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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	) Subcases 45-12050, <i>et al.</i>
	) [see list of 48 claims attached]
Case No. 39576	) (USDA/FS)
	)
	) ORDER GRANTING BRUCE
	) AND JARED BEDKE'S MOTIONS
	) TO FILE LATE OBJECTIONS

BACKGROUND¹

Director's Report

The Director of the Idaho Department of Water Resources filed his *Director's Report, Domestic & Stock, Reporting Area 10, IDWR Basin 45* on March 2, 1998. The Director recommended the above 48 claims to the United States of America, Department of Agriculture, Forest Service, 550 W. Fort Street, MSC 033, Boise, Idaho, 83724 ("USDA/FS"), each for .02 cfs from various creeks, springs and ponds for stockwater use in Cassia County from May 1 to November 30² with a priority date of May 1, 1879, based on beneficial use.³

IDWR filed its *Notice of Director's Report, Reporting Areas 7 and 10, for Small Domestic and Stock Water Rights* on March 23, 1998. The *Notice* stated that objections

¹ The following history of these 48 subcases is remarkably complicated and at times exhaustive because some or all of the claims are interwoven with approximately 7,500 overlapping state-based stockwater claims on federal grazing allotments across the state. Some of the 7,500 claims were filed by the United States; some were filed by permittees. Some have been decreed; some have not. The issue of whether Bruce and Jared Bedke's *Motions to File Late Objections* in these subcases, as well as similar subcases, has been briefed by the parties multiple times.

² One claim (45-12842) was recommended for a June 1 to November 30 period of use.

³ The United States noted that the above 48 claims are on the Sawtooth National Forest and nearly all located within the Goose Creek Allotment. *United States' Renewed Opposition to Motions to File Late Objections*, November 15, 2005, at 2.

to the Director's recommendations "must be **received** by the SRBA Court on or before July 3, 1998 [emphasis in the original]."

Scott C. Bedke's Late Objection and Order Granting Motion

Scott C. Bedke lodged an *Objection*⁴ on July 13, 1998, objecting to priority date and purpose of use and alleging the water rights should not exist:

The USFS/BLM should not be allowed to use a priority date that predates the organization of the Forest Service (1898 Organic Act) and BLM (1931 Taylor Grazing Act). They are not the successors in interest of these grazing allotments. The USFS/BLM do not own the livestock and therefore can not put the water to beneficial use as per Idaho water law.

Scott C. Bedke also wrote a letter the same date to former SRBA Presiding Judge Daniel C. Hurlbutt and said:

I am filing a motion for a late objection to several D&S [domestic and stock] claims in basin 45.

...

We filed claims with IDWR in 1989 for stockwater on all of the springs, streams, pipelines, troughs, ponds etc. on our FS/BLM allotment. Since 1989, the way IDWR processes the claims and enters the data has changed and consequently all claims filed under the "old" format were set aside and not included in the basin 45 director's report. We were told not to worry and that the claims would eventually be "sorted out" and be included in the basin 45 I&O [irrigation and other] report in the year 2000. Now we are told (July 13) that there is a good possibility that there will be a supplemental report that would include claims such as ours. We understand that basin 45 D&S claims were to be adjudicated by the end of 1998 and we would like to have our claims included in the D&S adjudication process. We feel we have valid objections to the claims the USFS/BLM made on the water in our grazing allotment.

...

We feel that we followed the process outlined by the IDWR to the letter and therefore feel our motion is valid.

On July 21, 1998, Judge Hurlbutt entered his *Order Granting Motion to File Late Objections* granting Scott C. Bedke's *Motion*. His *Objection* was lodged 10 days after the deadline specified by IDWR.

⁴ Scott C. Bedke lodged his *Objection* in all 48 USDA/FS claims now before the court, plus another 12 USDI/BLM claims not part of this *Order*.

Michael and Gary Poulton's Late Objections

On April 7, 1999, Michael and Gary Poulton filed *Motions to File Late Objections* to 157 USDA/FS and USDI/BLM claims, including the 48 USDA/FS claims in Basin 45 now before the court. Their *Motions* were filed 9 months late. In their *Objections*, the Poultons objected to priority date and purpose of use and alleged the water rights should not exist:

The government has no beneficial use to the water. The water was previously appropriated.

