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: See Exhibit A**
	)	
Case No. 39576	)	**MEMORANDUM DECISION AND ORDER ON CHALLENGE**
	)	
	)	**ORDER OF RECOMMITMENT**
	)	
	)	

I.
PROCEDURAL HISTORY AND FACTS

A. The United States of America, Department of Agriculture, Forest Service (United States), filed the twenty-six water right claims underlying these subcases. The claims are for *de minimus* stockwater rights located on National Forest Service lands. The same lands are subject to grazing allotments for which various livestock ranchers hold grazing privileges and have historically grazed their cattle.[1] The claims were brought solely pursuant to state-law based on beneficial use.

B. The claims were reported by the Idaho Department of Water Resources (IDWR) in its *Director's Report for Domestic and Stockwater for Reporting Area 12 (Basin 47)* on August 7, 1998. Objections to claims in the *Director's Report* were due on February 12, 1999. No timely objections were filed to the claims. Responses were due April 16, 1999.

[1] The livestock ranchers also filed stockwater claims to these same sources. Parties in the SRBA refer to the disputed claims located on grazing allotments as between rancher permittees and the United States as "competing claims" because it is alleged that the permittees were the only party grazing cattle for purposes of perfecting a beneficial use water right. The issue is whether title to the right vests in the permittee who actually grazed the cattle or the United States who owns and administers the lands on which the allotments are situated.

C. The hearing on the uncontested *Director's Report for Domestic and Stockwater for Reporting Area 12 (Basin 47)* was held on April 20, 1999. Following the hearing, the claims were then ready for partial decree. However, because of the large number of uncontested rights, the partial decrees were issued between May and July of 1999.

D. On April 28, 1999, prior to the above-captioned claims being decreed, Scott Bedke filed *Motions to File Late Objections* to the claims. On June 4, 1999, *Motions to File Late Objections* were also filed by Bruce Bedke and Jared Bedke (Bedkes). On June 7, 1999, Gary and Michael Poulton filed *Motions to File Late Objections.* The *Motions* all alleged that claims should be disallowed because the United States never historically grazed cattle on the subject lands for purposes of appropriating a state-based beneficial use water right. The *Motions* also alleged that no agreement was ever made with the United States that title to any water right perfected by the livestock ranchers on the grazing allotments would vest in the United States. The *Motions* were referred to Special Master Terrence Dolan for recommendations.

E. Accompanying these *Motions,* Bruce and Jared Bedke each wrote letters stating that: "At this time I am filing a motion to file a late objection. I only recently became aware that the United States had filed claims to water that I had claimed. I have been following the status of my claims through the Internet, and was not aware of the Government's conflicting claims due to the extreme number of governmental filings and the fact that all claims are listed by subcase rather than a legal description. I am filing my objection now so that the govt. claims will not show up as unobjected to and be partially decreed as a matter of course."

F. Throughout the proceedings, the Bedkes have consistently stated (though not under oath) that they were confused by the process, and did not realize that they needed to file objections to the above rights until after the objection deadline had passed. The Bedkes have stated various reasons for the confusion (again, not under oath); however,

this Court does not need to analyze the reasons stated for their confusion to reach its decision.

G. On August 6, 1999, Special Master Dolan issued an *Order Partially Staying Subcases Except Settlement Negotiations*, and on August 9, 1999, Special Master Dolan issued an *Amended Order Partially Staying Subcases*. The Special Master's stated purpose for staying the subcases was to wait until the claims of the livestock permittees were also reported and then litigate the claims of the permittees and the United States at the same time, because of the "competing" nature of the claims.[2] Despite no ruling on the Bedke's *Motions*, the Bedkes were permitted to participate in the settlement negotiations and did participate in the negotiations.

