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Department of Water Resources

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Environment & Natural Resources Division
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Denver, CO 80202
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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**

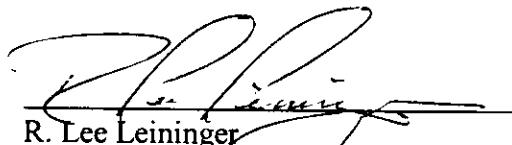
In Re SRBA	)	Subcase Nos.: 25-13635, 25-13637, 25-
	)	13653, 65-19960, and 65-19962
	)	
Case No. 39576	)	NOTICE OF ADDITIONAL LEGAL
	)	AUTHORITY
	)	

The United States hereby provides notice of additional legal authority relating to the United States' Motion to Alter or Amend the Special Master's Report and Recommendation denying a federal reserved water right pursuant to Public Water Reserve No. 107 for the above referenced subcases.^{1/} Counsel for the United States recently became aware of a provision in the *Pickett Act of 1910*, ch. 421, 36 Stat. 847(repealed by the Federal Land Policy and

^{1/} See *State of Alaska ex rel. Sweat v. Hansen*, 116 Idaho 927, 929, 782 P.2d 50, 52, n. 3 (Idaho App. 1989)("Where, as here, an issue . . . has been properly raised in a brief, additional legal authorities pertaining to that issue may be presented orally or in writing.")

Management Act, Pub. L. 94-579, § 702, 90 Stat. 2787 (1976)), excepting from the executive's withdrawal authority "any lawful homestead" existing on the date of such withdrawal, provided the entryman or settler "continues to comply with the law under which the entry or settlement was made." The *Pickett Act of 1910* is enabling legislation for the *Stock Raising Homestead Act of 1916*, 43 U.S.C. § 300 (repealed 1976), which incorporates by reference the *Pickett Act of 1910*, and the Public Water Reserve No. 107. A copy of the session law for the *Pickett Act of 1910* is attached as Exhibit A. Should the Court so request, the United States will submit supplemental briefing regarding the significance of the *Pickett Act of 1910* on the pending legal issue.

Respectfully submitted,



R. Lee Leininger
Trial Attorney
U.S. Department of Justice

CERTIFICATE OF SERVICE

I certify that on this 22nd day of September, 2003, I served a true and correct copy of for-going Notice upon the following individuals by serving as follows:

via Facsimile:

Diana R. Delaney, Chief Deputy Clerk (Original)
Snake River Basin Adjudication
DISTRICT COURT
253 Third Ave., North
Twin Falls, ID 83301

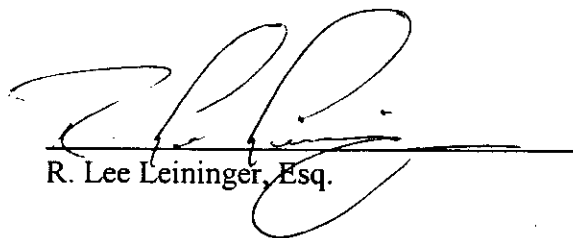
via Facsimile & First-Class Mail:

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

via First-Class Mail:

U.S. Department of Justice
Environment and Natural Resources
550 W. Fort Street, MSC 033
Boise, ID 83724

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098



R. Lee Leininger, Esq.

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exclusive. The franchise hereby granted shall not be construed to be exclusive and shall be subject to all general laws now in force or which may hereafter be enacted respecting railway companies.

"SEC. 12. This act shall go into effect and be law from and after the date of its approval by the governor of the Territory of Hawaii, subject, however, to the approval of the Congress of the United States. Time of taking effect.

"Approved this twenty-sixth day of April, A. D. 1909.

"WALTER F. FREAR,
"Governor of the Territory of Hawaii."

SEC. 2. That Congress may at any time alter, amend, or repeal said Act.

Approved, June 25, 1910.

Amendment, etc.

CHAP. 420.—An Act Granting certain public lands to the State of Colorado for the use of the State Agricultural College, for agriculture, forestry, and other purposes.

June 25, 1910.
[H. R. 24012.]

