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DEPARTMENT OF
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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> -- 64 Claims
	)	See Attachment A
Case No. 39576	)	Subcases 45-12477 <i>et al.</i> -- 30 Claims
	)	See Attachment B
	)	
	)	RESPONSE RE: BEDKES' MOTIONS
	)	TO FILE LATE OBJECTIONS (BLM)
_____	)	

Pursuant to the SCHEDULING ORDER ON BEDKE MOTIONS TO FILE
LATE OBJECTIONS dated September 9, 2005, this is the RESPONSE RE: BEDKES'
MOTIONS TO FILE LATE OBJECTIONS (BLM) from Bruce Byron Bedke and Jared
K. Bedke, pro se litigants, in the above named subcases.

Discussion

In the Court's *Order on Permissive Review and Order of Recommitment*, 15-
12475, *et al.* of August 3, 2005 (Order) the District Court remanded these subcases to the
Special Master to make findings of fact and apply the "good cause" standard under

I.R.C.P. 55(c) and *McFarland*, 123 Idaho at 935:

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

McFarland, 123 Idaho at 936, 854 P.2d 279.

In the UNITED STATES' RENEWED OPPOSITION TO MOTIONS TO FILE LATE OBJECTIONS, Subcase nos. 45-12475, et al (Renewed Opposition), the United States alleges that the subcases at issue are for water sources located on public lands. While this issue is collateral to the questions before the court, it can create some confusion as to the nature of the property secured and its relationship to the meritorious position advanced by the Bedkes. In order to clarify the issues and resolve this confusion, we shall address them now.

PROPERTY IN GENERAL

At the heart of any confusion regarding property of any kind is a misunderstanding of exactly what property is. Property is not a thing or some tangible object of ownership, rather, property is a set of legal relations or relationships among persons with respect to things. [*Fallini v. Hodel* 725 F.Supp. 1113, 1123 (1989) citing *Kaiser Aetna v. United States*, 444 U.S. 164, 179, 100 S.Ct. 383, 392, 62 L.Ed.2d 332 (1979), see also *Henneford v. Silas Mason Co.*, 300 U.S. 577 (1937)] "These rights include, among others, the right to possess, use, and dispose of property, and to exclude others from using property. *Id.*" (*Fallini v. Hodel, supra*) The thing or tangible object is correctly referred to as the "subject of property"

Perhaps the clearest example of the true nature of property is an easement to cross another's land. An easement in its simplest form, is the right to cross another's land for a specified purpose. There is no doubt that an easement is property, but it does not give the easement holder title to another's land. It merely confirms that he has established a legal relationship with another person's land for a specified purpose.

When viewed on the whole, state property law is merely a codification of how one established relationships with the various subjects of property. Once these relationships were established, the relationships became known as vested property rights. These property rights, once vested and secured, became the private property of the one who established the original relationship and became his to dispose of through sale, inheritance, or any other lawful conveyance ("A 'vested right' is one which is absolute, complete, and unconditional to exercise of which no obstacle exists and which is immediate and perfect in itself and not dependent upon a contingency." *Hutton v Autoridad Sobre Hogares De La Capital, D.C. Puerto Rico*, 78 F.Supp 988, 994, 999).

PROPERTY IN WATER

During the settlement of the West, the prevailing riparian water doctrine of the Eastern United States was abandoned out of the necessity created by the arid character of the Western States, and the Prior Appropriation Doctrine of securing water rights became the established and recognized method of securing property in water throughout the Western United States. The Prior Appropriation Doctrine, or first in time, first in right as it became known, established the method people must use in order to establish a legal relationship with water. For the first time, merely establishing a relationship with land as the subject of property, did not establish a relationship with water. Conversely,

establishing a relationship with water as the subject of property, did not establish a relationship with soil. Both relationships had to be secured separately by use (“The Desert Land Act of 1877 severed soil and water rights on ‘public lands’ and provided that a transfer of federal land out of the public domain after the date of the Act would not pass title to any *unappropriated* appurtenant water; water rights would be acquired in the manner provided by the law of the state of location. *United States v. Cappaert*, 508 F.2d. at 320.” *Fallini v Hodel*, *supra*, at 1119, emphasis unchanged; “A riparian proprietor in the state of Idaho has no right in or claim to the waters of a stream flowing by or through his lands that he can successfully assert as being prior or superior to the rights and claims of one who has appropriated or diverted the water of the stream and is applying it to a beneficial use. To this extent, therefore, the common law doctrine of riparian rights is in conflict with the constitution and statutes of this state and has been abrogated thereby.” *Hutchinson v. Watson Slough Ditch Co.* (1909) 16 I. 484, 491, 101 P. 1059, 133 A. S. R. 125).

