaho 663, 664, 672 P.2d 231, 232 (1983). The Bedkes did not retain legal counsel, but chose to remain *pro se* litigants. In the SRBA, *pro se* litigants, such as the Bedkes, are held to the same standards and rules as those represented by attorneys. *See 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.* (January 31, 2001) at 7. Simply being confused over one's legal obligations does not constitute good cause to have entry of default set aside under ID. R. CIV. P. 55(c).

The Bedkes cite Johnson v. Pioneer Title Company of Ada County, 104 Idaho 727, 662 P.2d 1171 (Idaho Ct. App. 1983) in support of their argument that their confusion constitutes good cause to set aside entry of default. Bedke's Memo at 7. In Johnson, default judgment was entered against Pioneer for failing to appear and defend a lawsuit. 104 Idaho at 730, 662 P.2d at

^{3/} Attachments to the United States' Renewed Opposition to Motions to File Late Objection, In Re SRBA, Case No. 39576, Subcase Numbers 45-12475 *et al.* will hereinafter be referred to as Attachment 1, Attachment 2, *etc.*

1174. The Idaho Supreme Court set aside the default judgment under IDAHO R. CIV. P. 60(b)(1) because the Johnsons' complaint was not addressed to Pioneer and Pioneer's employees believed that another entity was legally responsible to appear and defend. Johnson, 104 Idaho at 733, 662 P.2d at 1177. The Court stated:

The conduct of the employee who accepted service of process, and then allowed the process to sit idly on his desk, hardly can be justified. On the other hand, Pioneer contends that, after learning of the lawsuit, its manager at the First American Office failed to notify Pioneer's attorneys only because he sincerely believed that Gem Valley was the proper defendant and that Gem Valley's president would personally take care of the matter. . . .

Confusion may have resulted from the fact that the summons was addressed neither to Pioneer nor to Gem Valley, but to "First American Title Co. Of Northern Idaho," a fictitious entity. The Johnsons' complaint did not allege that First American was a corporation; nor did it allege who was doing business as First American. It is difficult to tell – from reading the Johnsons' complaint – what legal entity or persons were being sued under the name of "First American." Thus, in our view, the confusion generated by this lawsuit was attributable, in part, to the plaintiffs themselves.

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. . . . 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).

Johnson, 104 Idaho at 732-33, 662 P.2d at 1176-77. Johnson is not on point. Unlike Pioneer's employees, Bruce Bedke was served with a notice of filing director's report that gave detailed instructions and apprised him of the consequences of failing to file a timely objection. See Attachment 1 at 2-4; see Attachment 2 at 5-8. The Bedkes have not identified anything materially defective in the notice of filing director's report. Ignorance of the law and ignorance

of the rules of procedure are generally not excusable. See Washington Federal Savings and Loan Association v. Transamerica Premier Insurance Company, 124 Idaho 913, 917, 865 P.2d 1004, 1008 (Idaho Ct. App. 1993) In fact, Bruce Bedke's conduct is most like "[t]he conduct of the employee who accepted service of process, and then allowed the process to sit idly on his desk, [which] hardly can be justified." Johnson, 104 Idaho at 732-33, 662 P.2d at 1176-77. Unlike Johnson, the record here is completely devoid of facts that show good cause to set aside the entry of default. Therefore, Bedke's Motions to File Late Objections must be denied.

B. The Bedkes Failed To Promptly Seek Relief.

The Bedkes argue they promptly sought relief from entry of default because they "first became aware of the need to file objections to the United States' claims shortly before the April 7, 1999 hearing" and "filed their motions on the same day that the initial hearings for the Objections of the State of Idaho, BLM, and Scott Bedke took place." Bedkes' Memo at 7-8. The documents in the record contradict this argument.

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 Attachment 1 at 207; 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); see Attachment 11 at 3 (In Bruce Bedke's objection to one of his own claims that had not been reported, he stated that "BLM or State do not own livestock - water right should belong to the users.")). It is therefore apparent 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, which is over a year before the April 7, 1999 Initial Hearing.

The BLM filed timely objections to two of Bruce Bedke's *de minimis* stock water claims on public lands. *See* Attachment 5; *see* Attachment 6. As the District Court astutely pointed out in a similar set of circumstances, it should have become apparent that the ownership of stock watering rights on all of the grazing allotments would be at issue. *See Memorandum Decision and Order on Motion to Set Aside Partial Decrees, In Re SRBA*, Case No. 39576, Subcases 55-02373 *et al.* (May 1, 2001) at 27.

Because Bruce Bedke was erroneously named a co-owner of 45-02810, which is a BLM stock water claim based upon a previously issued license, he received a letter that stated "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). The letter from IDWR, the notice of filing director's report that accompanied the letter, and the recommendation of BLM 45-02810 that accompanied the letter all notified Bruce Bedke of the need to file a timely objection to BLM *de minimis* stock water rights that were reported in the Basin 45 director's report alongside several of Bruce Bedke's own *de minimis* stock water claims, at least two of which designated places of use on public lands.

In spite of all of the documents that provided notice and detailed instructions, Bruce Bedke still waited over a year to file objections after receiving such notice. Thus, there is no evidence that the Bedkes' promptly sought relief from entry of default.

