

RECEIVED

DEC 23 2003

Department of Water Resources

MICHAEL J. VAN ZANDT
CRAIG A. PRIDGEN
ELIZABETH P. EWENS
McQUAID BEDFORD & VAN ZANDT LLP
221 Main Street, 16th Floor
San Francisco, California 94105
Telephone: (415) 905-0200
Facsimile: (415) 905-0202

Roger D. Ling
LING ROBINSON & WALKER
P.O. Box 396
Rupert, ID 83350

Attorneys for LU Ranching

**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

**LU RANCHING COMPANY'S
RESPONSE TO IDWR'S
SUPPLEMENTAL REPORT**

LU Ranching Company ("LU Ranching") and the United States each filed a Motion to Alter or Amend the Special Master's Report and Recommendation issued in the above captioned case. LU Ranching's Motion to Alter or Amend was specifically limited to addressing proposed corrections to legal descriptions contained in the Recommended Partial Decrees, or "technical issues." LU Ranching did not, and does not, object to the priority date recommended by the Court nor does LU Ranching contest other substantive aspects of the Court's ruling. For its part, the United States also filed a Motion to Alter or Amend on both technical and substantive issues. In reference to the technical issues, both parties submitted proposed changes to the Court's Recommended Partial Decrees and specifically identified proposed changes to the legal descriptions contained therein. *See* 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; *see*

1 also LU Ranching's Reply Memorandum in Support of LU Ranching's Motion to Alter or Amend
2 the Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law;
3 United States Bureau of Land Management's Proposed Amended Special Master's Report and
4 Recommendation.^{1/}

5 In a hearing held on July 31, 2003, the Court requested written input from the IDWR on the
6 technical issues raised by the parties. Accordingly, on December 4, 2003, the IDWR filed its Report
7 to the SRBA District Court.^{2/} Per the Court's verbal order on July 31, 2003, and the Court's written
8 Order issued November, 13, 2003, LU Ranching submits this Response to the IDWR Report.

9 55-10288B

10 LU Ranching disagrees with the IDWR's comments with respect to source.

11 The IDWR took no position with respect to the addition of T07S R06W S35 SENE. This
12 reach should be included, the two additional points of diversion as recommended by the IDWR in
13 its supplemental report should be added, and LU Ranching's suggested language, previously
14 submitted, that the use of water within T07S R06W S35 SENE is limited to the South Mountain
15 Allotment, should be added to further clarify this right.

16 LU Ranching agrees with the IDWR that the BLM's notations concerning beginning and
17 ending points (B1, E1, etc) are not necessary to define this, or any other water right, discussed
18 herein.

19 In addition to the above, in further response to the IDWR's Supplemental Director's Report,
20 LU Ranching refers the Court to LU Ranching's Motion to Alter or Amend, Memorandum in
21 Support of LU Ranching's Motion to Alter or Amend, and LU Ranching's Reply Memorandum in

22
23 ^{1/} As a preliminary matter, LU Ranching notes that the IDWR apparently only
24 considered LU Ranching's Reply Memorandum in drafting its supplemental
25 recommendations. See Supplemental Director's Report, p. 2. Certainly, it is LU Ranching's
26 position that the IDWR should have considered, and the Court should consider, all briefs
submitted by the parties on these issues including not only LU Ranching's Reply Brief, but
also its Motion to Alter or Amend and Memorandum in Support of LU Ranching's Motion
to Alter or Amend.

27 ^{2/} While captioned "Supplemental Director's Report", it is LU Ranching's
28 understanding that the written comments submitted by the IDWR at issue herein were not
meant to amend or supplement the Director's Report and, specifically, were not intended to,
and do not, trigger any further objection or response period under the applicable rules.

1 Support of LU Ranching's Motion to Alter or Amend (collectively "LU Ranching's Briefs on
2 Motion to Alter or Amend) and incorporates the same by reference.

3 55-10289B

4 LU Ranching does not agree with the BLM and IDWR recommendations as to source. LU
5 Ranching does not oppose the addition of T08S R05W S28 NENW as an instream
6 beginning point.

7 LU Ranching disagrees with the IDWR's recommendation that the "beginning and ending
8 points for each draw, reach, or stream should be described on the SMRR". *See* IDWR
9 Supplemental Report, p. 4 (55-10289B). What the IDWR is suggesting is a near impossibility. The
10 draws and reaches at issue may be evident during a field investigation, but do not appear on the
11 relevant map exhibits admitted at trial. Further, the level of detail the IDWR now is purportedly
12 requesting seems to conflict with its other statements that specifically defining water rights down to
13 a 10 acre tract, as suggested by the United States, is not necessary to define the water rights. *See*
14 *e.g.* IDWR Supplemental Report, p. 8. Accordingly, in keeping with the manner in which water
15 rights have been historically reported and IDWR instructions regarding the detail with which the
16 rights should be identified and defined, no additional descriptions of these small draws and reaches
17 should be necessary to preserve the full right. Neither party will be prejudiced by that result.

