

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

<b>In Re SRBA</b>	)	<b>Subcases: See Exhibit A</b>
	)	
<b>Case No. 39576</b>	)	<b>ORDER ON PERMISSIVE REVIEW</b>
	)	<b>And</b>
	)	<b>ORDER OF RECOMMITMENT</b>
	)	
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**I.  
PROCEDURAL HISTORY AND FACTS**

A. The United States, Department of Interior, Bureau of Land Management (United States) filed the above 64 claims in Basin 45. It appears that forty-two of the claims are state-based beneficial-use water rights. Twenty-two of the rights are dual based, meaning the rights are based on a state-law basis and as federal reserved water rights based on Public Water Reserve (PWR) 107.

B. The Idaho Department of Water Resources filed its *Director's Report for Domestic and Stockwater for Reporting Areas 7 and 10 (IDWR Basins 41, 43, and 45)* on March 2, 1998. The United States' Basin 45 *de minimis* claims were included in the *Director's Report*. The *Notice of Filing* stated that objections to the recommendations must be received by the SRBA Court on or before July 3, 1998. Responses to objections were due on or before September 1, 1998. A hearing on Uncontested Water Rights was scheduled for September 1, 1998, although it is not clear when the hearing was actually held.

C. The Notice of *Director's Report* in Basin 45 stated that:

Also included in the complete Director's Report are descriptions of the United States' claims for domestic and stockwater under federal law. The Director does not investigate these claims and makes no recommendation whether they should be granted or not. Sometimes the United States claims one right under both federal and state law. These are called "dual based" claims.

D. Timely objections were filed to some of the above rights by the State of Idaho. On April 7, 1999, *Motions to File Late Objections* were filed by Michael Poulton, Gary Poulton, Bruce Bedke and Jared Bedke.

E. On April 7, 1999, Bruce and Jared Bedke filed documents that the Special Master treated as *Motions to File Late Objections*. The documents stated:

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 directors report. I have been assured by the IDWR that my filings will be included in a subsequent directors 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 directors 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.

On June 18, 1999, Jared Bedke filed a revised objection list to include all 40 of the United States' spring claims and deleting the 24 claims whose sources are creeks, unnamed streams and gulches. Bruce Bedke did not file a similar list.

F. After several hearings, on July 21, 2001, the Special Master entered an ***Order Staying Subcases*** in multiple subcases in Basin 45 and 47, "until the remaining stockwater claims in Basins 45 and 47 are reported by I.D.W.R."

G. As they did in Subcase 47-16422 *et al* (Bedke I), 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 claims until after the objection deadline had passed. The Bedkes have stated various reasons for the confusions (again, not under oath); however, this Court does not need to analyze the reasons stated for their confusion to reach its decision.

H. The State of Idaho's objections were resolved through stipulation. The objections of Michael Poulton and Gary Poulton and other private parties were resolved through stipulation with the United States filed on August 29, 2002.

I. On January 5, 2005, the Special Master entered an *Order Vacating Stay, Order Denying Motion to File Late Objections and Recommendation of Permissive Review*. The *Order* stated that the above subcases contained issues that were virtually identical to the ones addressed in the Special Master's *Order Vacating Stays and Order Denying Motions to File Late Objections* in Subcases 47-16422 *et al* (Bedke I). The *Special Master's Report* in Subcase 47-16422 *et al* was ultimately challenged by the Bedkes. On Challenge, this Court reversed the Special Master, finding 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).

J. On January 18, 2005, a hearing was held before this Court on whether Permissive Review is proper in the above subcases. The Court found that the issues presented in the above subcases were closely related to the issues presented in Bedke I. Therefore, the Court found that the above subcases were appropriate for permissive review.

K. In Basin 47, the United States' similar stockwater claims, claimed by the United States Forest Service, 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. On April 28, 1999, prior

to the Basin 47 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. On June 7, 1999, Gary and Michael Poulton filed *Motions to File Late Objections*.<sup>1</sup>

## II.

### ISSUE ON PERMISSIVE REVIEW

*SRBA Administrative Order 1, Rules of Procedure*, 9,e, states:

**Permissive Review** — A Special Master or any party to the Subcase may seek permissive review by the Presiding Judge of the Special Master’s interlocutory determination which involves a controlling question of law as to which there are substantial grounds for difference of opinion and on which immediate consideration of the determination may advance the orderly resolution of the litigation following the procedure set forth in I.A.R. 12.

The Special Master in his order of *Recommendation of Permissive Review* stated, “The issues presented here are the same as those argued by the Bedkes in subcases 47-16433, *et al.*, and consideration of the Special Master’s denial of the Bedkes’ motions to file late objections in both sets of subcases would advance the orderly resolution of litigation in a significant number of similar subcases.”

