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 45-12475, *et al.***
	)	**(see list of 64 claims, Exhibit A, attached)**
Case No. 39576	)	**(USDI/BLM)**
	)	**and**
	)	**Subcases 45-12477, *et al.***
	)	**(see list of 30 claims, Exhibit B, attached)**
	)	**(USDI/BLM)**
	)	
	)	**ORDER GRANTING BEDKE**
	)	**MOTIONS TO FILE LATE**
	)	**OBJECTIONS AND SETTING**
	)	**SCHEDULING CONFERENCE**

BACKGROUND

Order Denying Bedkes' Motions to File Late Objections

On January 5, 2005, the Special Master entered an ***Order Denying Motions to File Late Objections*** in subcases 45-12475, *et al*., denying Bruce and Jared Bedke's motions to file late objections to the BLM's stockwater claims on federal public lands in Cassia County.[1] The reasons given were that the Bedkes 1) did not act as would a reasonably prudent person under the circumstances; 2) they failed to show excusable neglect or mistake in failing to file timely objections; and 3) they failed to plead a meritorious defense and thereby could not show good cause to file late objections.

Order on Permissive Review and Order of Recommitment (45-12475, *et al.*)

On August 3, 2005, SRBA Presiding Judge John M. Melanson entered his ***Order on Permissive Review and Order of Recommitment*** in subcases 45-12475, *et al*., reversing the Special Master's January 5, 2005 ***Order Denying Motions to File Late Objections*** and

[1] Forty of the claims listed on Exhibit A are dual-based (state law and PWR 107) while the remaining 24 are instream flow claims based on beneficial use (state law) only. All of the claims listed on Exhibit B are dual-based. See the November 4, 2005 United States *Renewed Opposition to Motions to File Late Objections*, at 19, fn 8.

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)."

First, Judge Melanson recalled that on March 22, 2005, he reversed the Special Master in similar subcases (47-16433, *et al.*) 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 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 an agreement (*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. . . . <u>The court finds, therefore, that the Bedkes have asserted a meritorious position</u> [emphasis added].

Id, at 14.

Back to subcases 45-12475, *et al.*, and Judge Melanson's ***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." ***Order on Permissive Review and Order of Recommitment***, subcases 45-12475, *et al.*, 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.

Judge Melanson wrote that the Special Master may consider other criteria:

> (1) proof that the default was not willful or culpable;
> (2) prompt action by the defaulting party to correct the default;
> (3) the existence of a meritorious defense;
> (4) an absence of prejudice to the opponent;
> (5) whether the default resulted from a good faith mistake in following a rule of procedure;
> (6) the nature of the defendant's explanation for defaulting;
> (7) the amount in controversy;
> (8) the availability of effective alternative sanctions; and
> (9) whether entry of a default would produce a harsh or unfair result.

Id, at 10.

Finally, 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.

PROCEEDINGS ON RECOMMITMENT

Scheduling Order

On September 9, 2005, the Special Master entered a ***Scheduling Order on Bedke Motions to File Late Objections*** in subcases 45-12475, *et al*., and subcases 45-12477, *et al*., [2] and reminded the parties:

> Judge Melanson finally ordered that the Special Master "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) [emphasis added]." The parties are encouraged to carefully review Judge Melanson's August 3, 2005 ***Order on Permissive Review And Order of Recommitment***, 45-12475, *et al.*, and focus their memoranda on the specific findings of fact ordered by Judge Melanson. There is no question about what issues must be briefed by the parties and will be reported by the Special Master.

Bedke Memorandum

On November 4, 2005, Bruce and Jared Bedke lodged their *Memorandum on Bedkes' Motions to File Late Objections*. They argued that they showed good cause to file late objections because of the confusion caused by IDWR's bifurcated reporting of stockwater claims (*de minimis* versus non-*de minimis*):

> In the spring of 1999, Objectors [the Bedkes] learned that they indeed needed to file objections to the United States' claims, as their non-deminimus [*sic*] claims were not scheduled to be reported until a much later date, but the objection deadline had passed. Objectors then made motion to file late objections in the above named subcases.

Bedke *Memorandum*, at 5.

The Bedkes also argued they acted promptly in requesting relief. They filed their *Objections* the same day (April 7, 1999) they first became aware of the need to file objections to

[2] On August 9, 2005, the Special Master entered an ***Order Granting Bedke Motion to Participate*** in subcases 45-12477, *et al*., to resolve Bruce Bedke's April 7, 1999 motions to file late objections in those subcases. Mr. Bedke's motions remain pending and by general consent, the parties sought to have those motions resolved, along with the Bedkes' motions to file late objections in subcases 45-12475, *et al*. From that date forward, the two virtually identical sets of subcases were joined.

the United States' claims – the day of initial hearings on timely *Objections* filed by the BLM and the State. Bedke *Memorandum*, at 7-8.

Next, the Bedkes argued that they pled a meritorious defense because "the United States did not ever put the water to beneficial use, the only use of the water at issue was by and for the benefit of private individuals, and therefore the United States should not have the subcases at issue recommended as valid water rights." Bedke *Memorandum*, at 10.

The Bedkes then argued that while PWR 107 may be a valid legal basis for a water right, the United States must establish the facts supporting each of its claims. "If the United States does not produce [certain] documents for each of the claims based on PWR 107, a Federal Reserve of the land did not occur, and they are not entitled to a water right." Bedke *Memorandum*, at 11.

Finally, the Bedkes argued that there is no prejudice to the other parties if their motions to file late objections are granted: "At the time the Bedkes' Motions were filed, all of the subcases at issue had outstanding timely objections pending [and s]everal of these subcases had an SF-5 deadline of April 28, 1999 set as well." Bedke *Memorandum*, at 11.

