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21381-001

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Department of Water Resources

November 18, 2002

Via Federal Express

Diane Delaney
Snake River Basin Adjudication
253 Third Avenue North
Twin Falls, Idaho 83301

Re: Subcase No.: 55-10135, 55-11061, 55-11385, 55-12452
*Joyce Livestock Co.'s Response to United States' Motion in Limine and
Memorandum of Points and Authorities - Joyce Livestock Co.'s Preliminary Reply to
Anticipated Response by the United States to Joyce Livestock Co.'s Motion in
Limine to Exclude Evidence Identified by the United States*

Dear Ms. Delaney:

Please find enclosed herewith the above-referenced pleadings on behalf of Joyce Livestock Company in Subcase 55-10135. Also enclosed are five copies, one of which should be returned in the envelope provided herewith for that purpose. Under separate cover you will be receiving a duly executed copy of this pleading from Mr. Harris.

If you have any questions concerning this matter, please contact the undersigned or my assistant, Margarita Bermudez. Thank you for your cooperation and courtesies in this regard.

Very truly yours,



Craig A. Pridgen, Esq.

CAP/mjb
Enc.

cc: Service List
Paul Nettleton

MICHAEL J. VAN ZANDT
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Attorneys for Joyce Livestock Company

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	)	Subcase Numbers 55-10135, 55-11061
	)	55-11385, and 55-12452
Case No. 39576	)	
	)	JOYCE LIVESTOCK CO.'S
	)	RESPONSE TO THE UNITED STATES'
	)	MOTION IN LIMINE AND
	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES
		JOYCE LIVESTOCK CO.'S
		PRELIMINARY REPLY TO
		ANTICIPATED RESPONSE BY THE
		UNITED STATES TO JOYCE
		LIVESTOCK CO.'S MOTION IN LIMINE
		TO EXCLUDE EVIDENCE IDENTIFIED
		BY THE UNITED STATES

I. INTRODUCTION

The United States has filed a motion in limine to exclude exhibits identified by Joyce Livestock Co., being exhibits A, B, D, M, CC, EEE, FFF, GGG and HHH, on the basis that Joyce Livestock Co. failed to provide the documents in response to a request for production propounded by the United States; and, with respect to Exhibits CC, EEE, FFF and GGG, because the documents are allegedly not relevant. As discussed in detail below, it is submitted that (1) the United States was advised that these were exhibits which might be used in the trial, (2) some are actually exhibits already in the record in the SRBA with respect to the LU Ranching trial before Special Master Cushman in sub-case no. 55-10288B which has been under submission since March of 2001 – which case was tried by the same counsel in the within action, and involved either identical or substantially similar issues, (3) are exhibits which have in fact been produced in response to discovery demands propounded by Joyce Livestock Co. or are public documents and/or historic documents with respect to which the United States has actual knowledge, (4) are documents produces and Bates stamped by the United States, or (5) are otherwise admissible under Idaho Rules of Evidence (“IRE”) Rule 803. With respect to Exhibits CC, EEE, FFF and GGG, these are deposition transcripts of witnesses or potential witnesses identified by the United States in the LU Ranching case above referenced. These deposition transcripts have been designated in this action primarily for purposes of impeachment with respect to witnesses the United States has indicated it will call to testify in the within action; or, are otherwise offered for impeachment purposes.

The United States moves the Court for an order excluding Dr. Chad C. Gibson as an expert witness. The objection is primarily based upon the deposition taken by Mr. Brown of

Dr. Gibson. Dr. Gibson was a designated expert witness and Mr. Brown, on behalf of the United States, had ample opportunity to depose Dr. Gibson. Dr. Gibson has also been qualified as an expert witness in other SRBA litigation, including but not necessarily limited to, the LU Ranching case above referenced; and, in that case, he was qualified to give testimony substantially identical to the testimony he is anticipated to be giving during the course of this trial.