H. On August 29, 2002, a *Stipulation and Joint Motion for Order Approving Stipulation* was filed by the United States and various livestock ranchers.[3] The *Stipulation* resolved the late objections of Scott Bedke, Gary Poulton and Michael Poulton but not those of the Bedkes.[4]

I. On July 3, 2003, prior to the Bedke's claims being reported, the Special Master issued an *Order Vacating Stays and Order Denying Motions to File Late Objections.* On

[2] The reason for the United States' claims being reported prior to those of the permittees stems from how the claims were filed. The United States filed its claims as *de minimus* claims to individual sources within each grazing allotment. Accordingly, these claims were reported in the director's report for the small domestic and stockwater rights, which was issued prior to the director's report for irrigation and other purposes water rights. (The reason for the "bifurcation" of reporting between small domestic and stockwater rights and the irrigation and other water rights is discussed in the *A.L. Cattle* opinion.). The permittees "bundled" the claims for individual sources into a single claim for either a portion of or for the entire allotment. These claims therefore did not meet the criteria for a small domestic and stockwater right and would be reported in the director's report for the irrigation and other water rights.

[3] The *Stipulation* was a global stipulation between the United States and various livestock ranchers holding grazing permits settling the dispute over the competing claims and included several thousand water right claims. Very generally speaking, under the terms of the *Stipulation* both rancher permittees and the United States would receive a water right. The rancher permittee would receive a one day senior priority unless an earlier date certain could be established.

[4] Although the Bedkes would have received a senior priority date the Stipulation also included language which according to the Bedkes would alter how the grazing allotments were historically administered.

July 22, 2003, the Bedkes filed a *Motion to Alter or Amend Order Vacating Stays and Order Denying Motions to File Late Objections.* On January 7, 2004, the Special Master issued an *Order Denying the Bedke's Motion to Reconsider*.

J. On January 12, 2004, the Special Master issued a *Special Master's Report and Recommendation*, which recommended the United States claims as agreed to in the *Stipulation.* On February 27, 2004, the Bedkes filed a *Motion to Alter or Amend Master's Report*. On October 6, 2004, the Special Master issued an *Order Denying Motion to Alter or Amend*. On October 18, 2004, the Bedkes filed this *Notice of Challenge to Special Master's Decision.* On January 12, 2005, the United States filed a *Motion to Strike Asseverations and Exhibits Attached to Opening Brief and Supporting Memorandum*, asking this Court to strike certain attachments to the Bedkes' Briefs filed on Challenge. Oral argument on the *Challenge* was heard on February 17, 2005. The matter was deemed fully submitted the next business day, or February 18, 2005.

II.
ISSUES PRESENTED ON CHALLENGE.

A. The Bedkes raise the following issue on Challenge:

1. The Special Master improperly denied Bedkes' late objections.

B. The United States raises the following issues on Challenge:

1. Whether the "Asseverations" and other attachments to the Bedkes' briefing on Challenge were improper and should be struck?

2. Whether the Special Master properly denied the Bedkes' late objections to the United States claims?

3. Whether the Bedkes' properly objected to the Special Master's Report, and, if so, whether the Special Master's Recommendation was proper.

III.
MOTION TO STRIKE

Because the United States' *Motion to Strike* addresses whether or not the court should consider certain factual assertions made by the Bedkes by way of "Asseverations" and certain exhibits submitted with their *Opening Brief*, the court will address this issue first. The United States asserts that the "Asseverations" and other documents attached to the Bedkes' briefing should not be considered by the court. To asseverate is to state solemnly or positively; to aver. Black's Law Dictionary, 8th Ed. (2004). Therefore, the "asseverations" filed by the Bedkes with their *Opening Brief* are solemn or positive averments. They are not affidavits. *See, Evans v. Twin Falls County*, 118 Idaho 210, 796 P.2d 87 (1990); I.C. §51-109. Furthermore, the Challenge stage of the proceeding is not the appropriate stage for building the factual record. *See, e.g. NSGWD v. Gisler*, 136 Idaho 747, 750-51, 40 P.3d 105, 108-09 (2002). The court, therefore, views the statements made in the asseverations as mere argument and will consider them only to that extent. Exhibits 6 and 7 submitted with the Bedkes' *Opening Brief* are unauthenticated and they are hearsay. Therefore, even if this were the appropriate time in these proceedings for the Bedkes to establish a factual record, the court would not consider Exhibits 6 and 7. The remainder of the exhibits submitted with the Bedkes' *Opening Brief* appear to be part of the existing record in this case and will be considered as such by the court. Accordingly, the United States' *Motion to Strike* is **granted in part and denied in part**.