18 In addition to the above, in further response to the IDWR's Supplemental Director's Report,
19 LU Ranching refers the Court to LU Ranching's Motion to Alter or Amend, Memorandum in
20 Support of LU Ranching's Motion to Alter or Amend, and LU Ranching's Reply Memorandum in
21 Support of LU Ranching's Motion to Alter or Amend, and incorporates the same by reference.

22 55-10290B

23 LU Ranching does not oppose any of the changes proposed by the United States or the
24 IDWR with respect to this water right.

25 55-10292B

26 LU Ranching disagrees with the IDWR's Supplemental Report with respect to this water
27 right. LU Ranching and BLM were in agreement regarding proposed changes. LU Ranching refers
28 the Court to LU Ranching's Motion to Alter or Amend, Memorandum in Support of LU Ranching's

1 Motion to Alter or Amend, and LU Ranching's Reply Memorandum in Support of LU Ranching's
2 Motion to Alter or Amend, and incorporates the same by reference.

3 55-10293B

4 The IDWR makes the following statement with respect to subcase 55-10293B: "BLM
5 proposes the SMRR is incorrect because the recommendation describes private land and should
6 describe public land. IDWR does not have sufficient information to determine whether this is
7 correct." See IDWR Supplemental Report, p. 6. This statement is problematic, primarily because
8 the recommended partial decree at issue describes a private right decreed to LU Ranching in subcase
9 55-10293A as evidenced by the Partial Decree entered in 55-10293A on April 30, 2001, and this is
10 information that should be fully available to the IDWR.^{3/} The recommendation for 55-10293B
11 should be amended to describe the water right on the public land at issue, conforming to the
12 evidence presented at trial, using the legal descriptions recommended by the BLM and agreed to by
13 LU Ranching. Further, the decreed rights on private land as set forth in the Partial Decree entered in
14 subcase 55-10293A should not be affected or disturbed in any way by the within proceedings.

15 In further response to the IDWR's Supplemental Director's Report, LU Ranching refers the
16 Court to LU Ranching's Motion to Alter or Amend, Memorandum in Support of LU Ranching's
17 Motion to Alter or Amend, and LU Ranching's Reply Memorandum in Support of LU Ranching's
18 Motion to Alter or Amend, and incorporates the same by reference.

19 55-10295

20 LU Ranching disagrees with the IDWR's analysis with respect to this water right. LU
21 Ranching and the BLM were in agreement with respect to the legal descriptions for this water right.
22 LU Ranching refers the Court to LU Ranching's Motion to Alter or Amend, Memorandum in
23 Support of LU Ranching's Motion to Alter or Amend, and LU Ranching's Reply Memorandum in
24 Support of LU Ranching's Motion to Alter or Amend, and incorporates the same by reference.

25
26
27 ^{3/} What likely occurred was a simple error in compiling the recommended
28 partial decrees for 55-10293B, whereby the legal descriptions for 55-10293A were
inadvertently inserted in the recommendation for 55-10293B.

LU Ranching disagrees with the IDWR's conclusion that the BLM's proposed changes to the point of diversion are correct and specifically disagrees with the proposed changes to the descriptions of the points of diversion as proposed by the United States.

The IDWR declined to offer an opinion regarding the addition T05S R06W S23 NWNE as a place of use in order to conform to the evidence presented at trial. This quarter quarter section should have been recommended to conform to the evidence presented at trial. For resolution of this issue, and other matters at issue with respect to this right, LU Ranching refers the Court to LU Ranching's Motion to Alter or Amend, Memorandum in Support of LU Ranching's Motion to Alter or Amend, and LU Ranching's Reply Memorandum in Support of LU Ranching's Motion to Alter or Amend, and incorporates the same by reference.

55-10297B

LU Ranching disagrees with the IDWR's conclusion that the BLM's proposed changes are correct as to source.

The IDWR offered no opinion regarding the proposed elimination of certain points of diversion, claimed by the BLM to lie outside the BLM's Cow Creek allotment. LU Ranching does not agree to the changes to the descriptions of the points of diversion as proposed by the United States and notes the IDWR's agreement with LU Ranching's position that if the SMRR correctly identified T05S R06W S13 SWSW as a point of diversion, it should also be identified and decreed as a corresponding place of use.

LU Ranching disagrees with the IDWR's conclusion that draws and reaches need to be described with further particularity. *See* Discussion on 55-10289B, above.

LU Ranching does not believe that T05 R06W S14 NESE and T05S R06W S23 SWNE should be eliminated as places of use.

The IDWR took no position with respect to whether T05S R06 W S24 NESW and SWSE should be decreed as either an "A" or "B" right. The validity of these rights as decreed is not at issue, the only question is whether they were properly decreed as "A" rights. LU Ranching has proposed that the water rights on these quarter-quarter sections should not be designated as either

1 "A" or "B" rights in order to clearly reflect that LU Ranching's water rights extend throughout these
2 quarter quarter sections, whether the water is within the Lowry Federal Fenced Range Allotment or
3 within the Cow Creek Allotment. Such a change in designation should not change or compromise
4 the right, and would not prejudice either party.