[Public, No. 302.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized and directed to convey to the State of Colorado, for the use and benefit of the State Agricultural College, at Fort Collins, Colorado, for experimental, educational, and kindred uses in forestry, agriculture, horticulture, grazing, stock raising, and such other uses included in the work of experiments and instruction at said college, and the experiment station connected therewith, one thousand six hundred acres of vacant, unoccupied, unentered, and nonmineral land, or so much thereof as the state board of agriculture may select and designate, upon the payment therefor of the sum of one dollar and twenty-five cents per acre.

Public lands.
Granted to Colorado
for State Agricultural
College.

SEC. 2. That said land shall be selected by said state board of agriculture from any vacant, unoccupied, and unentered, nonmineral public land in township seven north, ranges seventy, seventy-one, seventy-two, seventy-three, and seventy-four west, of the sixth principal meridian, in the county of Larimer, State of Colorado, and the tracts so selected shall not contain less than forty nor more than one hundred and sixty acres each.

Selection.

Approved, June 25, 1910.

CHAP. 421.—An Act To authorize the President of the United States to make withdrawals of public lands in certain cases.

June 25, 1910.
[H. R. 24070.]

[Public, No. 303.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States including the District of Alaska and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress.

Public lands.
Temporary with-
drawals by President
for power sites, irriga-
tion, etc., authorized.

SEC. 2. That all lands withdrawn under the provisions of this Act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to minerals other than coal, oil, gas, and phosphates: *Provided*, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work: *And provided further*, That this Act shall not be construed as a recognition,

Mining rights con-
tinued.

Exceptions.

Provisos.
Rights of bona fide
oil or gas claimants.

Status of prior
claims.

Homestead, etc., settlements excepted.

Restriction on new forest reserves.

Report of withdrawals to Congress.

abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this Act: *And provided further*, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this Act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: *And provided further*, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by Act of Congress.

SEC. 3. That the Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals.

Approved, June 25, 1910.

June 25, 1910.
[H. R. 24149.]

[Public, No. 304.]

Alaska.
Miner's labor lien.
Persons entitled.

Preference of lien.

Proviso.
Prior valid deeds,
etc., not affected.

Notice to be filed.

Form.

CHAP. 422.—An Act To create, establish, and enforce a miner's labor lien in the Territory of Alaska, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every miner or other laborer who shall labor in or upon any mine or mining ground for another in the Territory of Alaska in digging, thawing, conveying, hoisting, piling, cleaning up, or any other kind of work in producing any mineral-bearing sands, gravels, earth, or rock, gold or gold dust, or other minerals, or shall aid or assist therein by his labor as cook, engineer, fireman, or in cutting and delivering wood used in said work, or in work in any like capacity in producing the dump, shall, where his labor directly aided in such production, have a lien upon the dump or mass of mineral-bearing sands, gravels, earth, or rocks, and all gold and gold dust, or other minerals therein, and all gold and gold dust extracted therefrom, for the full amount of wages for all the time which he was so employed as such laborer in producing the said dump, within one year next preceding his ceasing to labor thereon; and to the extent of the labor of the said miner or other laborer actually employed or expended thereon, within one year next prior to ceasing to labor thereon, the said lien shall be prior to and preferred over any deed, mortgage, bill of sale, attachment, conveyance, or other claim, whether the same was made or given prior to such labor or not: *Provided*, That this preference shall not apply to any such deed, mortgage, bill of sale, attachment, conveyance, or other claim given in good faith and for value prior to the approval of this Act.

SEC. 2. That every laborer, within ninety days after the completion of the performance of the work or labor mentioned in the foregoing section who shall claim the benefit thereof, must, personally or by some other person for him, file for record in the recording precinct where the labor was performed a claim of lien containing a statement of his demand under oath, substantially in the following form:

NOTICE OF LABORER'S LIEN.

Territory of Alaska, _____ precinct, ss:

_____, claimant, against _____, defendant.

Notice is hereby given that _____, claimant, claims a lien upon (describing the dump or mass of mineral-bearing sands, gravels, earth, or rock, and its location with reasonable certainty) in the _____

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