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MAY - 5 2003

Department of Water Resources

**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

Case No. 39576

) Subcase Numbers 55-10288B, 55-10289B,
) 55-10290B, 55-10292B, 55-10293B,
) 55-10295, 55-10296, 55-10297B,
) 55-10298, 55-10299B, 55-10300,
) 55-10301B, 55-10303B, and 55-13451
)

) **MEMORANDUM IN SUPPORT OF LU**
) **RANCHING'S MOTION TO ALTER**
) **OR AMEND THE SPECIAL**
) **MASTER'S REPORT AND**
) **RECOMMENDATION, FINDINGS OF**
) **FACT AND CONCLUSIONS OF LAW**

LU Ranching Co. ("LU Ranching") filed a Motion to Alter or Amend the *Special Master's Report and Recommendation, Findings of Fact, and Conclusions of Law* in the above captioned subcases. As noted in LU Ranching's Motion, the basis for LU Ranching's Motion to Alter or Amend was limited to correcting certain technical errors contained within the Special

Master's Recommended Partial Decrees. Accordingly, the subject matter of this Memorandum is limited to addressing proposed corrections to legal descriptions contained the Recommended Partial Decrees. A separate response brief in opposition to the United States' Memorandum in Support of United States' Motion to Alter or Amend the Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law, to respond to the substantive portions of the United States' Motion to Alter or Amend, will be filed on May 13, 2003 per the Court's recent Order.

As previously represented to the Court, counsel for LU Ranching has been working with counsel for the United States to determine whether the parties could come to an agreement regarding any necessary changes to the Recommended Partial Decrees. In an attempt to simplify this analysis, LU Ranching's submission, below, references the United States' Proposed Amended Special Master's Report and Recommendation, which is the United States' "red-line" version of the Court's Recommended Partial Decrees listing both the Court's original Recommended Partial Decrees and demonstrating the United States' proposed changes to the same. LU Ranching's position with respect to both is as set forth, below.

AS TO ALL SUBCASES AT ISSUE

LU Ranching notes for the record that while the points of diversion described both by the United States in its Proposed Amended Special Master's Report and Recommendation and the Special Master's Proposed Partial Decrees are consistent with the methodology employed by the IDWR, LU Ranching believes that because these are instream stockwater rights, the true "points of diversion" encompass all points on the stream. With this caveat, the points of diversion are

addressed, subcase by subcase, below.

The United States left the priority date blank on its Proposed Amended Special Master's Report and Recommendations. LU Ranching clearly believes that there was no error with respect to the Special Master's ruling on the priority date issue as set forth in the Court's substantive opinion and in the individual Recommended Partial Decrees. As indicated, above, LU Ranching will be briefing this issue as part of its substantive response to the United States' Motion to Alter or Amend. With respect to each and every subcase at issue herein, LU Ranching concurs with the Special Master's recommended priority date.

55-10288B

LU Ranching does not agree with the United States' deletion of T07S R06W S35 SENE as a point of diversion and place of use. However, LU Ranching would agree to a general provision for the definition or administration of this water right as follows: "The use of water within the SENE, S35, T07S, R06W is limited to the South Mountain Allotment." The basis for this limitation is found in trial testimony indicating that there was some question about whether this particular quarter quarter section was located within the South Mountain Allotment.

Other than as noted, above, LU Ranching does not oppose any of the other changes proposed by the United States in its Proposed Amended Special Master's Report and Recommendation for water right 55-10288B, and otherwise agrees with the Special Master's Proposed Recommended Partial Decree for this water right.

55-10289B

LU Ranching does not agree to the deletion of Unnamed Streams tributary to Juniper

Creek.

Other than as noted, above, LU Ranching does not oppose any of the other changes proposed by the United States in its Proposed Amended Special Master's Report and Recommendation for water right 55-10289B, and otherwise agrees with the Special Master's Proposed Recommended Partial Decree for this water right.

