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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 RESPONSE TO</b>       |
|                | ) | <b>IDWR'S SUPPLEMENTAL</b>             |
|                | ) | <b>DIRECTOR'S REPORT</b>               |

**I. INTRODUCTION**

On December 4, 2003, the Idaho Department of Water Resources (hereinafter "IDWR") filed a Supplemental Director's Report in the above-captioned subcases. The purpose of this Memorandum is to respond to IDWR's report.

## II. RESPONSE

### A. 55-10288B

The United States Department of the Interior, Bureau of Land Management (hereinafter "BLM") agrees with IDWR's statement that the Special Master's Report and Recommendation (hereinafter "SMRR") for 55-10288B should be amended so that the source reads "Unnamed Stream" tributary to "Lone Tree Creek," and "Lone Tree Creek" tributary to "Jordan Creek."

The BLM does not agree that T. 07 S., R 06 W., Section 35, SENE could be retained as a place of use (hereinafter "POU"). This POU is, without a doubt, outside the South Mountain Grazing Allotment. Trial Transcript, pp. 58-59 and 324-325; Trial Exhibit 20. The POU should be deleted from the SMRR. Because the POU should be deleted, the two additional points of diversion (hereinafter "POD") suggested by IDWR should not be added to the SMRR. Since this POU should be deleted from the SMRR, the BLM does not agree with IDWR's statement that it would be acceptable to include a remark that would confine water use to the South Mountain Allotment.

The BLM holds no opinion on IDWR's statement regarding whether or not the beginning and ending points of instream PODs should have reference notations (B1, E1, etc.) for identification purposes.<sup>1/</sup>

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<sup>1/</sup> IDWR's statement regarding 10-acre tract descriptions of PODs is inconsistent with IDWR's instructions to claimants for completing Notices of Claim, Form No. 42-1409(2)a. The instructions state, "describe the location of the point of diversion to the 40-acre tract or government lot within a section. If possible, describe the point of diversion to the 10-acre tract within the section."

B. 55-10289B

The BLM agrees with IDWR's statement that the source described as "Unnamed Streams" tributary to "Juniper Creek" should be deleted from the SMRR.

The BLM agrees with IDWR's statement that T. 08 S., R. 05 W., Section 28, NENW should be added to the SMRR's list of beginning point PODs.

The BLM holds no opinion on IDWR's statement regarding whether or not the beginning and ending points of instream PODs should have reference notations (B1, E1, etc.) for identification purposes.

The BLM agrees with IDWR's statement that the SMRR should not include as sources the unnamed streams, draws, and reaches flowing into Juniper Creek.

C. 55-10290B

The BLM agrees with IDWR's statement that the sources described as "Unnamed Streams" tributary to "Buck Creek" and "Buck Creek" tributary to "Juniper Creek" should be deleted from the SMRR.

The BLM agrees with IDWR's statement that two PODs, as suggested by the BLM in its proposed SMRR, should be added to the SMRR.

The BLM holds no opinion on IDWR's statement regarding whether or not the beginning and ending points of instream PODs should have reference notations (B1, E1, etc.) for identification purposes.

D. 55-10292B

The BLM agrees with IDWR's Supplemental Director's Report regarding the PODs, except BLM does not agree with IDWR's statement that T. 08 S., R. 05 W., Section 35, NESW

and Lot 2 (SWSE) should not be added as PODs. These legal descriptions should be added to the list of PODs in the SMRR for 55-10292B, as described in BLM's proposed SMRR, to exclude the private POU that is described in the partial decree for 55-10292A as T. 08 S., R. 05 W., Section 35, NWSE.

The BLM holds no opinion on IDWR's statement regarding whether or not the beginning and ending points of instream PODs should have reference notations (B1, E1, etc.) for identification purposes.

E. 55-10293B

The BLM holds no opinion on IDWR's statement regarding whether there is sufficient information to recommend amendment of the SMRR. The BLM suggests that there is sufficient information in the Director's Report for 55-10293 and in Trial Exhibit 20.

F. 55-10295

The BLM does not agree with IDWR's statement regarding BLM's suggestion that two PODs should be added to the claim. According to BLM's GIS data, there are two stream segments that should be described by the PODs. See Trial Exhibit 21.

The BLM holds no opinion on IDWR's statement regarding whether or not the beginning and ending points of instream PODs should have reference notations (B1, E1, etc.) for identification purposes.

G. 55-10296

The BLM agrees with IDWR's statement that two PODs should be added to the SMRR, as suggested by BLM's proposed SMRR.

The BLM holds no opinion on IDWR's statement regarding whether or not the beginning and ending points of instream PODs should have reference notations (B1, E1, etc.) for identification purposes.

The BLM disagrees with IDWR's statement that T. 05 S., R. 06 W., Section 23, NWNE could be added to the SMRR's list of POUs. LU Ranching Company (hereinafter "LU") did not claim the POU in its original Notice of Claim. IDWR did not recommend the POU. LU did not file a motion for leave to file an amended notice of claim to add the POU to the original claim. The time to amend claims expired on August 20, 2000. *See* Trial Scheduling Order dated June 29, 2000. LU's attempt to amend its claim by suggesting that the POU should be added to the SMRR's list of POUs is, in reality, an untimely motion for leave to file an amended notice of claim.