IV.
APPLICABLE LAW AND STANDARDS OF REVIEW

A. Standard for granting late objections in the SRBA.

In subcases *for which partial decrees have not been entered*, the legal standard for filing a late objection to a water right claim in the SRBA has been historically determined

pursuant to the standard set forth in ***AO1*** for filing late claims. ***Order on Motion to Set Aside Partial Decrees and File Late Objections; Order of Reference to Special Master Cushman.*** (January 31, 2001) (*A.L. Cattle*). ***AO1*** does not expressly provide a standard for reviewing late objections. A motion to file a late claim is determined pursuant to I.R.C.P. 55(c), which provides the standard for setting aside the entry of a default. *Id*., see ***AO1*** § 4d(2)(d) (late claims reviewed under I.R.C.P. 55(c) criteria) and (k) leave to amend a notice of claim shall be freely given when justice so requires). In the *A.L. Cattle* subcase, this Court held that the I.R.C.P. 55(c) standard should be applied to late objections to which partial decrees have not been entered, rather than the I.R.C.P 60(b) standard.

In determining whether to set aside the entry of a default under I.R.C.P. 55(c), Idaho Courts apply a "good cause" for untimeliness standard. I.R.C.P. 55(c). The "good cause" standard is a more lenient threshold than the Rule 60(b) standard. *McFarland v. Curtis,* 123 Idaho at 935, 854 P.2d at 279. The I.R.C.P. 55(c) good cause standard takes into account the following factors:

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. Other jurisdictions apply similar criteria, such as: (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. *See* STEVEN BAICKER-MCKEE ET AL., FEDERAL CIVIL RULES HANDBOOK, at 874-875, (2005).

B. **Standard of review of a special master's recommendation.**

The following standard of review of a special master's report and recommendation has been consistently applied throughout the course of the SRBA.

1. **Findings of fact of a special master.**

In Idaho, the district court is required to adopt a special master's findings of fact unless they are clearly erroneous. I.R.C.P. 53(e)(2); *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho 370, 377, 816 P.2d 326, 333 (1991); *Higley v. Woodard*, 124 Idaho 531, 534, 861 P.2d 101, 104 (Ct. App. 1993). Exactly what is meant by the phrase "clearly erroneous," or how to measure it, is not always easy to discern. The United States Supreme Court has stated that "[a] finding is 'clearly erroneous' when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *U.S. v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). A federal court of appeals stated as follows:

> It is idle to try to define the meaning of the phrase "clearly erroneous"; all that can be profitably said is that an appellate court, though it will hesitate less to reverse the findings of a judge than that of an administrative tribunal or of a jury, will nevertheless reverse it most reluctantly and only when well persuaded.

U.S. v. Aluminum Co. of America, 148 F.2d 416, 433 (2nd Cir. 1945) (L. Hand, J.).

A special master's findings, which a district court adopts in a non-jury action, are considered to be the findings of the district court. I.R.C.P. 52(a); *Seccombe v. Weeks*, 115 Idaho 433, 435, 767 P.2d 276, 278 (Ct. App.1989); *Higley*, 124 Idaho at 534, 861 P.2d at 104. Consequently, a district court's standard for reviewing a special master's findings of fact is to determine whether they are supported by substantial,[5] although perhaps conflicting, evidence. *Seccombe*, 115 Idaho at 435, 767 P.2d at 278; *Higley*, 124 Idaho at 534, 861 P.2d at 104.

In other words, a referring district court reviews a special master's findings of fact under I.R.C.P. 53(e)(2) just as an appellate court reviews a district court's findings of fact in a non-jury action, i.e. using the "clearly erroneous" standard. An appellate court, in

[5] Substantial does not mean that the evidence was uncontradicted. All that is required is that the evidence be of such sufficient quantity and probative value that reasonable minds *could* conclude that the finding -- whether it be by a jury, trial judge, or special master -- was proper. It is not necessary that the evidence be of such quantity or quality that reasonable minds must conclude, only that they *could* conclude. Therefore, a special master's findings of fact are properly rejected only if the evidence is so weak that reasonable minds could not come to the same conclusion the special master reached. *Mann v. Safeway Stores, Inc.*, 95 Idaho 732, 518 P.2d 1194 (1974); *see also Evans v. Hara's, Inc.*, 123 Idaho 473, 478, 849 P.2d 934, 939 (1993).

reviewing findings of fact, does not consider and weigh the evidence *de novo.* Wright and Miller, *Federal Practice and Procedure* § 2614 (1995); *Zenith Radio Corp. v. Hazletine Research, Inc.*, 395 U.S. 100, 123 (1969). The mere fact that on the same evidence an appellate court might have reached a different result does not justify it in setting a district court's findings aside. *Amadeo v. Zant*, 486 U.S. 214, 223 (1988). A reviewing court may regard a finding as clearly erroneous only if the finding is without adequate evidentiary support or was induced by an erroneous view of the law. Wright and Miller, *supra,* § 2585.

The parties are entitled to an actual review and examination of all of the evidence in the record, by the referring district court, to determine whether the findings of fact are clearly erroneous. *Locklin v. Day-Glo Color Corp.*, 429 F.2d 873, 876 (7th Cir. 1970), *cert. denied,* 91 S.Ct. 582 (1971).

In the application of the above principles, due regard must be given to the opportunity a special master had to evaluate the credibility of the witnesses. I.R.C.P. 52(a); *U.S. v. S. Volpe & Co.*, 359 F.2d 132, 134 (1st Cir. 1966).

Under Federal Rule of Civil Procedure 52(a), inferences from documentary evidence are as much a prerogative of the finder of fact as inferences as to the credibility of witnesses. *Anderson v. Bessemer City*, 470 U.S. 564, 574 (1985). The rule in Idaho is less clear. Professor D. Craig Lewis states that "[u]nlike Fed. R. Civ. P. 52(a), IRCP 52(a) does not explicitly state that the 'clearly erroneous' standard of review applies to findings based on documentary as well as testimonial evidence. However, the Court of Appeals has held that it does, relying on the Idaho Appellate Handbook." Lewis, Idaho Trial Handbook, § 35.14 (1995), (citing *Treasure Valley Plumbing & Heating v. Earth Resources Co.*, 115 Idaho 373, 766 P.2d 1254 (Ct. App. 1988), citing Idaho Appellate Handbook § 3.3.4.2.).

The party challenging the findings of fact has the burden of showing error, and a reviewing court will review the evidence in the light most favorable to the prevailing party. *Ernst v. Hemenway and Moser Co., Inc.*, 126 Idaho 980, 987, 895 P.2d 581, 588 (Ct. App. 1995); *Zanotti v. Cook*, 129 Idaho 151,153, 922 P.2d 1077, 1079 (Ct. App. 1996).

2. **Conclusions of law of a special master.**

A special master's conclusions of law are not binding upon a district court, although they are expected to be persuasive. This permits a district court to adopt a special master's conclusions of law only to the extent they correctly state the law. *Oakley Valley Stone, Inc.*, 120 Idaho at 378, 816 P.2d at 334; *Higley,* 124 Idaho at 534, 861 P.2d at 104. Accordingly, a district court's standard of review of a trial court's (special master's) conclusions of law is one of free review. *Higley,* 124 Idaho at 534, 861 P.2d at 104. Further, the label put on a determination by a special master is not decisive. If a finding is designated as one of fact, but is in reality a conclusion of law, it is freely reviewable. Wright and Miller, *supra*, § 2588; *East v. Romine, Inc.*, 518 F.2d 332, 338 (5th Cir. 1975).