Finally, Joyce Livestock Co. has taken the opportunity below to reply to what it anticipates to be a response by the United States to the motions in limine filed in this action on behalf of Joyce Livestock. Without waiving its right to file an additional reply if time allows (the hearing on these motions is currently set for November 21, 2002), or to raise additional arguments and authority in opposition or reply to the United States' response to Joyce Livestock Co.'s motions in limine at the time of the hearing, it is anticipated that the United States in its response will assert that the affidavit of David R. Tuthill, Jr. and IRE 706 Report for sub-case numbers 57-10587, 57-10598 and 57-10770 are relevant and should not be excluded. It is submitted that in addition to being not relevant, this Exhibit 17 is inadmissible in that it constitutes hearsay, and purports to be an affidavit by David R. Tuthill, Jr. pursuant to IRE Rule 706 whereby apparently Mr. Tuthill was designated as a court-appointed expert in prior litigation involving sub-cases which are not the subject matter of this litigation. Mr. Tuthill was not designated as an expert in these sub-cases. Mr. Tuthill was not designated by the Court as an expert in these cases under Rule 706. Joyce Livestock Co., prior to the discovery cut-off date, had no prior indication or information that Mr. Brown intended to rely on Mr. Tuthill as an expert either based upon his oral testimony or the hearsay affidavit and accompanying report;

and, accordingly, Joyce Livestock did not take his deposition. The time period within which to designate Mr. Tuthill and/or his report as an expert witness and/or for the purposes of introducing an expert report has long since past, thus prohibiting Joyce Livestock Co. from taking his deposition in that discovery has been concluded and is now barred.

II. ARGUMENT IN OPPOSITION TO MOTION TO EXCLUDE EXHIBITS AS NOT RELEVANT OR NOT IDENTIFIED IN RESPONSE TO DISCOVERY

1. Joyce Livestock Co.'s Exhibits A and B are photocopies of the original minutes of the District Advisors' Conventions held January 13 and 14, 1936 and December 9, 10 and 11, 1936 in Salt Lake City, respectively. These exhibits were introduced at the trial involving LU Ranching Company (Claimant Water Right Nos. 55-10288B, et al.) in February, 2001 wherein the undersigned represented LU Ranching Company and Mr. Larry Brown represented the United States. The originals were produced and entered as Exhibits BBB-1 and BBB-2, respectively at that trial. The issues in the LU Ranching case were substantially similar, or in some cases identical, to the issues before this Court in these proceedings. The contents of these exhibits have significant probative value, not only with respect to the LU Ranching Company's case but, as an importantly, with respect to the within sub-cases and the SRBA litigation generally, particularly with respect to the significant consideration that was given by those in attendance at these conventions to the prior history of ranching within the allotments and the weight that would be given to that history in determining grazing preferences, including grazing practices and stock watering from streams located on a particular allotment. This is particularly significant in view of the fact that, at the time, it had been long established that water rights and in-stream flows in non-navigable waterways within the state were property of the state and subject to its regulation with respect to appropriation and use, as well as the fact that the Taylor

Grazing Act (43 U.S.C.S section 315b) specifically recognized the prior appropriation of water rights for agricultural purposes. The United States in the within sub-cases asserts that it has acquired a stock water right not by prior appropriation but as a result of its ownership of the land prior to the enactment of the Taylor Grazing Act and/or subsequent thereto as a result of not only it's ownership interest but its regulatory powers conferred pursuant to the terms and conditions of the Taylor Grazing Act. It is submitted that the minutes of these meetings clearly establish that it was not contemplated by the representatives of the United States government, nor understood by the ranches who attended these conventions, that water rights for stock watering purposes either belonged to the United States or that the appropriation and use of those water rights was subject to its regulations. These documents are not new to the United States and there is no surprise or undue advantage as a result of their submission at this time. The probative value of these exhibits under these circumstances far outweighs any prejudice which Mr. Brown can assert since he is fully aware of their contents. These documents also qualify as historic documents and thus can be admitted as an exception to the hearsay rule pursuant to IRE Rule 803(16).

2. Exhibit D is a proposed composite map taken from the documents submitted by the United States in response to discovery in this action. This map was produced by our offices as a composite of maps prepared as part of the application for a grazing permit by John T. Shea in 1935 and specifically as part of the dependent property record with respect to privately-owned land constituting base property of John T. Shea and his predecessors. The purpose of the composite map is to demonstrate to the Court the relationship of the base properties to various streams including, but not limited to, Jordan Creek in the Silver City portion of the Oreana allotment. This composite map was produced to Mr. Brown on October 29 at a meeting between

the undersigned and Mr. Brown, which was specifically designed to identify and exchange exhibits and exhibit lists. At that time, the undersigned did not have a colored version of the map. The map is a composite and thus a photocopy of various documents produced by the United States in this action and specifically Bates-stamped numbers 02361-02371. The intent is to enlarge this map and to color-code it so that it can be used during the trial either as an exhibit or, at a minimum, for demonstrative purposes and as a reference for the Court. Other than the color-coding, this proposed exhibit has been prepared from the very documents produced by the United States as explained to Mr. Brown on October 29th.

3. Exhibit M is a document produced by the United States and identified by Bates-stamp numbers 02412-02421. This document is a general index for township 5 South range 5 West of the Boise Meridian, Idaho identifying private property of Joyce Livestock or its predecessors and is from the official records of the United States General Land Office and Bureau of Land Management produced by the United States in his action. This document was produced by the United States in response to Joyce Livestock Co.'s request for production of documents.

4. Mr. Brown is correct in asserting that Exhibits ZZ, EEE, FFF and GGG are in fact deposition transcripts taken of witnesses for the United States in the LU Ranching Company case (sub-case numbers 55-10288B, et al.). Joyce Livestock Co. agrees with Mr. Brown that to the extent that the any portion of those deposition transcripts are fact-specific to the LU Ranching case, they are not relevant to this litigation. This fact notwithstanding, the transcripts of these depositions do contain testimony by the United States' witnesses with respect to issues involving the United States' alleged ownership of a stock water right as a result of its ownership of the land

and regulation of the grazing allotments. These exhibits are offered for identification and will be primarily used, if at all, for impeachment purposes. They are accordingly being provided to the Court for the Court's reference and depending upon whether or not they are used for impeachment purposes, the undersigned on behalf of Joyce Livestock Co. may move the Court to admit those portions, or ask the Court to take judicial notice of the same.

5. Exhibit HHH is a copy of the Findings of Fact and Conclusions of Law in case number CB14906 filed October 12, 1999 and dated October 8, 1999 in the Matter of the Determination of the Relative Rights in and to The Waters of Monitor Valley - Southern Part (140-B) Nye County, Nevada. This is a published decision. This decision is being provided for the Court's reference, although it is submitted that the Court may be asked to take judicial notice of this and other decisions with respect to the adjudication of water rights in the Monitor Valley which are commonly referred to as the "Hage Adjudication."

III. THE TESTIMONY OF DR. CHAD C. GIBSON SHOULD BE ALLOWED BASED UPON HIS QUALIFICATIONS TO TESTIFY AS AN EXPERT

Dr. Gibson was designated as an expert witness by Joyce Livestock Co. in these proceedings. Mr. Brown was provided with a curriculum vitae by Dr. Gibson. By stipulation, the parties waived the preparation and submission of a formal report by this expert; however, a summary of topics and/or issues with respect to which Dr. Gibson might be asked to testify at trial was prepared and provided to the United States prior to the taking of his deposition on October 31, 2002. The United States quotes from portions of the testimony given by Dr. Gibson during the course of his deposition. It is important to recognize that Dr. Gibson testified in response to specific questions asked by Mr. Brown during the course of that deposition and those inquiries by Mr. Brown may or may not involve issues and potential testimony by Dr. Gibson at

the time of trial. Accordingly, Mr. Brown's reliance upon responses to questions asked by Mr. Brown during the course of Dr. Gibson's deposition does not necessarily reflect the testimony which Dr. Gibson will be asked to give during the course of the trial. Further, there is no requirement that Joyce Livestock Co. lay a foundation to qualify Dr. Gibson as an expert for the purpose of a deposition by the United States. Accordingly, it is respectfully submitted that – at trial – Joyce Livestock Co. will have the opportunity to qualify Dr. Gibson as an expert with respect to his testimony in that capacity as it relates to issues involving the appropriation and use of stock water rights historically in Idaho as well as his understanding based upon his personal experience and expertise with respect as to whether or not water rights in the state of Idaho are “riparian rights” or “constitutional rights based upon appropriation and beneficial use.”