In order to establish property in water, or a “water right”, one must first put it to a beneficial use and create a relationship with it. In the case of stockwater rights, the original predecessor in interest must have established a relationship with the stream or other source of water by accessing the same with his livestock, thereby creating the relationship. The priority date established is not an arbitrary date, rather it is the date from which his relationship with the water began. The points of diversion/points of use are the actual locations that the relationship took place. The volume, or rate of diversion, is the quantity of water used in the relationship.

Once this relationship has been established and secured, it becomes a vested right,

vesting in the one who established the relationship and becomes private property. The Idaho Supreme Court has held, “The state engineer has no right, power, or authority to interfere with vested rights, or to grant a permit for the appropriation and diversion of the water of a stream, where the same has already been diverted and applied to a beneficial use.” “Under the laws of this state, a water right is ‘real property,’ and one who has actually diverted the water of a stream and applied the same to a beneficial use is in the actual possession of such real property, and this possession constitutes actual notice to any subsequent appropriator of the water of the same stream, or to any person who subsequently applies to the state engineer for a permit to appropriate and divert the water of the same stream.” *Nielson v. Parker* (1911) 115 P. 488, see also *Youngs v. Regan* (1911) 118 P. 499, *Furey v. Taylor* (1912) 22 I. 605, 127 P. 676.

PUBLIC LAND

The lawful definition of public lands are: “The general public domain; unappropriated lands; lands belonging to the United States and which are subject to sale or other disposal under general laws, and not reserved or held back for any special governmental or public purpose. *Newhall v. Sanger*, 92 U.S. 761, 763, 23 L.Ed. 769 (1875)” *Blacks Law Dictionary* 5th edition.

A review of other United States Supreme Court opinions where the issue involved lands of the public domain demonstrates that the term “public land” has a definite and fixed meaning. In *Bardon v. Northern Pacific Railroad Co.* 12 S Ct 856, 145 US 535, 538, 36 L Ed 806, the Court stated: “It is well settled that all land to which any claims or rights of others have attached does not fall within the designation of public land.” And again in *Northern Pacific Railroad Company v Wismer*, C.C.A. Wash., 230 F. 591, 593,

the Court held that “public lands are lands open to sale or other disposition under the general laws, lands to which no claims or rights of others have attached”.

In its Renewed Opposition, the United States defines public lands as “‘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. Sec 1702(e)” (Renewed Opposition, footnote 2). This definition was first set out by the Federal Land Policy and Management Act (FLPMA) of 1976. Under the broad political definition of public land created by FLPMA, if the United States owns merely an interest in land, that is public land. For example, if the U.S. purchased an easement across a section of private land, this easement would be an interest in land owned by the United States. As such, under the political definition, it would be considered public land, even though the only property owned by the United States is the easement and not any of the other property rights associated with the underlying section of private land. Furthermore, if the United States issues a patent for a parcel of ground, yet retains the mineral estate, the surface estate becomes private property, yet the mineral estate would still be an interest in the land owned by the United States, so the parcel would be considered public land.

The discord in western land jurisprudence, and resulting confusion, arises from the use of the term “public land” by the federal land management agencies, and here by the United States, in its broad political sense to characterize a rancher’s grazing allotment. They then attempt to invoke regulatory authority which only applies to public lands when defined in the lawful sense. The agencies then demand that a rancher have agency permission to utilize his own water rights and grazing lands.

The question now becomes, which definition of public land is correct in the subcases at hand? To resolve this question, the courts have directed, “The words ‘public lands’ are not always used in the same sense. Their true meaning and effect are to be determined by the context in which they are used, and it is the duty of the court not to find such a meaning to the words as would destroy the object and purpose of the law or lead to absurd results.” *United States v Blendaur*, 128 F. 910, 913, 63 C.C.A. 636

Clearly, the legal definition and binding precedent set forth the definition of public lands that should be used in the SRBA or any court of law. Furthermore, as the lands where the water claims at issue are located are not available for sale or disposal under the general laws, have not been reserved or held back for any special governmental or public purpose, and do have claims or rights of others attached to them, they do not fall within the lawful definition of public lands and therefore should be placed in their proper context.

A. Good Cause

In the Renewed Opposition, the United States continues to make arguments similar, if not identical, to the arguments they made in Subcase nos. 47-16433 et al. The District Court not only rejected these arguments, but also found that the Bedkes had met the requirements of *AOI* for filing late objections. ***Memorandum Decision and Order on Challenge; Order of Recommitment***, Subcases 47-16433 et al (Bedke I) (March 22, 2005); See also ***Order on Permissive Review and Order of Recommitment***, Subcases 45-12475 et al, (August 3, 2005) page 3 at I.