Later, on July 9, 1999, the Poultons amended their list of Basin 45 *Objections* with their *Notice of Basin 45 Subcase Objections*. They listed the 48 USDA/FS claims now before the court, plus another 12 USDI/BLM claims not now before the court.

Bruce and Jared Bedke's Late Objections

On April 7, 1999, Bruce and Jared Bedke lodged identical *Objections* to the same 157 claims originally objected to by the Poultons, plus 6 more. Like the Poultons, the Bedkes' *Objections* were 9 months late and they, too, objected to priority date and purpose of use and alleged the water rights should not exist: "Priority date discrepancy; cannot claim stockwater under Idaho statute (42-114); license's [sic] issued on prior appropriated waters."

Bruce and Jared Bedke also wrote a letter the same date to former SRBA Presiding Judge Barry Wood and said:

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 that 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 director[']s report. I have been assured by the IDWR that my filings will be included in a subsequent director[']s 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 director[']s 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.

Later, on June 18 and July 1, 1999, Bruce and Jared Bedke filed their *Late Objection Revised Subcase Lists* amending their late *Objections* to include 196 United States stockwater claims, including the 48 USDA/FS claims now before the court.

United States' Memorandum in Opposition

The United States lodged its *Memorandum in Opposition to Motions to File Late Objections* on June 2, 1999, in the 196 subcases. It argued that the Poultons' and the Bedkes' *Motions* should be denied because: 1) the movants received sufficient notice of the proceeding; 2) since there is no evidence of equitable tolling, the objections are time-barred; 3) the *Motions* are untimely; and 4) the movants failed to allege facts showing a meritorious position and/or sufficient grounds for relief.

Scott C. Bedke's Response

On June 17, 1999, Scott C. Bedke filed a *Response to Memorandum in Opposition to Motions to File Late Objections* in 156 subcases, including the 48 claims now before the court, arguing that *Motions to File Late Objections* filed by *pro se* claimants Michael and Gary Poulton and Bruce and Jared Bedke should be granted.

Pickett Ranch & Sheep Company's Late Objection

On June 23, 1999, Pickett Ranch & Sheep Company filed its *Motion for Leave to File Late Objections* in 34 subcases in basins 45 and 47, including 2 of the 48 claims now before the court. In its *Objection*, lodged with the *Motion* 11 months late, Pickett Ranch & Sheep Company objected to name and address and alleged: "This water right should not exist, i.e., in the name of the USA." It added:

The Director's Report incorrectly refers to the United States of America as the proper claimant of this instream water right. Pickett Ranch & Sheep Company, by and through its predecessor [sic] in interest of this grazing preference located on public lands, is the proper claimant as owner of the livestock which put the water to beneficial use.

Pickett Ranch & Sheep Company's Response

Pickett Ranch & Sheep Company filed its *Response to Memorandum in Opposition to Motion to File Late Objections and Supplement to Memorandum in Opposition to Motion to File Late Objections* on August 6, 1999. It argued that Pickett Ranch & Sheep Company had not ignored the SRBA process, its *Motion for Leave to File Late Objections* was timely and it demonstrated good cause and a meritorious position.

Special Master's Notice of Intent to Stay

On August 12, 1999, the Special Master entered a *Notice of Intent to Stay Certain Subcases in Basins 45 and 47* covering 400+ subcases, including the 48 claims now before the court, where the following conditions applied:

1. The United States of America, Department of Agriculture, Forest Service or the United States of America, Department of Interior, Bureau of Land Management is the claimant;
2. The United States claim is for small stock water up to 13,000 gallons per day (a *de minimis* stock water claim);
3. An objection to the United States claim has been filed, whether late or not;
4. The objector claims all or part of the same water for stock water use; and
5. The objector's claim(s) for stock water were **not** reported in the *Director's Report for Domestic and Stockwater, Reporting Area 10 (IDWR Basin 45)*, filed March 2, 1998, or the *Director's Report for Domestic and Stockwater, Reporting Area 12 (IDWR Basin 47)*, filed August 14, 1998.