It is important for the Court to consider that Dr. Gibson has previously been qualified as an expert in the SRBA proceedings and specifically with respect to the LU Ranching case (sub-case number 55-10288B, et al.). As an expert witness in that proceeding, Dr. Gibson has testified with respect to grazing practices, the appropriation and use of stock water by ranchers historically in Idaho as well as issues involving whether or not those stock water rights, once appropriated and beneficially used, become an asset of a particular ranching operation and thus is an indispensable asset the ownership of which is material and essential to the successful operation of a cattle ranch; and, thus, becomes an integral part of a ranching operation. Dr. Gibson has previously testified that stock water rights are so critical to a ranching operation that the absence of those rights will render the base property of little or no value for ranching purposes. In other words, the water rights are an appurtenance to the base property.

In addition to the fact that Dr. Gibson has already been qualified as an expert to testify

before this Court on issues which are identical or substantially identical to the issues presented in the within action, and as further evidence of his qualifications to so testify as an expert is the fact that Dr. Gibson was asked to, and in fact did participate in the drafting of the specific language adopted by the legislature for the recent amendment of Section 42-113 of the Idaho Code. That code section deals specifically with in-stream and other water use for livestock. It is respectfully submitted that the fact that Dr. Gibson was selected to analyze and make recommendations with respect to issues involving stock water for the specific purpose of amending Section 42-113, and that his recommendations and draft language were ultimately incorporated into this section is, in and of itself, sufficient to qualify Dr. Gibson as an expert. This is particularly true when considered in conjunction with his extensive background and expertise with respect to ranching operations in general, as well as Idaho law with respect to stock water rights, their appropriation and beneficial use and the recognition thereof in the Taylor Grazing Act, State Law and Federal Codes. Dr. Gibson is not relied upon for legal opinions or analysis of legislative intention; but, rather the plain meaning of such provisions as applied historically. As an author, Dr. Gibson is qualified to opine on the legislative intentions with respect to Section 42-113.

At a minimum, it is respectfully submitted that Dr. Gibson cannot be disqualified as a potential expert based upon testimony given at a deposition conducted by Mr. Brown on behalf of the United States. Joyce Livestock Co. is entitled to have the opportunity to qualify Dr. Gibson at the time of trial and to ask the Court to take judicial notice of the fact that Dr. Gibson is already qualified as an expert in the SRBA proceedings. It is submitted that the United State should reserve its objections to the testimony of Dr. Gibson at trial and that it is premature to speculate as to what his testimony will be, particularly based upon deposition

testimony given in response to questions by Mr. Brown which may or may not reflect testimony which Dr. Gibson will be asked to give during the course of trial.

IV. PRELIMINARY REPLY TO ANTICIPATED RESPONSE BY THE UNITED STATES TO JOYCE LIVESTOCK CO.'S MOTION IN LIMINE TO EXCLUDE THE UNITED STATES' EXHIBIT 17

As a matter of professional courtesy, Larry Brown has indicated to the undersigned that he intends to respond to Joyce Livestock Co.'s motion in limine to exclude evidence specifically with respect to the United States' Exhibit 17 which is the affidavit of David R. Tuthill, Jr. and the IRE 706 Report for sub-case numbers 57-10587, 57-10598 and 57-10770. In addition to the fact that the affidavit and accompanying report were not prepared with respect to this case and therefore are not relevant, this exhibit should be excluded for the following additional reasons:

1. Mr. Tuthill was apparently designated as a court-appointed expert either as a result of a stipulation between the parties or by direct appointment by the Court and as a result thereof, a report was prepared dated June 9, 1997 and submitted to the Court with respect sub-case numbers 57-10587, et al. Mr. Tuthill was not identified by the United States as an expert witness in the sub-cases which are the subject matter of this adjudication. The time period within which the United States has to designate Mr. Tuthill as an expert has long passed. Accordingly, Joyce Livestock Co. has not noticed or taken the deposition of Mr. Tuthill and the time period within which it has to do so has also lapsed. Although the United States has disclosed the report, it failed to designate Mr. Tuthill in its response to discovery as an expert for purposes of the sub-cases which are the subject matter of this litigation. The United States had an affirmative obligation to identify all experts which it intended to call as witnesses and failed to do so. The affidavit and the accompanying 706 Report must be excluded.

