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Department of Water Resources

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**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 55-10288B, 55-10289B, |
|                | ) 55-10290B, 55-10292B, 55-10293B,      |
|                | ) 55-10295, 55-10296, 55-10297B,        |
|                | ) 55-10298, 55-10299B, 55-10300,        |
| Case No. 39576 | ) 55-10301B, 55-10303B, and 55-13451    |
|                | )                                       |
|                | ) <b>MEMORANDUM IN SUPPORT OF LU</b>    |
|                | ) <b>RANCHING'S MOTION TO ALTER</b>     |
|                | ) <b>OR AMEND THE SPECIAL</b>           |
|                | ) <b>MASTER'S REPORT AND</b>            |
|                | ) <b>RECOMMENDATION, FINDINGS OF</b>    |
|                | ) <b>FACT AND CONCLUSIONS OF LAW</b>    |

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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**

A quarter quarter section which lies between areas at issue in 55-10296 and 55-10297B, specifically T05S R6W S23 NWNE, apparently was not claimed or recommended, but should have been given the fact that a segment of the stream at issue in 55-10296 runs through a portion of that quarter quarter section. LU Ranching is in the process of determining whether it will be necessary to file a Motion to File a Late Claim and corresponding Claim to identify this place of use, and has initiated discussions with the United States regarding the same.

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.

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, apparently, was not claimed or recommended as a place of use in conjunction with subcase number 55-10297B, namely T05S R06W S13 SWSW. However, it has a segment of the subject stream running through it and was recommended as a point of diversion in this claim. LU Ranching is in the process of determining whether it will be necessary to file a Motion to File a Late Claim and corresponding Claim to identify this place of use, and has initiated discussions with the United States regarding the same.

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 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

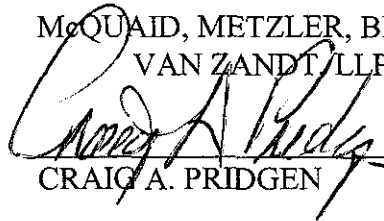
quarter section described as T09S R05W S28 NWSW. The United States has at its disposal more detailed maps that could answer the question of whether the stream crosses into this quarter section, and LU Ranching and the United States are in discussions to determine whether another claim should be filed in conjunction with 55-10303B.

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

DATED this 1<sup>st</sup> day of May, 2003.

Respectfully submitted,

McQUAID, METZLER, BEDFORD &  
VAN ZANDT/LLP

  
CRAIG A. PRIDGEN

LAW OFFICES OF RICHARD L. HARRIS

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Attorneys for LU Ranching Co.

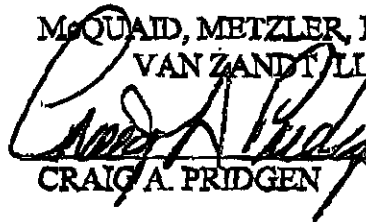
quarter section described as T09S R05W S28 NWSW. The United States has at its disposal more detailed maps that could answer the question of whether the stream crosses into this quarter section, and LU Ranching and the United States are in discussions to determine whether another claim should be filed in conjunction with 55-10303B.

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

DATED this 1<sup>st</sup> day of May, 2003.

Respectfully submitted,

MCQUAID, METZLER, BEDFORD &  
VAN ZANDT LLP

  
CRAIG A. PRIDGEN

LAW OFFICES OF RICHARD L. HARRIS

  
RICHARD L. HARRIS

Attorneys for LU Ranching Co.

## CERTIFICATE OF MAILING

I certify that on May 1, 2003, I mailed the original and copies of the foregoing ***LU Ranching Memorandum in Support of Motion to Alter or Amend*** to the following persons via Fed Ex 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 Federal Express)

2. Copies to:

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

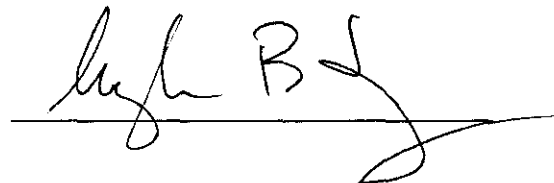
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A handwritten signature in black ink, appearing to read "Hugh B. J.", is written over a horizontal line.