In sum, findings of fact supported by competent and substantial evidence, and conclusions of law correctly applying legal principles to the facts found will be sustained on challenge or review. *MH&H Implement, Inc. v. Massey-Ferguson, Inc.*, 108 Idaho 879, 881, 702 P.2d 917, 919 (Ct. App. 1985).

3. **Standards applied to special master's ruling on a late objection.**

The standard of review applied to a trial court's ruling on a motion to set aside default should apply to this Court's review of a special master's ruling on a motion to file late objection. A court's denial of a motion to set aside an entry of default will not be reversed on appeal unless an abuse of discretion clearly appears. *McFarland* at 931, 854 P.2d 274. Where the trial court makes factual findings that are not clearly erroneous, applies correct criteria pursuant to I.R.C.P. 55(c) to those facts, and makes a logical conclusion, the court will have acted within its discretion. *Id.*

A (trial) court must examine each case in the light of the unique facts and circumstances presented. *Avondale on Hayden, Inc. v. Hall*, 104 Idaho 321, 326, 659 P.2d 992, 997 (Court App. 1983). A motion to set aside a default judgment (under I.R.C.P. 60(b)) because of mistake, inadvertence, surprise or excusable neglect, presents questions of fact to be determined by the trial court. *Id.* After the court has found the facts, it must decide whether these facts are sufficient, under proper legal standards, to

warrant the relief sought. This application of law to the facts is tempered by a general policy in Idaho – that, in doubtful cases, relief should be granted to reach a judgment on the merits. *Id.*

V.
ANALYSIS AND DECISION

A. The Special Master's reasoning and ruling.

In the ***Order Vacating Stays and Order Denying Motions to File Late Objections*****,** the Special Master analyzed whether the *Motions to File Late Objections* should be granted as follows:

> The standards for granting motions to file late objections in the SRBA were discussed in the Special Master's ***Amended Order Partially Staying Subcases,*** subcases 47-16433, *et al.*, dated August 9, 1999. The general rule is that a party must show "good cause" and that means a party must 1) state a reason, 2) act in good faith, 3) exercise due diligence and 4) plead a meritorious defense. The facts reviewed by the Idaho Supreme Court in *LU Ranching* may not be identical to the circumstances presented in Bruce and Jared Bedke's motions to file late objections (i.e., a motion to set aside a partial decree versus a motion to file a late objection), but they are sufficiently analogous to guide this Court.
>
> LU Ranching argued they were not given adequate notice of the USDI/BLM claims. Here, the Bedkes essentially argued the same lack of notice because of IDWR's bifurcated process. But like LU Ranching, the Bedkes were aware of the commencement of the SRBA and they were aware that action concerning their claims and the rights of others in Basin 47 would be adjudicated. They also received notice of the *Director's Report*, the nature of that report, its location and the way to access the report. Hence, like LU Ranching, Bruce and Jared Bedke did not act as would a reasonably prudent person under the circumstances and they failed to show excusable neglect or mistake in failing to file timely objections. In other words, they failed to show "good cause" for not filing objections in a timely manner. Therefore, their motions to file late objections must be denied.
>
> Then, there is the matter of prejudice to the other parties caused by the stay orders. If further proceedings in the above 26 subcases were to remain stayed until the Basin 47 "*de maximus*" stockwater claims are reported in the fall of 2004, the stockwater rights of the remaining parties who signed the *Stipulation* would be put on hold. Now is the time to

vacate the stays and deny Bruce and Jared Bedke's motions to file late objections.