2. Exhibit 17 violates the hearsay rule (IRE Rule 801) and is not admissible as an exception under IRE Rule 804.

3. Exhibit 17 was prepared and presumably submitted to the Court with respect to the adjudication of sub-case numbers 57-10587, 57-10598 and 57-10770, which involve Joyce Livestock Co. To the extent that Exhibit 17 was introduced and considered by the Court with respect to that adjudication, the contents and conclusions therein contained were obviously rejected. The report accompanying Mr. Tuthill's affidavit regarding IDWR recommendations with respect to competing claims to ownership (of stock water rights) is based upon an erroneous conclusion or assumption that Idaho law as well as its constitution recognizes "riparian water rights." This conclusion is erroneous as a matter of law and fact. The conclusion set forth in the 706 Report were rejected by Special Master Haemmerle in his Order Denying Motion to Alter or Amend (Amended Order on State's Motion for Summary Judgment) dated April 15, 1998 as specifically adopted and incorporated into Judge Hurlbutt's Order Denying Challenges and Adopting Special Masters' Reports and Recommendations dated September 30, 1998. It is submitted that whether or not these decisions were "dicta" or constitute "the law of the case" is immaterial with respect to the motion to exclude Exhibit 17. The findings and conclusions set forth in the 706 Report were obviously rejected by the Court in that the Court found that the State of Idaho has adopted a constitutional basis for appropriation of a water right based upon historic, actual appropriation and beneficial use of the stock water right. Accordingly, Mr. Tuthill's affidavit and accompanying 706 Report has no probative value, has not been authored as an analysis with respect to the specific facts and circumstances of the case now pending before this Court, is not relevant, and its probative value is outweighed by the prejudicial effect that it will

have in the sub-cases now pending before this Court, particularly in view of the fact that the position of the declarant/expert may not be the same in light of the intervening decision of the then Presiding Judge Hurlbutt. At a minimum, the United States should have requested that the Court re-appoint Mr. Tuthill under Rule 706 to prepare a new report in light of these intervening decisions; or, in the alternative, should have at least requested that counsel for Joyce Livestock Co. agree to the appointment of such an expert.

4. On June 17, 2000, the United States responded to Joyce Livestock Co.'s interrogatories and request for identification of documents. Interrogatory no. 7 asked the United States to "[I]dentify (by stating the name, title, street and mailing address, and telephone number) each person the United States intends to call as a witness at trial herein." The response made reference to the "BLM's Response to Interrogatory No. 2," which is attached hereto and identified as Exhibit A. Interrogatory No. 8 asked the United States to "[I]dentify each document (by stating its title, date of creation, author, type of document, and the name, street and mailing address, and telephone number of the individual with custody of the document) which the United States intends to offer in evidence at the trial herein." The United States responded that "[T]he United States cannot respond at this time, but will supplement its response to this interrogatory when the trial exhibits are defined." This trial exhibit was finally specifically identified on October 29, 2002, and there was no prior supplementation of the response to these interrogatories by the United States identifying the subject affidavit and the 706 Report. Specifically, the United States did not respond by identifying Mr. Tuthill as a witness, expert or otherwise. The United States did not supplement its response to the discovery in order to identify Mr. Tuthill as a potential witness nor to specify the report as an exhibit which the United States intended to use at

trial. The United States did include the affidavit of Mr. Tuthill and accompanying 706 Report in binders which were submitted at the time of the hearing on the motion for summary judgment in this case; however, it was not specifically identified in that proceeding as a "trial exhibit." Accordingly, the report must be excluded.

In view of the fact that Joyce Livestock Co. by and through the undersigned counsel has not yet had an opportunity to review any response prepared by the United States to Joyce Livestock Co.'s motions in limine; and, particularly in view of the fact that time will undoubtedly prohibit any further reply prior to the pre-trial conference currently scheduled for November 21, 2002, the undersigned specifically reserves the right to raise additional arguments in reply to any response filed by the United States at the time of the hearing on the motions in limine.

V. CONCLUSION

As indicated, Joyce Livestock Co. responded to the document production demands of the United States in these cases. With the exception of demonstrative exhibits which have been prepared or will be prepared for trial, all of the documents identified as exhibits by Joyce Livestock Co. are documents in the possession of the United States and in most instances were identified and produced by them in response to discovery requests by Joyce Livestock Co. Except as noted, the United States' motion in limine to exclude documents should be denied.