Objectors' Reply

On November 8, 1999, a whole new group of objectors⁵ filed their *Objectors' Reply to United States Memoranda and Objections in Opposition to Motions to File Late Objections, Motion to Set Aside Partial Decrees, and Affidavit in Support* in the 400+ subcases. Their main concerns were to file late objections and to set aside partial decrees in related subcases.

⁵ The new group included: Joe Tugaw, Western Stock Growers Association, William Properties LLC, William and Thomas Williams, Williams, Inc., Tugaw Ranches, Broken Diamond Ranch, Birchie Brown, Kinsey Family LLP, Tom Kunkel, David Crockett, Raymond Butler, Wallace Brown and Mathers Ranch.

Judge Burdick's Order Denying

On January 3, 2001, former SRBA Presiding Judge Roger S. Burdick entered his *Order Denying Joint Motion to Consolidate Subcases, Vacate Order of Reference to Special Master Dolan and Stay Related Subcases* in approximately 7,500 subcases state-wide involving overlapping state-based instream stockwater claims located on federal grazing allotments because he found that resolution will require individual fact-finding. Hence, consolidation or stay are not appropriate – the matters are better resolved individually by the special masters via standard SRBA procedures.

United States' Supplemental Memorandum

The United States lodged its *Supplemental Memorandum in Support of United States' Opposition to Motions to Set Aside Partial Decrees and Motions to File Late Objections* on June 1, 2001, in the 400+ subcases. On the issue of motions to file late objections, the United States cited the “Smith Springs” case, *State v. U.S.*, 134 Idaho 106, 996 P.2d 806 (2000), as holding that the time limits specified in *AO-1* are absolute. Hence, all pending *Motions to File Late Objections* should be denied: “Where the movants received notice of the Director’s Report, attended meetings with the Idaho Department of Water Resources, attended SRBA hearings, filed other pleadings in the SRBA, and had actual notice of the United States’ claims, the late objections should not be allowed [footnote omitted].” *Supplemental Memorandum*, at 5.

Objectors' Supplemental Brief

A slightly smaller group of objectors⁶ filed their *Supplemental Brief* on June 1, 2001, in the 400+ subcases. They argued, in relevant part, that the standard to file late objections has been established in the SRBA⁷ and they met that standard. They also argued that there is a meritorious position to challenge the post-licensing use or non-use

⁶ By then the smaller group of objectors included: Scott C. Bedke, Karl “Bud” Bedke, Gary and Michael Poulton, Pickett Ranch & Sheep Company and Joe Tugaw.

⁷ “A.L. Cattle” (*Order on Motion to Set Aside Partial Decrees and File Late Objections*, subcases 65-7267, *et al.*, January 31, 2001).

of the water rights because there has been no beneficial use of the United States' water rights.

Order Staying Subcases

On July 2, 2001, the Special Master entered an *Order Staying Subcases* staying the 400+ subcases until the remaining stockwater claims in Basins 45 and 47 were reported by IDWR. Quoting from an earlier stay *Order* in Basin 47, the Special Master wrote:

Because the SRBA is analogous to an interpleader action (I.R.C.P. Rule 22), all interested parties and their claims must be reviewed together – especially where the claims are or may be in conflict. Only in that way can IDWR and the SRBA Court ensure that all claims are accurately adjudicated.

Amended Order Partially Staying Subcases, subcases 47-16433, *et al*, August 9, 1999, at 11.

Withdrawal of Objections and Responses

On August 29, 2002, the United States and all of the objectors, except for Bruce and Jared Bedke, filed two *Notices of Withdrawal of Objections and Responses* in a large number of contested subcases in 17 basins all across Idaho. The settlement was based on a *Stipulation and Joint Motion for Order Approving Stipulation* filed the same date.