United States Opposition

On November 4, 2005, the United States filed its *Renewed Opposition to Motions to File Late Objections*, along with a comprehensive collection of virtually all documents submitted in this matter as well as other related subcases. The United States first pointed out that the Bedkes filed their objections over nine months after the time for filing objections passed. It continued:

> Even though Bruce Bedke has 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' [*sic*] 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.

United States *Renewed Opposition*, at 2-3.

The United States noted that IDWR reported five of Bruce Bedke's *de minimis* stockwater claims on public lands in the same *Director's Report* where the United States' stockwater claims at issue were reported and Bruce Bedke was served notice of that filing.

United States *Renewed Opposition*, at 3-4. The United States said it even filed timely *Objections* to Bruce Bedke's *de minimis* stockwater claims putting him on adequate and timely notice that ownership of water rights on grazing allotments in Basin 45 would be at issue – the exact same set of facts determined in *LU Ranching Co. v. United States*, 138 Idaho 606, 67 P.3d 85 (2003). United States *Renewed Opposition*, at 13-14. Hence, the United States concluded that the failure to file timely objections was willful and inexcusable. United States *Renewed Opposition*, at 11 and 13.

Finally, the United States argued that "the Bedkes' allegations state bare conclusions that fail to satisfy the requirement to allege detailed facts that constitute a meritorious defense [emphasis in the original]." United States *Renewed Opposition*, at 21.

Bedke Response

The Bedkes filed their *Response Re: Bedkes' Motions to File Late Objections (BLM)* on December 15, 2005. They argued that the first beneficial user of stockwater secures a vested private property right in the water that cannot be interfered with. As to the definition of "public lands" and whether PWR 107 implied water reservations are invalid because the lands surrounding the water sources were allegedly not properly withdrawn, the Bedkes wrote:

> 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 purpose, and do not 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.

Bedke *Response*, at 7.

The Bedkes reminded the Court that the Presiding Judge has already ruled in "Bedke I" that the Bedkes have met all the requirements of ***AO-1*** to file late objections.[3]

[3] See SRBA Presiding Judge John M. Melanson's March 22, 2005 ***Memorandum Decision and Order on Challenge, Order of Recommitment***, subcases 47-16433, *et al.* ("Bedke I"):

> The Special Master applied a "reasonably prudent person" standard and an "excusable neglect or mistake" standard to the Bedke's [*sic*] untimely filing. Although it is a close question, that standard is not synonymous with "willful." A person may act "carelessly, thoughtlessly or inadvertently" but his or her behavior is not necessarily "willful." The Bedkes have consistently alleged that they were confused by the process. Their confusion, for whatever reason, may have not been reasonably prudent, but it does not appear to have been willful. Based upon the record in this matter, the court finds that the Bedkes' conduct in failing to file timely objections was not clearly willful.

United States Response

The United States filed its *Response to Memorandum on Bedkes' Motions to File Late Objections* on December 16, 2005. It repeated its earlier arguments, i.e., that 1) the Bedkes' alleged confusion does not establish good cause for filing untimely objections; 2) they failed to promptly seek relief; 3) they have not plead detailed facts that constitute a meritorious position; and 4) they failed to allege a meritorious position in their proposed objection to water rights based on PWR 107.

Hearing on Recommitment

A hearing on the Bedkes' motions to file late objections was held on January 12, 2006. Larry A. Brown and R. Lee Leininger appeared for the United States; Bruce and Jared Bedke appeared *pro* se; and Nicholas B. Spencer appeared for IDWR.

DISCUSSION

Binding Effect of Law of the Case

Former SRBA Presiding Judge Roger S. Burdick unequivocally reminded the special masters of their limited 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

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> . . .
> Likewise, it does not appear that other parties would have been significantly prejudiced had the motions been granted at the time they were filed. Finally, the objections asserted by the Bedkes are meritorious. Therefore, balancing these factors, the court finds that the Special Master erred as a matter of law in denying the Bedkes' motions to file late objection. [emphasis added].

Memorandum Decision, at 12 and 15.

> 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.

Binding Conclusions of Law

As noted earlier, Judge Melanson ordered that these subcases 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.

Order on Permissive Review and Order of Recommitment, subcases 45-12475, *et al.*, August 3, 2005, at 10.

Applying the above good cause standard and Judge Melanson's conclusions of law in his March 22, 2005 ***Memorandum Decision and Order on Challenge, Order of Recommtiment***, subcases 47-16433, *et al.*, there can be only one conclusion – the Bedkes' motions to file late objections in subcases 45-12475, *et al*., and subcases 45-12477, *et al*., must be granted. The subcases are remarkably similar in their substantive and procedural aspects. While some of the claims are state-law based only and others are dual-based, all of the claims concern United States stockwater claims on federal public lands which overlap some or all of the Bedkes' claims associated with their livestock grazing permits. The Bedkes' late objections are identical and they have alleged the same reasons for their untimeliness. There are no significant legal differences between the subcases.

In 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." ***Memorandum Decision and Order on Challenge, Order of Recommitment,*** subcases 47-16433, *et al*., March 22, 2005, at 14. There are no other findings of fact or

conclusions of law required to determine the Bedkes' motions to file late objections in these subcases.

ORDER

THEREFORE, IT IS ORDERED that:

1. The Bedkes' motions to file late objections in subcases 45-12475*, et al.*, and subcases 45-12477, *et al*., are **granted**; and

2. A scheduling conference shall be held on **Thursday, May 4, 2006, 12:00 p.m.** at the SRBA Courthouse, 253 3rd Avenue North, Twin Falls, Idaho. Parties may participate by telephone by dialing 1-225-383-1099 and entering participant code 654400.

DATED April 3, 2006.

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TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication