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DEPARTMENT OF
WATER RESOURCES

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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 45-02810A
	)	
Case No. 39576	)	MEMORANDUM IN OPPOSITION TO
	)	UNITED STATES' MOTION FOR SUMMARY
	)	JUDGMENT
	)	
	)	

Pursuant to the ORDER SETTING SUMMARY JUDGMENT SCHEDULE of
January 13, 2006, this is the MEMORANDUM IN OPPOSITION TO THE UNITED
STATES' MOTION FOR SUMMARY JUDGMENT from Jared K. Bedke, pro se
litigant, in the above named subcase.

PROCEEDURAL BACKGROUND

The United States Department of the Interior, Bureau of Land Management
("BLM") and the State of Idaho filed water right claim number 45-02810. On March 20,
1998, IDWR filed the Director's Report for Basin 45. In this Report, the IDWR added
Bruce Bedke's name to claim number 45-02810 and recommended it as a joint claim but
that it be recommended disallowed, "claim incomplete".

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Subcase 45-02810A

The IDWR filed *Notices of Completed Administrative Proceeding* ("NCAP") on October 8 and November 26, 2004, splitting 45-02810 into 45-02810A (USDI/BLM) and 45-02810B (State), and dropping Bruce Bedke's name from the water right claim.

The State of Idaho filed an Objection in subcase 45-02810B which was resolved by an *Amended Claim Standard Form 5* on November 10, 2005. The Special Master issued a *Report and Recommendation* on Jan 5, 2006 recommending a partial decree for Water Right 45-02810B in the name of the State of Idaho, Department of Lands, and disallowing the original claim of 45-02810 because it had been split into 45-02810A and 45-02810B.

The relevant NCAP recommended 45-02810A be disallowed. The BLM filed an objection to the recommendation on November 26, 2004. Jared Bedke also filed an objection to the recommendation on January 7, 2005. "Jared Bedke's objection was deemed to be a timely response to the BLM's November 26, 2004 Objection." *Orders RE: Bedke Objection, In Re SRBA*, Case No. 39576, Subcase Number 45-02810A (November 1, 2005)¹.

The United States filed a Motion for Summary Judgment on January 4, 2006 (hereinafter Motion) seeking to dismiss the Response with prejudice.

FACTUAL BACKGROUND

In 1963, the various grazers of the Goose Creek: East Side Allotment sought to install a pipeline to capture certain underground springs in the Granite Creek drainage. The BLM provided the materials for the pipeline project and the private grazers installed the project which consisted of headboxes at the two spring heads, a long stretch of 1 ¼"

¹ Therefore, as in the United States' Motion, Jared Bedke's SF-1 Objection will hereinafter be referred to as the "Response".

poly pipe, and several water troughs. One of the spring heads was located on land owned by the State of Idaho. In exchange for the capture of this water, a water trough was installed on the State land with the overflow running back into the pipeline and combining with the waters captured from the other spring head².

The BLM sought and received a license for this project in 1963.

Subsequent to the initial Director's Report for Basin 45, the BLM replaced the original installation with new sections of PVC pipe and moved the diversion from the underground springs to the live stream known as Granite Creek.

IDWR employee Vicki Hancock performed an on site inspection of the water right claim on July 7, 2004. Accompanying Miss Hancock were Bryce Taylor (State of Idaho, Department of Lands), Bruce Bedke, and Jared Bedke.

ARGUMENT

Material Issues of Fact

In it's Motion, the United States alleges that "Based upon the pleading on file, there are no genuine issues of material fact and the United States is entitled to summary judgment dismissing Mr. Bedke's response as a matter of law." (page 1)

As this water right claim was recommended disallowed, there are no "prima facie" facts associated with this claim. There is, however, a certain set of facts alleged by the United States in it's objection along with the specific reasoning that "IDWR should have recommended this right."

In the Response, Mr. Bedke states in part, "This water right is filed on the basis of

² The State of Idaho obtained water right 45-02810B for this facility. Currently, the overflow from the trough no longer runs into the pipeline servicing the various troughs installed by the grazers in 1963, rather it returns to the live stream known as Granite Creek.

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.”

This statement by Mr. Bedke not only alleges the fact that the original license was based on IC 42-501, but that the current diversion is capturing a live stream that is fully appropriated. While it might appear that these statements are an attack on the license, as argued by the United States, the original installation only captured underground springs, and the license was issued according to this specific diversion³. The BLM has since changed the diversion to include the waters of a live stream. Through it’s objection and the attachments thereto, the United States is claiming that the water right exists today as it did in 1963. If, at trial, the evidence demonstrates that the BLM not only changed the diversion point, but also the water source, the water right recommendation should prevail and the water right claim be disallowed.

It is also alleged that “Mr. Bedke’s response attacks specific elements of BLM’s stock water claim, and hence, also attacks specific elements of BLM’s license.” (Motion, page 3)

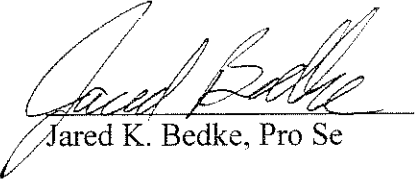
The Response was filed to agree with the original recommendation of the IDWR that this claim be disallowed. As such, there is no attack on the license or stock water claim, merely a response of facts in opposition to the facts alleged in the objection filed by the United States. As stated above, the attachments to the objection contain no inherent prima facie weight as they would have if the claim had been recommended as a valid water right claim.

³ In the original Application for Permit Number D1728 attached to the United States Objection (page 16), it specifically states at line 9 “Kind of works: spring development and pipe line”.
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CONCLUSION

For the reasons stated above, there are outstanding issues of material fact yet to be decided and the United States is not entitled to relief they requested as a matter of law. Therefore the United States' Motion for Summary Judgment should be denied.

Dated this 8th day of February, 2006.



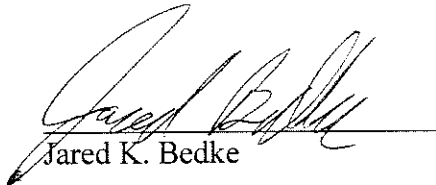
Jared K. Bedke, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2006 I served a true and correct copy of the foregoing MEMORANDUM IN OPPOSITION TO THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT upon the following individuals by placing the document in the United States Mail, postage prepaid, addressed as follows:

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