Several key provisions were:

[Certain] overlapping or competing claims of the Private Parties shall have a priority date that is one-day senior to the United States' priority date, unless the Private Parties can provide a patent or deed for their "base property" . . . that precedes this date, in which case the Private Parties shall receive a priority date that is this more senior date.

...

The Parties agree that the purpose of use of the state-law based Water Rights . . . is only for the watering of livestock lawfully within a permitted federal grazing allotment.

...

The Parties agree that the Water Rights . . . shall not alter the rights of a permittee under a valid grazing permit nor impede the authority of the United States to manage federal lands.

Stipulation, at 4 and 6-7.

United States' Renewed Opposition

On November 15, 2005, the United States lodged its *Renewed Opposition to Motions to File Late Objections* in the 48 claims now before the court. It argued that 1) the Bedkes received notice of the Basin 45 *Director's Report, Domestic & Stock*; 2) the Bedkes' default was willful; and 3) they failed to present a meritorious defense to the United States' stockwater claims.

Bedkes' Memorandum

Bruce and Jared Bedke lodged their *Memorandum on Bedkes' Motions to File Late Objections (USFS)* the same day, November 15, 2005. They opened their discussion by reminding the Special Master of SRBA Presiding Judge John M. Melanson's August 3, 2005 *Order on Permissive Review and Order of Recommitment*, subcases 45-12475, *et al.* (USDI/BLM).⁸

In that *Order*, Judge Melanson reversed the Special Master's January 5, 2005 *Order Denying Motions to File Late Objections* and recommitted the subcases to "conduct any procedures necessary to make findings of fact to determine whether the Bedkes met the 'good cause' standard under I.R.C.P. Rule 55(c)." *Order on Permissive Review and Order of Recommitment*, subcases 45-12475, *et al.*, at 12. Judge Melanson recalled that on March 22, 2005, he reversed the Special Master in similar subcases (47-16433, *et al.*, USDA/FS) and found that the Bedkes had met the requirements of *AO-1* for filing late objections. In those subcases, Judge Melanson held as a matter of law that the Special Master applied the wrong standard to determine whether good cause existed: "Because partial decrees had not yet been entered, the Rule 55(c) standard should have been applied." *Memorandum Decision and Order on Challenge, Order of Recommitment*, subcases 47-16433, *et al.*, at 11.

In subcases 47-16433, *et al.*, Judge Melanson also held as a matter of law that the Bedkes' confusion over IDWR's bifurcated process of reporting stockwater claims "may have not been reasonably prudent, but it does not appear to have been willful. Based on

⁸ To give the reader a complete picture of the "law of the case" established in similar subcases, the following several paragraphs are repeated from the Special Master's *Order Granting Bedke Motions to File Late Objections*, subcases 45-12475, *et al.*, and 45-12477, *et al.* (USDI/BLM), April 3, 2006, at 1-4.

the record in this matter, the court finds that the Bedkes' conduct in failing to file timely objections was not clearly willful." *Id.*, at 12.

Next in subcases 47-16433, *et al.*, Judge Melanson held as a matter of law that the Special Master erroneously considered the *Stipulation* signed by other parties to settle their objections in finding prejudice to other parties: "[U]nder the procedural anomalies of these subcases the prejudice was outweighed by the general policy that doubtful cases be tried on their merits." *Id.*, at 14.

Finally, in subcases 47-16433, *et al.*, Judge Melanson held as a matter of law that the Special Master incorrectly focused on the Bedkes' reason for not agreeing to the *Stipulation* instead on the merits of their objections:

More importantly, the Special Master failed to recognize the Bedkes' assertion that the United States could have no state-based claim for a water right because the United States had never owned or pastured cattle on the federal land in question. . . . [T]his question is one which raises justiciable issues which have not yet been addressed by this court. . . . The court finds, therefore, that the Bedkes have asserted a meritorious position [emphasis added].

Id., at 14.

Back to subcases 45-12475, *et al.*, and Judge Melanson's August 3, 2005 *Order on Permissive Review and Order of Recommitment*, the Judge reiterated what he stated in subcases 47-16433, *et al.*, that is: "The Special Master erroneously applied an I.R.C.P. 60(a)(default judgment) standard instead of an I.R.C.P. 55(c)(default) standard. . . . [and in] ruling on the meritorious defense, the Special Master incorrectly focused on the Bedkes' reason for not agreeing to the *Stipulation* instead of on the merits of their objections." *Id.*, at 8-9.

Judge Melanson then ordered that subcases 45-12475, *et al.*, be remanded back to the Special Master to apply the good cause standard under I.R.C.P. 55(c):

- 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.

Id., at 10.

Finally, in subcases 45-12474, *et al.*, Judge Melanson directed the Special Master to make findings in accord with certain principles:

1. “Any prejudice to the opposing party must be measured from the time the objections were due until the *Motions to File Late Objections* were filed.” *Id.*, at 10.
2. The procedural posture of each subcase – which claims were dual-based and which were objected to in a timely manner by the State.
3. “The merit of the Bedkes’ position should be evaluated based on their objections.” *Id.*, at 11.
4. The Special Master should make findings of fact as to:
 - 1) the length of time between the objection period and the time the *Motions* were filed;
 - 2) whether or not the Bedkes’ claims on federal land were reported out at the same time as the United States’, and whether the *Order Staying Subcases* until competing claims was reported out was appropriate;
 - 3) any other factual findings the Special Master deems relevant.*Id.*, at 11.
5. “The Special Master should consider the policy that doubtful cases be tried on their merits.” *Id.*, at 11.

The Bedkes argued that the reasoning in Judge Melanson’s August 3, 2005 *Order on Permissive Review and Order of Recommitment*, subcases 45-12475, *et al.*, applied in the present subcases. The Bedkes then urged the Special Master to enter an order vacating stays⁹ and grant their *Motions to File Late Objections*.

Final Arguments and Hearing on Bedkes’ Motions to File Late Objections

Bruce and Jared Bedke lodged their *Response Re: Bedkes’ Motions to File Late Objections (USFS)* on December 15, 2005, and the United States lodged its *Response Brief in Support of Its Renewed Opposition to Motions to File Late Objections* on December 16, 2005. The parties essentially renewed their earlier arguments.

A hearing on the Bedkes’ *Motions to File Late Objections* in the 48 USDA/FS claims now before the court was held on January 12, 2006, at the SRBA Courthouse in

⁹ As noted earlier, on July 2, 2001, the Special Master entered an *Order Staying Subcases* in 400+ subcases in Basins 45 and 47. The *Order* included the 48 subcases now before the court. See *Order*, exhibits A and C. That *Order* was vacated on August 9, 2005 (see *Order Vacating Order to Stay*, subcases 45-12477, *et al.*).

Twin Falls, Idaho. David L. Negri appeared for the United States; Bruce and Jared Bedke appeared *pro se*; and Nicholas B. Spencer appeared for IDWR.

At the hearing, the United States argued that Melanson's August 3, 2005 ***Order on Permissive Review and Order of Recommitment***, subcases 45-12475, *et al.*, does not dictate a certain outcome in these subcases. Unlike those earlier subcases, here, six of the Bedkes' *de minimis* claims were recommended in the same *Director's Report* as the 48 USDA/FS claims. The United States also argued that there is no factual support for the Bedkes' claim of confusion caused by IDWR's bifurcated reporting process.

The Bedkes argued that there are no significant differences between these subcases and the USDI/BLM subcases where Judge Melanson reversed the Special Master on all issues. ***Order on Permissive Review and Order of Recommitment***, subcases 45-12475, *et al.*, August 3, 2005. They pointed out that back in April, 1999, counsel for the United States admitted to confusion arising from the bifurcation of *de minimis* versus non-*de minimis* stockwater claims and the Bedkes thought the United States had agreed not to oppose the Bedkes' late objections. Finally, the Bedkes argued that their intent in these subcases has always been clear – to urge that the United States can have no state-based claims for water rights on the Goose Creek Allotment because the United States has never owned nor pastured cattle on the allotment. The Bedkes also hinted that they will argue the factual basis of any federal stockwater claims based on PWR 107.