5 The IDWR also took no position on whether T05 R06W S13 SWSW should be
6 recommended as a place of use. For the reasons set forth in LU Ranching's Briefs on Motion to
7 Alter or Amend, this quarter quarter section should have been recommended as a place of use
8 consistent with the evidence at trial.

9 In further response to the IDWR, LU Ranching refers the Court to LU Ranching's Motion to
10 Alter or Amend, Memorandum in Support of LU Ranching's Motion to Alter or Amend, and LU
11 Ranching's Reply Memorandum in Support of LU Ranching's Motion to Alter or Amend, and
12 incorporates the same by reference, for a further discussion of this issue and other issues pertaining
13 to this subcase.

14 55-10298

15 LU Ranching agrees with the IDWR that the addition of 10 acre tract information and
16 "B1, E1" notations are not necessary to further define this water right, and otherwise refers the
17 Court to LU Ranching's Motion to Alter or Amend, Memorandum in Support of LU Ranching's
18 Motion to Alter or Amend, and LU Ranching's Reply Memorandum in Support of LU Ranching's
19 Motion to Alter or Amend, and incorporates the same by reference, for a further discussion of this
20 issue and other issues pertaining to this subcase.

21 55-10299B

22 LU Ranching and the United States were in prior agreement regarding the proposed
23 changes to the point of diversion and place of use descriptions of this water right. LU Ranching
24 refers the Court to LU Ranching's Motion to Alter or Amend, Memorandum in Support of LU
25 Ranching's Motion to Alter or Amend, and LU Ranching's Reply Memorandum in Support of LU
26 Ranching's Motion to Alter or Amend, and incorporates the same by reference, for a further
27 discussion of this issue and other issues pertaining to this subcase.

1 55-10300

2 LU Ranching agrees with the IDWR's supplemental recommendations with respect to this
3 water right.

4 55-10301

5 LU Ranching agrees with the IDWR's supplemental recommendations with respect to this
6 water right.

7 55-10303B

8 LU Ranching disagrees with the IDWR's conclusion that the BLM's recommendations are
9 correct as to source. *See* Discussion on 55-10289B, above.

10 LU Ranching disagrees with the IDWR's recommendation to remove T09S R05W S33
11 NWNW from the place of use.

12 LU Ranching agrees with the IDWR's recommendation to add T09S R05W S28 NWSW as
13 a place of use.

14 In further response to the IDWR, LU Ranching refers the Court to LU Ranching's Motion to
15 Alter or Amend, Memorandum in Support of LU Ranching's Motion to Alter or Amend, and LU
16 Ranching's Reply Memorandum in Support of LU Ranching's Motion to Alter or Amend, and
17 incorporates the same by reference.

18 **CONCLUSION**

19 The matters at issue herein are limited to the technical issues relating to legal descriptions
20 contained in the recommended partial decrees. Correct resolution of the technical issues is
21 important to ensure the accuracy of the rights which will be decreed. Accordingly, LU Ranching
22 urges the Court to consider not only the recent submission by the IDWR, but all briefs filed by the
23 parties, including LU Ranching's Motion to Alter or Amend, Memorandum in Support of LU
24 Ranching's Motion to Alter or Amend, and LU Ranching's Reply Memorandum in Support of LU
25 Ranching's Motion to Alter or Amend. These briefs, in particular, further address issues raised by
26 the IDWR and also further address issues on which the IDWR declined to offer an opinion.

1 Finally, LU Ranching respectfully requests that the Court grant its Motion to Alter or Amend
2 in its entirety, and that the Court deny the United States' Motion to Alter or Amend.

3 Dated this 17 day of December, 2003.

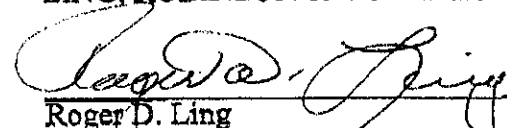
4 Respectfully submitted,

5 McQUAID, BEDFORD
6 & VAN ZANDT, LLP

7 By: 
8 Michael J. Van Zandt

9
10
11 As local counsel, having reviewed the foregoing Response to IDWR's Supplemental Report,
12 I hereby execute the same this 19th day of December, 2003.

13 LING, ROBINSON & WALKER

14 
15 Roger D. Ling
16 Attorney for LU Ranching Co.
17 Idaho State Bar No. 1018
18
19
20

21 G:\Docs\21347\001\55-10288B et al\pleadings\Response to IDWR.wpd
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on Dec 19, 2003, I served a true and correct copy of foregoing LU RANCHING'S RESPONSE TO IDWR'S SUPPLEMENTAL REPORT upon the following individuals by placing the document in the United States Mail, postage paid, and addressed as follows:

U.S. Department of Justice
General Litigation Section
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

Larry Brown
Attorney, U.S. Dept. of Justice
General Litigation Section
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83720-0098

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