The United States' motion to exclude the testimony of Dr. Gibson is premature. Dr. Gibson has been pre-qualified as an expert in these proceedings. Dr. Gibson's testimony cannot be excluded at a preliminary stage in view of the fact that Joyce Livestock Co. has the statutory right to qualify Dr. Gibson to testify in these cases and the United States will have ample opportunity to object to his testimony during the course of the trial in the event that the

Court so qualifies this witness. The motion to exclude Dr. Gibson as an expert witness is premature.

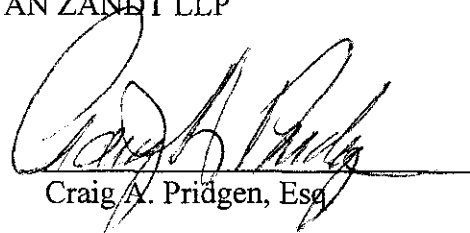
Exhibit 17, consisting of Mr. Tuthill's affidavit and the accompanying 706 Report must be excluded for the reasons set forth above.

DATED: November 19, 2002

Respectfully submitted,

McQUAID, METZLER, BEDFORD
& VAN ZANDT LLP

By:



Craig A. Pridgen, Esq.

LAW OFFICES OF RICHARD L. HARRIS

DATED: November __, 2002

By:

Richard L. Harris, Esq.
Attorneys for Joyce Livestock Co.

G:\Docs\21381\001\pleadings\Reply to US Mot in Limine

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing instrument was served on the following this 18th day of November, 2002 by first class mail, postage prepaid.

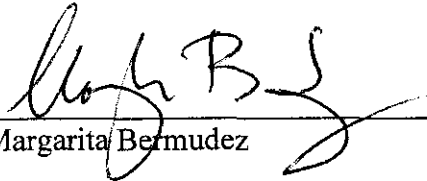
U.S.D.I. Bureau of Land Management
Idaho State Office
1387 S. Vinnell Way
Boise, ID 83709

State of Idaho
Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Larry Brown
U.S. Dept. of Justice
Environment & Natural Resource Division
P.O. Box 663
Washington, DC 20044-0663


Margarita Bermudez

BLM's RESPONSE TO INTERROGATORY NUMBER 2

INTERROGATORY NO. 2:

Identify each witness (by stating the name, title, street and mailing address, and telephone number) with knowledge of the facts stated in Interrogatory Number One.

RESPONSE:

The United States may call the following witnesses. Although it does not anticipate doing so at this time, the United States reserves the right to call additional witnesses and experts not identified in response to this interrogatory and shall supplement its response at that time.

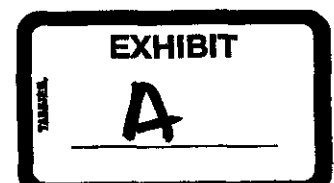
1. Ms. Katherine Kitchell
Lower Snake River District (LSRD) Manager
U.S.D.I., Bureau of Land Management
Lower Snake River District
Boise Field Office
3948 Development Avenue
Boise, Idaho 83705-5389

Ms. Kitchell may testify regarding BLM management practices, decisions, and policies within the Lower Snake River District and the Owyhee Resource Area.

2. Mr. Daryl Albiston
Owyhee Resource Area Manager
U.S.D.I., Bureau of Land Management
Lower Snake River District
Owyhee Resource Area
Boise Field Office
3948 Development Avenue
Boise, Idaho 83705-5389

Mr. Albiston may testify regarding BLM management practices, decisions, and policies within the Owyhee Resource Area, the Silver City Grazing Allotment (#0569), and/or the Jordan Creek drainage.

3. Mr. William Reimers
Supervisory Rangeland Management Specialist
U.S.D.I., Bureau of Land Management
Lower Snake River District
Owyhee Resource Area
Boise Field Office



3948 Development Avenue
Boise, Idaho 83705-5389

Mr. Reimers may testify regarding BLM management of and grazing practices within the Owyhee Resource Area, the Silver City Grazing Allotment (#0569), and/or the Jordan Creek drainage.

4. Mr. Pat Kane
Rangeland Management Specialist
U.S.D.I., Bureau of Land Management
Lower Snake River District
Owyhee Resource Area
Boise Field Office
3948 Development Avenue
Boise, Idaho 83705-5389

Mr. Kane may testify regarding BLM management of and grazing practices within the Owyhee Resource Area, the Silver City Grazing Allotment (#0569), and/or the Jordan Creek drainage.

5. Mr. Kim Schultsmeier
Rangeland Technician
U.S.D.I., Bureau of Land Management
Lower Snake River District
Owyhee Resource Area
Boise Field Office
3948 Development Avenue
Boise, Idaho 83705-5389

Mr. Schultsmeier may testify regarding BLM management and use of Range Improvements within the Owyhee Resource Area, the Silver City Grazing Allotment (#0569), and/or the Jordan Creek drainage.

6. Mr. Leo Coleman
Natural Resource Specialist
U.S.D.I., Bureau of Land Management
Lower Snake River District
Owyhee Resource Area
Boise Field Office
3948 Development Avenue
Boise, Idaho 83705-5389

Mr. Coleman may testify regarding water claims filed by the United States

on behalf of BLM within SRBA Basin 55, Owyhee Resource Area, and the Jordan Creek drainage.

7. Mr. Jay Carlson
Swift Resource Area Manager
(former) Owyhee Resource Area Manager
U.S.D.I., Bureau of Land Management
Roseburg District
Swift Resource Area
777 NW Garden Valley Blvd.
Roseburg, Oregon 97470

Mr. Carlson may testify regarding BLM management of and past grazing practices within the Owyhee Resource Area, the Silver City Grazing Allotment (#0569), and/or the Jordan Creek drainage.

8. Mr. Robert C. Mitchell
Rangeland Management Specialist
U.S.D.I., Bureau of Land Management
Idaho State Office
1387 S. Vinnell Way
Boise, Idaho 83709-1657

Mr. Mitchell may testify to United States range management programmatic practices and policies since enactment of the Taylor Grazing Act in 1934.

9. Dr. Gary A. Madenford
Water Rights Team Leader
U.S.D.I., Bureau of Land Management
Idaho State Office
1387 S. Vinnell Way
Boise, Idaho 83709-1657

Dr. Madenford may offer testimony regarding BLM's historic and present practices in acquiring water rights pursuant to Idaho Statutes and federal law. He may also offer testimony regarding BLM's criteria for asserting and investigating water right claims.

10. Mr. Fredric W. Price
Water Rights Specialist
U.S.D.I., Bureau of Land Management
Idaho State Office

1387 S. Vinnell Way
Boise, Idaho 83709-1657

Mr. Price may offer testimony regarding the technical elements of the water claims at issue and the relationship between these claims. He may also offer testimony regarding BLM's past and present water right acquisition practices and its criteria for asserting and investigating water right claims.

11. Mr. James Muhn
Land Law Historian (Retired)
3605 Nelson Street
Wheatridge, Colorado 80333

Mr. Muhn may testify to United States range management programmatic practices and policies prior to and since the enactment of the Taylor Grazing Act in 1934 that manifest an intention to appropriate water. He may offer testimony regarding the history of grazing on federal public land in the Western United States and within SRBA Basin 55.

12. Mr. William Tydeman
Historian
Texas Tech. University
P.O. Box 41041
Lubbock, Texas 79409-1041

Mr. Tydeman may testify to United States range management programmatic practices and policies prior to and since the enactment of the Taylor Grazing Act in 1934 that manifest an intention to appropriate water. He may offer testimony regarding the history of grazing on federal public land in the Western United States and regarding the history of grazing within SRBA Basin 55.

BLM's RESPONSE TO INTERROGATORY NUMBER 2

INTERROGATORY NO. 2:

Identify each witness (by stating the name, title, street and mailing address, and telephone number) with knowledge of the facts stated in Interrogatory Number One.

RESPONSE:

The United States may call the following witnesses. Although it does not anticipate doing so at this time, the United States reserves the right to call additional witnesses and experts not identified in response to this interrogatory and shall supplement its response at that time.

1. Ms. Katherine Kitchell
Lower Snake River District (LSRD) Manager
U.S.D.I., Bureau of Land Management
Lower Snake River District
Boise Field Office
3948 Development Avenue
Boise, Idaho 83705-5389

Ms. Kitchell may testify regarding BLM management practices, decisions, and policies within the Lower Snake River District and the Owyhee Resource Area.

2. Mr. Daryl Albiston
Owyhee Resource Area Manager
U.S.D.I., Bureau of Land Management
Lower Snake River District
Owyhee Resource Area
Boise Field Office
3948 Development Avenue
Boise, Idaho 83705-5389

Mr. Albiston may testify regarding BLM management practices, decisions, and policies within the Owyhee Resource Area, the Silver City Grazing Allotment (#0569), and/or the Jordan Creek drainage.