55-10290B

LU Ranching does not oppose any of the changes proposed by the United States in its Proposed Amended Special Master's Report and Recommendation for water right 55-10290B, and otherwise agrees with the Special Master's Proposed Recommended Partial Decree for this water right.

55-10292B

LU Ranching does not oppose any of the changes proposed by the United States in its Proposed Amended Special Master's Report and Recommendation for water right 55-10292B, and otherwise agrees with the Special Master's Proposed Recommended Partial Decree for this water right.

55-10293B

LU Ranching does not oppose any of the changes proposed by the United States in its Proposed Amended Special Master's Report and Recommendation for water right 55-10293B, and otherwise agrees with the Special Master's Proposed Recommended Partial Decree for this water right.

55-10295

LU Ranching does not oppose any of the changes proposed by the United States in its Proposed Amended Special Master's Report and Recommendation for water right 55-10295, and otherwise agrees with the Special Master's Proposed Recommended Partial Decree for this water right.

55-10296

LU Ranching does not agree to the changes to the descriptions of the points of diversion as proposed by the United States. The United States did not produce evidence at trial to rebut the presumption of the accuracy of the description set forth in the IDWR Report on this claim.

A quarter quarter section which lies between areas at issue in 55-10296 and 55-10297B, specifically T05S R6W S23 NWNE, should have been claimed and recommended given the fact that a segment of the stream at issue in 55-10296 runs through a portion of that quarter quarter section. Evidence submitted at trial, including but not limited to the map showing the stream at issue in this subcase, which has historically used by LU Ranching and its predecessors in interest, flowing through a portion of this quarter quarter section, as well as the Director's Report, support inclusion of this quarter quarter section as a place of use. It should be noted that the beginning and ending points of diversion for this water right, as defined in the Court's Recommended Partial Decrees and as depicted on the map (Objector's Exhibit 22), begin at T05S R06W S12 NWSWSW where the stream begins, flowing through several quarter quarter sections, including T05S R6W S23 NWNE at issue herein, finally ending without interruption at T05S R06W S23 SESWNW. Accordingly, it was clearly the intent to include all points on the stream between

these beginning and ending points of diversion as places of use for this water right, as depicted on United States Exhibit 22. Further, the United States did not produce evidence at trial to rebut the presumption of the accuracy of the Director's Report with respect to this 40 acre parcel being a valid place of use by LU Ranching. The purpose of this Memorandum is to ensure that the recommended Partial Decrees accurately describe all of the places of diversion and places of use. Accordingly, LU Ranching requests that the Recommended Partial Decree be amended to reflect this quarter quarter section as a place of use, as it was clearly intended, consistent with the evidence presented at trial.¹ It should be noted that LU Ranching has initiated discussions with the United States to determine whether it is possible to reach a stipulation on this point.

Other than as noted above, LU Ranching does not oppose any of the changes proposed by the United States in its Proposed Amended Special Master's Report and Recommendation for water right 55-10296, and otherwise agrees with the Special Master's Proposed Recommended Partial Decree for this water right.

55-10297B

LU Ranching does not agree to the deletion of Unnamed Stream Tributary to Jordan Creek as a source as proposed by the United States.

LU Ranching does not agree to the changes to the descriptions of the points of diversion as proposed by the United States. The United States did not produce evidence at trial to rebut the presumption of the accuracy of the description set forth in the IDWR Report on this claim.

¹ If LU Ranching's requested amendment to include this quarter quarter section as a place of use is not granted, LU Ranching hereby reserves the right to file a Motion to File a Late Claim and corresponding Claim to identify this place of use.

LU Ranching does not agree to the deletion of the following places of use as proposed by the United States: T05S R06W S14 NESE and T05S R06W S23 SWNE.