The issue on permissive review, then, is the same as that raised by the Bedkes in Subcases 47-16433 *et al.*:

**Did the Special Master improperly deny the Bedkes’ late objections?**

## III.

### APPLICABLE LAW AND STANDARDS OF REVIEW

#### A. Standard of Review.

The Court first notes that the SRBA’s permissive review procedure is for an “interlocutory determination which involves a controlling question of law as to which there are substantial grounds for difference of opinion.” In a permissive review procedure, then, the Court must only review the question of law which the Court has been requested by either the Special Master or parties to review. Any factual findings, if they exist, would not be ripe for review on a permissive review. Since the Special Master has not issued a Special Master’s Report, the Court has limited

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<sup>1</sup> The Court notes that the Basin 47 claims and timeline are somewhat relevant to the Basin 45 timeline, in that the Bedkes and other parties were late in filing objections to the United States’ claims in both basins, even though Basin 47 was reported later than Basin 45.

facts on which to base a decision. Finally, the nature of permissive review does not allow the Court to make factual findings. Therefore, on permissive review, this Court must only narrowly review the “controlling question of law” at issue. The Court may not make nor review findings of fact.

The Court’s inquiry, then, is limited to review of the Special Master’s legal conclusions, and the application of those legal conclusions to any facts that exist at the time of the permissive review. 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 (5<sup>th</sup> Cir. 1975).

**B. Standard for granting late objections in the SRBA.**

As stated in *Bedke I*, 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 *AOI* 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*). *AOI* 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 *AOI* § 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).

### **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.*

## **IV.**

### **ANALYSIS AND DECISION**

#### **A. The Special Master's reasoning and ruling.**

The Special Master's *Order* in the above subcases essentially mirrored his ruling in 47-16433 *et al.*, although the Special Master did not make any findings of fact as to prejudice in these cases, as he did in the previous subcases. The Special Master stated:

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 United States' 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 45 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.

#### **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 a status conference held on June 19, 2003, in related and overlapping subcases, the Bedkes said the reason they did not sign the August 29, 2002 *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, Order Denying Motions to File Late Objections and Recommendation of Permissive Review* at 5-6.

As the question of law in these cases is identical to Subcases 47-16433 *et al* (Bedke I), the Court reiterates what it stated on Challenge in those subcases:

**B. 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.**

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.” 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 Bedkes’ 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.”

This ruling is consistent with 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 decrees 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.”

**C. 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.**

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*.

**D. The Above Subcases are Remanded to the Special Master to Apply the Correct Standard, and Make Findings of Fact in Accordance With the Above Ruling.**

As the Court noted previously, the procedural posture of the above subcases is different from those in Subcases 47-16433 *et al.* The Special Master has made no findings of fact, and any such findings of fact would be unreviewable by the Court at this point. Therefore, the Court remands the above subcases to the Special Master to 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.

Other criteria that the Special Master may consider are: (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).

The Court directs the Special Master to make findings in accord with the following principles:

1. **Prejudice.** Any prejudice to the opposing party must be measured from the time that the objections were due until the *Motions to File Late Objections* were filed. Any prejudice from events occurring after the *Motions* were filed is irrelevant. The stipulations reached with other parties, especially those who also filed *Motions to File Late Objections*, may not be considered in the Special Master's determination of prejudice.

2. **The procedural posture of each of the above subcases.** It is unclear from the record which of the above rights were "dual based," and which of the above rights were objected to in a timely fashion by the State of Idaho. The Special Master's *Order* states that all of the above subcases were "dual based," while briefing from the United States appears to state that only 22 of the subcases are based at least partially on a PWR 107 basis.

3. **Merit of Bedkes' Position.** The merit of the Bedkes' position should be evaluated based on their objections. As noted in *Bedke I*, this Court sees the Bedkes' objection to the United States' ownership of a stockwater right to be a judiciable issue that has not been addressed by this Court or the Idaho Supreme Court.<sup>2</sup> Finally, this Court sees a distinct legal difference between the Bedkes' objections to PWR 107 rights and the Bedkes' objections to state-based stockwater rights. One form of right has been firmly settled by the Idaho Supreme Court to be a valid basis for a water right, the other has not, and requires intensive fact-finding.

4. **Willfulness.** As noted earlier, the facts in the above subcases are not settled, nor are they identical to the facts in *Bedke I*. The Special Master may make findings of fact to determine the willfulness of the Bedkes in filing *Motions to File Late Objections*. The Special Master should

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<sup>2</sup> The Court notes that the Joyce Livestock cases (Subcases 55-10135) *et al*) currently before this Court deal squarely with the requirements necessary for the United States to prove a stockwater right.

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.

5. **Policy.** The Special Master should consider the policy that doubtful cases be tried on their merits.

## V.

### ORDER OF RECCOMITMENT

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

A. The *Order of the Special Master* entered on January 5, 2005, is hereby **REVERSED**.

B. The above-referenced subcases are **RECOMMITTED WITH INSTRUCTIONS** in accord with the foregoing. The Special Master may 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).

Dated August 3, 2005.

/s/ John M. Melanson\_\_\_\_\_

John M. Melanson  
Snake River Basin Adjudication  
Presiding Judge

EXHIBIT A

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