B. Meritorious Position

In the Renewed Opposition it is also argued that the letters and objection forms

submitted by the Bedkes on April 7, 1999 fail to satisfy the legal requirements necessary to establish a meritorious position. While the District Court has already ruled in Bedke I that the Bedkes have met all the requirements of *AOI* for filing late objections, it appears that an additional discussion of the circumstances surrounding the April 7, 1999 filings is in order to place them in their proper context.

As discussed in the Bedkes' *Memorandum on Bedkes' Motions to File Late Objections*, Subcases 45-12475 *et al* (November 4, 2005) (Bedkes' Memorandum) initial hearings for the outstanding objections to the subcases at issue were scheduled for April 7, 1999. These hearings, along with the several other initial hearings, were held in a small room in the basement of the Cassia County Courthouse. As has been stated previously, it was during these initial hearings that the Bedkes and several other private claimants learned the proper procedure for filing objections to the subcases at issue. That was to file Motions to File Late Objections with the court. (see Transcript of 1:45 p.m. Hearing beginning at pg 75, relevant pages attached as Exhibit 1). Immediately after the conclusion of that hearing, the Bedkes and other private claimants borrowed the use of a computer from the staff of the Cassia County Courthouse, hurriedly typed the cover letters, filled out the objection forms, attached copies of the subcase numbers to the back of the objections, and filed them with the SRBA Court before Special Master Dolan and Ms. Lash left the Courthouse that afternoon. Copies of these objections were also hand delivered to the United States at the same time. Later on, revised objection lists were submitted to the Court by the Bedkes.

In acting so promptly to request relief it is understandable that there might be some inadequacies in these documents, but the intent is clear. That intent is to object to

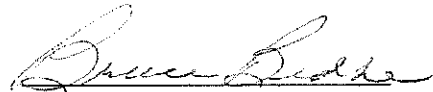
all of the United States' stockwater claims. In *Haines v Kerner*, (404 U.S. 519) the United States Supreme Court directed that when dealing with pro se claimants that the court should look to the substance of the pleadings rather than the form, and once again the substance of these forms and letters is clear: The United States stockwater claims should not exist.

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 granting the Objector's Motions to File Late Objections in the above named subcases because they have fully met the conditions imposed by the Court in this matter.

Dated this 15th day of December, 2005.


Jared K. Bedke, Pro Se


Bruce Byron Bedke, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2005 I served a true and correct copy of the foregoing RESPONSE RE: BEDKES' MOTIONS TO FILE LATE OBJECTION (USFS) upon the following individuals by hand delivery or placing the document in the United States Mail, postage prepaid, addressed as follows:

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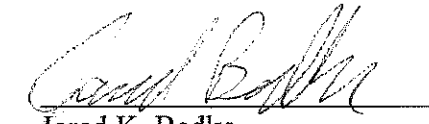

Jared K. Bedke

EXHIBIT A

Subcase Nos:

45-12475	45-12804
45-12493	45-12807
45-12495	45-12808
45-12499	45-12809
45-12515	45-12810
45-12517	45-12811
45-12522	45-12813
45-12523	45-12814
45-12524	45-12819
45-12525	45-12820
45-12526	45-12821
45-12527	45-12822
45-12549	45-12823
45-12550	45-12827
45-12551	
45-12557	
45-12558	
45-12559	
45-12560	
45-12561	
45-12613	
45-12615	
45-12632	
45-12636	
45-12654	
45-12656	
45-12672	
45-12677	
45-12678	
45-12682	
45-12683	
45-12686	
45-12689	
45-12690	
45-12779	
45-12780	
45-12781	
45-12782	
45-12783	
45-12786	
45-12787	
45-12788	
45-12790	
45-12794	
45-12795	
45-12796	
45-12797	
45-12801	
45-12802	
45-12803	

(Subcase list: LTEOBJBEKE)
9/09/05

EXHIBIT B

Subcase Nos:

45-12477
45-12479
45-12481
45-12483
45-12497
45-12541
45-12543
45-12545
45-12658
45-12693
45-12695
45-12699
45-12701
45-12703
45-12705
45-12707
45-12709
45-12711
45-12713
45-12715
45-12726
45-12728
45-12730
45-12784
45-12785
45-12789
45-12791
45-12798
45-12817
45-12818

(Subcase list: 1411APICK)
9/09/05

1 will say Forest Service on the 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 if you don't file a joint motion letting
2 us know 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: ght. 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 original claims had not been set aside, then the
2 Poulton 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 did
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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