LU Ranching notes for the Court that the following places of use have been decreed to LU Ranching under 55-10297A, although the maps admitted at trial depict these places of use as located solely on BLM land: T05S R06W S24 NESW and T05S R06W S24 SWSE. LU Ranching and the United States are continuing discussions regarding whether they were properly decreed as “A” rights (private land) or should instead be decreed as “B” rights (on BLM land). It is the understanding of undersigned counsel that the United States does not have an objection to these decreed rights, but agrees with LU Ranching’s purpose which is to ensure that they are properly designated as either an “A” or “B” rights.

There is a quarter quarter section which should have been claimed and recommended as a place of use in conjunction with subcase number 55-10297B, namely T05S R06W S13 SWSW. It has a segment of the subject stream running through it and was recommended as a point of diversion by the IDWR as well as by the Court in the Recommended Partial Decree for this water right. Evidence submitted at trial, including but not limited to Objector’s Exhibit 22 identifying this quarter quarter section as an instream beginning diversion point and the Director’s Report recommending the same, supports inclusion of this quarter quarter section as a place of use. The United States did not produce evidence at trial to rebut the presumption of the accuracy of the findings and holdings of IDWR set forth in the Director’s Report for this claim. In fact, the United States presented no evidence to rebut the Report. Accordingly, LU Ranching requests Recommended Partial Decree be amended to reflect this quarter quarter section as a

place of use, as it was clearly intended, consistent with the evidence presented at trial.² LU Ranching has initiated discussions with the United States to determine whether it is possible to reach a stipulation on this point.

Other than as noted above, LU Ranching does not oppose any of the changes proposed by the United States in its Proposed Amended Special Master's Report and Recommendation for water right 55-10297B, and otherwise agrees with the Special Master's Proposed Recommended Partial Decree for this water right.

55-10298

LU Ranching does not oppose any of the changes proposed by the United States in its Proposed Amended Special Master's Report and Recommendation for water right 55-10298, and otherwise agrees with the Special Master's Proposed Recommended Partial Decree for this water right.

55-10299B

LU Ranching does not oppose any of the changes proposed by the United States in its Proposed Amended Special Master's Report and Recommendation for water right 55-10299B, and otherwise agrees with the Special Master's Proposed Recommended Partial Decree for this water right.

55-10300

LU Ranching does not oppose any of the changes proposed by the United States in its

² If LU Ranching's requested amendment to include this quarter quarter section as a place of use is not granted, LU Ranching hereby reserves the right to file a Motion to File a Late Claim and corresponding Claim to identify this place of use.

Proposed Amended Special Master's Report and Recommendation for water right 55-10300, and otherwise agrees with the Special Master's Proposed Recommended Partial Decree for this water right.

55-10303B

LU Ranching does not agree to the change of "Unnamed Streams, Corral Creek" (plural) to "Unnamed Stream, Corral Creek" (singular) as proposed by the United States.

With respect to the place of use descriptions, LU Ranching agrees to the deletion of T09S R04W S18 Lot 3 (NWSW). LU Ranching does not agree to the deletion of T09S R05W S33 NWNW.

It appears that a portion of the stream at issue in 55-10303B may touch upon the quarter quarter section described as T09S R05W S28 NWSW. The United States has at its disposal more detailed maps that could answer the question of whether the stream crosses into this quarter quarter section, and LU Ranching and the United States are in discussions to determine the location of the stream relative to this quarter quarter section. If the stream does, in fact, cross into this quarter quarter section, LU Ranching requests Recommended Partial Decree be amended to reflect this quarter quarter section as a place of use, as it was clearly intended, consistent with the evidence presented at trial.³

Other than as noted, above, LU Ranching does not oppose any of the changes proposed by the United States in its Proposed Amended Special Master's Report and Recommendation for

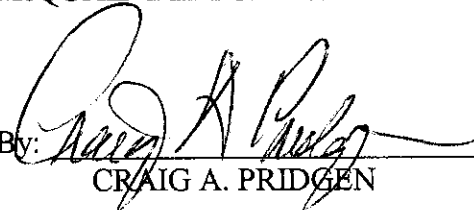
³ If the stream crosses into this quarter quarter section, and LU Ranching's requested amendment to include this quarter quarter section as a place of use is not granted, LU Ranching hereby reserves the right to file a Motion to File a Late Claim and corresponding Claim to identify this place of use.

water right 55-10303B, and otherwise agrees with the Special Master's Proposed Recommended Partial Decree for this water right.

DATED: May 2, 2003

Respectfully submitted,

McQUAID BEDFORD & VAN ZANDT, LLP

By: 
CRAIG A. PRIDDEN

LAW OFFICES OF RICHARD L. HARRIS

By: _____
RICHARD L. HARRIS
Attorneys for LU Ranching Co.

CERTIFICATE OF MAILING

I certify that on May 2, 2003, I mailed the original and copies of the foregoing ***Memorandum in Support of LU Ranching's Motion to Alter or Amend*** to the following persons via facsimile or U.S. Mail, the original and/or copies, postage paid and addressed as follows:

1. Original to:

Clerk of the Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
(Via Facsimile)

2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098
(Via U.S. Mail)

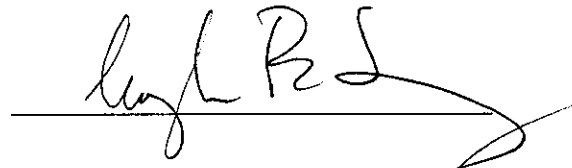
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449
(Via U.S. Mail)

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724
(Via U.S. Mail)

State of Idaho
c/o David J. Barber
P.O. Box 83720
Boise, ID 83720-0010
(Via U.S. Mail)

Larry Brown
United States Dept. of Justice
Environment and Natural Resource Div.
P.O. Box 663
Washington, DC 20044-0663
(Via Facsimile and U.S. Mail)

Richard L. Harris
1023 Arthur Street
Caldwell, ID 83605
(Via U.S. Mail)



A handwritten signature, appearing to read "Hugh L. Barber", is written over a horizontal line.



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MAY - 5 2003

Department of Water Resources

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San Francisco CA 94105-1936
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May 2, 2003

Via Facsimile and Federal Express

Shelley Bartlett, Deputy Clerk
Snake River Basin Adjudication
253 Third Avenue North
Twin Falls, Idaho 83301

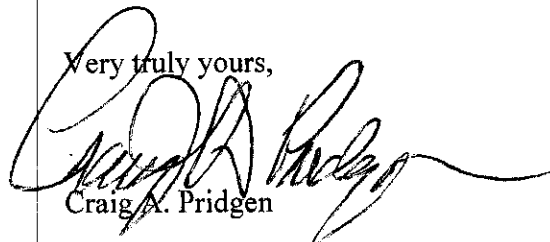
Re: SRBA Case No. 39576 - Memorandum in Support of LU Ranching's Motion to Alter or Amend the Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law - Subcase Nos. 55-10288B et al.

Dear Ms. Bartlett:

You should have received a Federal Express package containing a Memorandum titled as above-referenced. PLEASE DISREGARD THAT PLEADING. Enclosed is a new Memorandum containing the same caption which has been modified in certain particulars. Since today is the last day to file the Memorandum pursuant to the schedule ordered by Special Master Cushman, we are filing the same as a facsimile filing. You will note that the undersigned is the only counsel who has signed the new Memorandum. We have forwarded a copy to Mr. Harris for his execution and forwarding to your offices; however, we have not been able to communicate with him directly this afternoon. Apparently, he is in Court. Accordingly, with the Court's permission, if you do not receive a counter-signed copy of the Memorandum by facsimile this afternoon, you should anticipate receiving the same Monday, May 5, 2003.

I accordingly request that the Court accept the enclosed Memorandum and file the same as of today's date. If however, you are unable to do so, please contact the undersigned upon receipt of this correspondence. I apologize for the inconveniences which may have been created as a result of filing a modified Memorandum. Thank you for your continued cooperation and professional courtesies with respect to this matter.

Very truly yours,



Craig A. Pridgen

CAP/mjb
Enclosure