No Meritorious Defense

The law of the SRBA case and Idaho Supreme Court holding in *LU Ranching* alone are sufficient reasons to deny Bruce and Jared Bedke's motions to file late objections. However, there is one other basis that leads to the same result – they failed to plead a meritorious defense and thereby cannot show "good cause" to file late objections. In the status conference on June 19, 2003, the Bedkes said the reason they did not sign the *Stipulation* giving the private parties senior stockwater rights was because of the language in paragraph 7. That was the language stating 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."

It is apparent that Bruce and Jared Bedke are concerned less about stockwater rights than they are about conditions imposed on their grazing privileges and more broadly, the authority of the United States to manage federal lands. Both of those issues bear only a tenuous relationship, at best, to water rights and the role of the SRBA Court in adjudicating such rights. Viewed another way, the issues the Bedkes want to pursue with their late objections are beyond the jurisdiction of the SRBA Court. For that reason, the Bedkes failed to plead a meritorious defense and failed to show good cause to file late objections.

Order Vacating Stays and Order Denying Motions To File Late Objections at 5-6.

B. **The Special Master erroneously applied an I.R.C.P. 60(a)(default judgment) standard instead of the I.R.C.P. 55 (c)(default) standard.**

The Special Master applied incorrect criteria in determining whether good cause existed. He applied the Rule 60(b) standard. He ruled: "Hence, like LU Ranching, Bruce and Jared Bedke did not act as would a reasonably prudent person under the circumstances and they failed to show excusable neglect or mistake in failing to file timely objections. In other words, they failed to show "good cause" for not filing objections in a timely manner." ***Order Vacating Stays and Order Denying Motions To File Late Objections*** at 5-6. This is the Rule 60(b) standard, a standard which would be appropriate had partial decrees already been entered. Because partial decrees had not yet been entered, the Rule 55(c) standard should have been applied. *McFarland* states that the good cause standard of Rule 55(c) is less stringent than the Rule 60(b) standard. This statement, while dicta, is still persuasive to this Court, particularly given the policy considerations that a doubtful case be tried on its merits. *McFarland* states that the first

consideration in determining the "good cause" standard is whether the default is willful. Black's Law Dictionary, citing *United States v. Murdock*, 290 U.S. 389, 394, 395, 54 S.Ct. 223, 225, defines willful as: "In civil actions the word often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental." Black's further defines the term as, "A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from act done carelessly, thoughtlessly or inadvertently. A willful act differs essentially from a negligent act. The one is positive and the other negative."

The Special Master applied a "reasonably prudent person" standard and an "excusable neglect or mistake" standard to the Bedke's 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.

This ruling is consistent prior rulings in the SRBA where parties have sought to file late objections and/or set aside partial decrees. In the *A.L. Cattle* decision the presiding judge denied the motion to set aside the partial decrees but recommitted to the special master for resolution the motion to file late objections where the partial decree had not been entered. Ultimately, the subcases where the motions to file the late objections were filed were resolved before the special master as part of the global stipulation. By implication, the late objection was granted and A.L. Cattle was accorded party status for purposes of entering into the stipulation. In *Memorandum Decision and Order on Motion to Set Aside Partial Decrees*, subcases 55-02373 *et al*. (May 1, 2001) (LU Ranches), a case relied on by the special master, all of the water rights at issue had already been decreed. The presiding judge declined to set aside the partial decrees based *inter alia* on application of the I.R.C.P. 60(b) "reasonableness" standard as opposed to the I.R.C.P. 55(c) "willfulness standard."

This Court's ruling is also not inconsistent with the holding in the "*Smith Springs"* case wherein parties were denied the opportunity to file late response. *In Re*

SRBA Case No. 39576, Minidoka National Wildlife Refuge, *SRBA Subcase No. 36-15452 v. United States*, 134 Idaho 106, 996 P.2d 806 (2000). In that particular case the parties were given two opportunities to file responses, the second response period extending beyond the original by two years. The motions to file late responses weren't even filed until over a year after the second response period had closed and the United States had filed a motion for summary judgment. No allegation was made that the special master applied an incorrect standard, the issue was whether the special master abused discretion. Had the same amount of time elapsed in this case before the *Motions* were filed the result may well have been different.