DISCUSSION

Parallel Rulings and Law of the Case

On April 3, 2006, the Special Master entered an ***Order Granting Bedke Motions to File Late Objections*** in remarkably similar subcases (45-12475, *et al.*, and 45-12477, *et al.*) where the USDI/BLM was the claimant of stockwater rights on the same Goose Creek Allotment instead of the USDA/FS. In those subcases, Bruce and Jared Bedke filed essentially the same late objections citing the same reasons for untimeliness. In that ***Order***, the Special Master found that there were no significant legal differences between the USDI/BLM subcases and the USDA/FS subcases determined by Judge Melanson in

his March 22, 2005 *Memorandum Decision and Order on Challenge, Order of Recommitment*, subcases 47-16433. Hence, the Special Master had no discretion other than to grant the Bedke's *Motions*.

In the present subcases, likewise claimed by the USDA/FS, the Special Master has even less discretion because the bases for the late filings are the same, the prejudice to the claimant is no different, the "meritorious position" pled by the Bedkes is the same and more importantly, the parties are the same. And those criteria – to determine whether the "good cause" standard under I.R.C.P. 55 (c) has been met – have been decided as a **matter of law** by Judge Melanson.

In the USDA/FS subcases 47-16433, *et al.*, Judge Melanson held as a **matter of law** that: 1) the Bedkes' late filing was not willful; 2) setting aside the judgment, i.e., granting their motion to file late objections, would not prejudice the opponent, the United States; and 3) the Bedkes presented a meritorious position. i.e., "that the United States could have no state-based claim for a water right because the United States had never owned or pastured cattle on the federal land in question." *Id.*, at 14.

For those not familiar with the limited role of special masters in the SRBA and the binding effect of the "law of the case", it is worth reviewing an earlier holding of an SRBA presiding judge. Former SRBA Presiding Judge Roger S. Burdick reminded the special masters of their role in the SRBA process and their duty to follow **legal rulings** of the district court:

Special masters do not possess authority independent from the jurisdiction of the district court. Special masters are appointed for a limited purpose pursuant to an order of reference issued by the district court. The primary function of a special master is one of fact finding. A special master's conclusions of law are expected to be persuasive but are not binding upon the district court. Ultimately, the district court is charged with the specific duty of reviewing a special master's conclusions of law. Therefore, it is not within the purview of the authority conferred upon a special master to "reconsider" the prior legal rulings of the district court. Further, much of the benefit realized through the use of special masters is undermined if the district court has to repeatedly set aside a special master's conclusions of law for failing to follow a legal principle already set forth by the district court.

...
[U]ntil such time as a decision is appealed and precedent established, rulings by the district court are considered to be law of the case in the

SRBA and the special masters are expected to follow such rulings
[citations omitted, emphasis added].

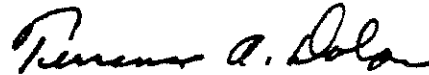
Memorandum Decision and Order on Challenge, subcase 65-5663B, May 9, 2002, at 9-10.

In light of Judge Melanson's rulings concerning the Bedkes' earlier *Motions to File Late Objections* in subcases 47-16433, *et al.* (USDA/FS), there can be only one result here – the Bedkes' *Motions to File Late Objections* in subcases 45-12050, *et al.* (USDA/FS), must be granted.

ORDER

THEREFORE, IT IS ORDERED that Bruce and Jared Bedkes' *Motions to File Late Objections* in subcases 45-12050, *et al.* (USDA/FS), are **granted**.

DATED May 1, 2006.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

45-12050
45-12053
45-12055
45-12056
45-12058
45-12060
45-12061
45-12073
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45-12114
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45-12162
45-12842
45-12855
45-12866
45-12869
45-12871

(Subcase list: MTNLTEOBJ)
5/01/06

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING BRUCE AND JARED BEDKE'S MOTIONS TO FILE LATE OBJECTIONS was mailed on May 01, 2006, with sufficient first-class postage to the following:

GARY RUSSELL POULTON
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