C. The Bedkes' Have Not Pleaded Detailed Facts That Constitute A Meritorious Position

The Bedkes argue that they have alleged facts that constitute a meritorious position; therefore, their motions to file late objections to the BLM's stock water claims should be granted.

Bedkes' Memo at 8-11. In opposition, the United States hereby incorporates by reference the United States' Renewed Opposition to Motions to File Late Objections, In Re SRBA, Case No. 39576, Subcase Numbers 45-12475 *et al.* (November 3, 2005) at 15-21. As thoroughly demonstrated therein, the Bedkes have failed to satisfy the requirement to allege detailed facts that constitute a meritorious position. See McFarland v. Curtis, 123 Idaho 931, 934, 854 P.2d 274, 277 (Idaho Ct. App. 1993) ("parties moving to set aside the entry of default must also allege facts which would constitute a defense to the action.").

D. The Bedkes Fail To Allege A Meritorious Position In Their Proposed Objection To Water Rights Based Upon Public Water Reserve No. 107.

The Bedkes argue – without citation to any legal authority – that PWR 107 implied water reservations are invalid because the public lands surrounding the water sources were not properly withdrawn. Bedkes' Memo at 10-11. Specifically, the Bedkes assert that springs must have been individually identified and the exact location of each spring submitted to the President of the United States for his withdrawal approval. *Id.* This is nothing more than a rehash of earlier arguments which have been consistently rejected by the District Court. In its *Memorandum Decision and Order on Challenge (Scope of PWR 107 Reserved Rights)*, In Re SRBA, Case No. 39576, Consolidated Subcase Nos. 23-10872, *et al.*, Joint Submission Subcase Nos. 23-10894, *et al.* (December 28, 2001) ("*Memorandum Decision*") at 18, the District Court stated,

PWR 107 represented a shift from a case-by-case examination of lands surrounding water sources needed by the public to a "global" or "blanket" withdrawal.

This blanket withdrawal applied to all unappropriated springs and water holes.⁴ The Idaho Supreme Court was clear on this point in its decision resolving Basin-Wide Issue #9, *i.e.*, the validity of a reserved water right made pursuant to PWR 107. *See United States v. State*, 131 Idaho 468, 959 P.2d 449 (Idaho 1998). The Idaho Supreme Court stated, “[o]n ... April 17, 1926, President Coolidge issued PWR 107 withdrawing **all** unreserved public land containing a spring or waterhole as stated.” *State*, 131 Idaho at 471, 959 P.2d at 452 (emphasis added). The Court “conclude[d] that PWR 107 evidences an express intention by Congress that reserves a water right in the United States.” *Id.* As these decisions show, there is no merit to the Bedkes’ claim of a limited withdrawal of springs and water holes under PWR 107. Consequently, their failure to assert a meritorious position forecloses their late objections against the BLM’s stock water claims that are based upon PWR 107.

III. CONCLUSION

As demonstrated above and in the United States’ Renewed Opposition to Motions to File Late Objections, *In Re SRBA*, Case No. 39576, Subcase Numbers 12475 *et al.* (November 3, 2005), the Bedkes are not entitled to relief from the mandatory requirements to file objections within the time-frame set forth in the Notice and the Bedkes cannot show good cause for filing objections over 9 months after the mandatory date for filing such objections had elapsed.

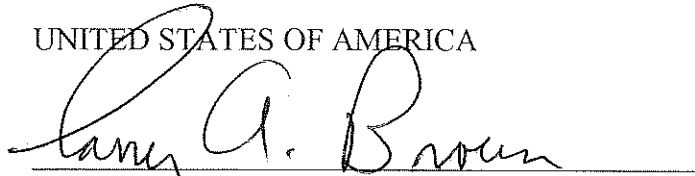
⁴ The Court identified one restriction on the scope of PWR 107’s blanket reservation. *Memorandum Decision* at 18. A regulation issued shortly after the signing of the PWR 107 executive order instructed the General Land Office to exclude small springs and water holes providing only enough water for the use of a single family when identifying the withdrawals made under PWR 107. This regulation, titled Circular 1066, was adopted to aid homesteading on the public lands and no longer had valid application after homesteading ceased in 1976 with the passage of the Federal Land Policy and Management Act, Pub.L. 94-579, 905 Stat. 2744 (1976) (codified at 43 U.S.C. §§ 1701 *et seq.* (1986)).

Moreover, the Bedkes have completely failed to plead detailed facts that constitute a meritorious position. Therefore, the Bedkes' motions must be denied.

DATED this 15th day of December, 2005.

Respectfully submitted,

UNITED STATES OF AMERICA

A handwritten signature in black ink, appearing to read "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 December 15, 2005, I served a true and correct copy of foregoing **UNITED STATES' RESPONSE TO BEDKES' MOTION TO FILE LATE OBJECTIONS; SUBCASES 45-12475 ET AL.** 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:

U.S. Department of Justice
General Litigation Section
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

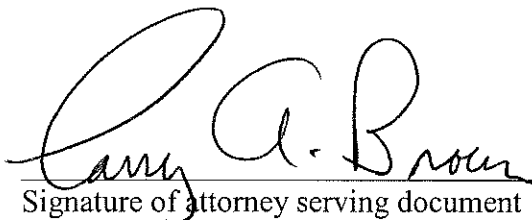
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Signature of attorney serving document

EXHIBIT A

45-12475	45-12788
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EXHIBIT B

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