3. Mr. William Reimers
Supervisory Rangeland Management Specialist
U.S.D.I., Bureau of Land Management
Lower Snake River District
Owyhee Resource Area
Boise Field Office

3948 Development Avenue
Boise, Idaho 83705-5389

Mr. Reimers may testify regarding BLM management of and grazing practices within the Owyhee Resource Area, the Silver City Grazing Allotment (#0569), and/or the Jordan Creek drainage.

4. Mr. Pat Kane
Rangeland Management Specialist
U.S.D.I., Bureau of Land Management
Lower Snake River District
Owyhee Resource Area
Boise Field Office
3948 Development Avenue
Boise, Idaho 83705-5389

Mr. Kane may testify regarding BLM management of and grazing practices within the Owyhee Resource Area, the Silver City Grazing Allotment (#0569), and/or the Jordan Creek drainage.

5. Mr. Kim Schultsmeier
Rangeland Technician
U.S.D.I., Bureau of Land Management
Lower Snake River District
Owyhee Resource Area
Boise Field Office
3948 Development Avenue
Boise, Idaho 83705-5389

Mr. Schultsmeier may testify regarding BLM management and use of Range Improvements within the Owyhee Resource Area, the Silver City Grazing Allotment (#0569), and/or the Jordan Creek drainage.

6. Mr. Leo Coleman
Natural Resource Specialist
U.S.D.I., Bureau of Land Management
Lower Snake River District
Owyhee Resource Area
Boise Field Office
3948 Development Avenue
Boise, Idaho 83705-5389

Mr. Coleman may testify regarding water claims filed by the United States

on behalf of BLM within SRBA Basin 55, Owyhee Resource Area, and the Jordan Creek drainage.

7. Mr. Jay Carlson
Swift Resource Area Manager
(former) Owyhee Resource Area Manager
U.S.D.I., Bureau of Land Management
Roseburg District
Swift Resource Area
777 NW Garden Valley Blvd.
Roseburg, Oregon 97470

Mr. Carlson may testify regarding BLM management of and past grazing practices within the Owyhee Resource Area, the Silver City Grazing Allotment (#0569), and/or the Jordan Creek drainage.

8. Mr. Robert C. Mitchell
Rangeland Management Specialist
U.S.D.I., Bureau of Land Management
Idaho State Office
1387 S. Vinnell Way
Boise, Idaho 83709-1657

Mr. Mitchell may testify to United States range management programmatic practices and policies since enactment of the Taylor Grazing Act in 1934.

9. Dr. Gary A. Madenford
Water Rights Team Leader
U.S.D.I., Bureau of Land Management
Idaho State Office
1387 S. Vinnell Way
Boise, Idaho 83709-1657

Dr. Madenford may offer testimony regarding BLM's historic and present practices in acquiring water rights pursuant to Idaho Statutes and federal law. He may also offer testimony regarding BLM's criteria for asserting and investigating water right claims.

10. Mr. Fredric W. Price
Water Rights Specialist
U.S.D.I., Bureau of Land Management
Idaho State Office

1387 S. Vinnell Way
Boise, Idaho 83709-1657

Mr. Price may offer testimony regarding the technical elements of the water claims at issue and the relationship between these claims. He may also offer testimony regarding BLM's past and present water right acquisition practices and its criteria for asserting and investigating water right claims.

11. Mr. James Muhn
Land Law Historian (Retired)
3605 Nelson Street
Wheatridge, Colorado 80333

Mr. Muhn may testify to United States range management programmatic practices and policies prior to and since the enactment of the Taylor Grazing Act in 1934 that manifest an intention to appropriate water. He may offer testimony regarding the history of grazing on federal public land in the Western United States and within SRBA Basin 55.

12. Mr. William Tydeman
Historian
Texas Tech. University
P.O. Box 41041
Lubbock, Texas 79409-1041

Mr. Tydeman may testify to United States range management programmatic practices and policies prior to and since the enactment of the Taylor Grazing Act in 1934 that manifest an intention to appropriate water. He may offer testimony regarding the history of grazing on federal public land in the Western United States and regarding the history of grazing within SRBA Basin 55.