C. **The Special Master erroneously considered the *Stipulation* in finding prejudice to other parties**.

The Special Master determined that other parties would be prejudiced if the Bedkes' late objections were allowed. In making this finding, the Special Master considered prejudice that resulted long after the Bedkes filed their *Motions to File Late Objections*. The finding of prejudice resulted from the fact that almost all of the other claimants reached a settlement with the USDA Forest Service, which would lead to the entry of partial decrees if not for the Bedkes' outstanding objections. The Bedkes decided not to enter into the *Stipulation and Joint Motion for Order Approving Stipulation*. However, the degree of prejudice that would have resulted to other parties should have been measured at the time the *Motions to File Late Objections* were filed, not four years later after a settlement had been reached by all but the Bedkes. Concededly, *some* prejudice would have occurred to the claimant had the Bedkes' motion been granted when it was filed, as the claim was otherwise uncontested, but that prejudice would have then been balanced against the policy in favor of determining cases on their merits and the relatively short time between the last day for filing objections and the filing of the Bedkes' *Motion*. Additionally, the parties were initially set to wait until the Bedkes' rights were to be reported out before the issues were resolved. This is a period of over five years. Given this extensive length of time the parties were prepared to wait to resolve their disputes, this Court has difficulty in finding any true degree of prejudice to the claimant. Accordingly, the court finds that applying the standard at the proper time

results in a determination, based upon the record, that some prejudice would have resulted had the Bedkes' motion then been granted, but that under the procedural anomalies of these subcases the prejudice was outweighed by the general policy that doubtful cases be tried on their merits.

D. In ruling on the meritorious defense the Special Master incorrectly focused on the Bedke's reason for not agreeing to the *Stipulation* instead of on the merits of their objections.

The Special Master found that the Bedkes failed to present a meritorious position. In making this finding, the Special Master focused on what he perceived to be the Bedkes' motivation in asserting the late objections—that the Bedkes were concerned more about conditions imposed upon their grazing privileges and the authority of the United States to manage federal lands. Plainly, these issues are not ones which can properly be raised in the SRBA Court, at least not in this context. However, the Court acknowledges that to the extent the *Stipulation* contained a term that although may have not dealt with the administration of water or a water right but was nonetheless objectionable to the Bedkes, the Bedkes would still have a valid basis for not agreeing to the *Stipulation.*

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 lands in question. While the court does not intend to express any opinion as to the outcome of the Bedkes' objections, plainly, this question is one which raises justiciable issues which have not yet been addressed by this court—in part because of the *Stipulation and Joint Motion for Order Approving Stipulation*. The court finds, therefore, that the Bedkes have asserted a meritorious position.

VI.
CONCLUSION

The court must balance all factors with the policy that doubtful cases be tried on their merits. As explained, it is not clear to this court that the conduct by the Bedkes was

willful. 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 objections.

VII.
ORDER AND ORDER OF RECOMMITMENT

Based upon the foregoing, it is hereby ORDERED as follows:

A. The *Order of the Special Master* entered on July 3, 2003, denying the Bedkes' *Motions to File Late Objections* is hereby REVERSED.

B. The above referenced subcases are RECOMMITTED WITH INSTRUCTIONS as follows:

1. The Bedkes' *Motions to File Late Objections* shall be **GRANTED**.
2. Trial of the above referenced subcases shall be consolidated with the Bedkes' competing claims and the United States' objections thereto.
3. Trial shall be held as soon as practicable after the reporting of the Bedkes' competing claims.

Dated March 22, 2005

/s/ John M. Melanson

John M.Melanson
Snake River Basin Adjudication
Presiding Judge