#### H. 55-10297B

The BLM agrees with IDWR's statement that the SMRR for 55-10297B should be amended to delete the source designated as "Unnamed Stream" tributary to "Jordan Creek."

The BLM does not agree with IDWR's statement regarding the deletion of the PODs that lie outside the boundary of the Cow Creek Allotment. The PODs are, without a doubt, outside the boundary of the Cow Creek Allotment and should be deleted from the SMRR. *See* Trial Exhibit 20.

The BLM agrees with IDWR's statement that the source should not describe the unclaimed draws and reaches flowing into Jordan Creek.

The BLM agrees with IDWR's statement that the POUs described in the SMRR as T. 05 S., R. 06 W., Section 14, NESE and T. 05 S., R. 06 W., Section 23, SWNE should be deleted from the SMRR.

The BLM does not agree with IDWR's statement regarding the descriptions of public land on 55-10297A. The POUs designated as T.05S., R.06W., Section 24, NESW and SWSE are public land, but should be retained on the partial decree for 55-10297A.

I. 55-10298

Although IDWR at one time required 10 acre legal descriptions of PODs, the BLM holds no opinion on IDWR's statement that 10 acre tract descriptions should not be added to the SMRR, or IDWR's statement on whether or not the beginning and ending points of instream PODs should have reference notations (B1, E1, etc.) for identification purposes.

The BLM agrees with IDWR's statement regarding the addition of a remark to the SMRR to clarify that the water is limited to use within the Cow Creek Allotment.

J. 55-10299B

Although IDWR at one time required 10 acre legal descriptions of PODs, the BLM holds no opinion on IDWR's statement that 10 acre tract descriptions should not be added to the SMRR, or IDWR's statement on whether or not the beginning and ending points of instream PODs should have reference notations (B1, E1, etc.) for identification purposes.

The BLM agrees with IDWR's statement regarding the legal descriptions of the PODs, as suggested by the BLM in its proposed SMRR, except the BLM is informed and believes that T. 04 S., R. 05 W., Section 32, SENE should be T. 04 S., R. 05 W., Section 32, SWNE. See BLM's proposed SMRR.

K. 55-10300

The BLM agrees with IDWR's statement that the SMRR should add the PODs, as suggested by the BLM in its proposed SMRR.

Although IDWR at one time required 10 acre legal descriptions of PODs, the BLM holds no opinion on IDWR's statement that 10 acre tract descriptions should not be added to the SMRR, or IDWR's statement on whether or not the beginning and ending points of instream PODs should have reference notations (B1, E1, etc.) for identification purposes.

L. 55-10301B

The BLM does not agree with IDWR's statement that the BLM does not dispute the SMRR for this water right. The BLM argued that this water right claim should be recommended as disallowed. *See* 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, Subcase Number 55-10288B et al., p. 3.

M. 55-10303B

The BLM agrees with IDWR's statement regarding the source. One of the source on the SMRR identified as "Unnamed Streams" tributary to "Corral Creek" should be amended to read, "Unnamed Stream" tributary to "Corral Creek," as suggested by the BLM in its proposed SMRR.

The BLM does not agree with IDWR's statement regarding T. 09 S., R. 04 W., Section 18, Lot 3 (NWSW). This tract lies outside of the Cliffs Allotment and should be deleted from the SMRR's list of PODs and POU. *See* Exhibit 20. Furthermore, this POU, and corresponding PODs, would more properly be described in the SMRR for 55-10293B, as suggested by the BLM in its proposed SMRR.

The BLM agrees with IDWR's statement that T. 09 S., R. 05 W., Section 33, NWNW should be deleted from the SMRR's list of POU's.

The BLM does not agree with IDWR's statement regarding T. 09 S., R. 05 W., Section 28, NWSW. This POU was never claimed or reported. LU did not amend this claim. The time to amend this claim expired on August 20, 2000. *See* Trial Scheduling Order dated June 29, 2000. LU's attempt to amend its claim by suggesting that the POU should be added to the SMRR's list of POU's is, in reality, an untimely motion for leave to file an amended notice of claim.

The BLM agrees with IDWR's statement regarding adding PODs to the SMRR, as suggested by BLM's proposed SMRR.

Although IDWR at one time required 10 acre legal descriptions of PODs, the BLM holds no opinion on IDWR's statement that 10 acre tract descriptions should not be added to the SMRR, or IDWR's statement on whether or not the beginning and ending points of instream PODs should have reference notations (B1, E1, etc.) for identification purposes.

N. 55-13451

The BLM agrees with IDWR's statement in that the BLM does not dispute the SMRR's description of the source, the POD, and the POU. However, the BLM does dispute the SMRR's description of the priority date. *See* United States' Memorandum in Support of Motion to Alter or Amend the Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law; Subcase Numbers 55-10288B, et al., pp. 7-15.

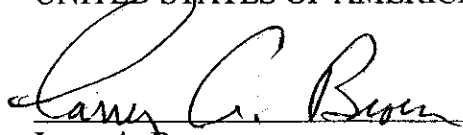
### III. CONCLUSION

For the above stated reasons and for the reasons stated in the United States' Memorandum in Reply to LU's Opposition to the United States' Motion to Alter or Amend the Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law, Subcases 55-10288B et al., the United States' Memorandum in Opposition of LU Ranching's Motion to Alter or Amend the Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law, Subcases 55-10288B et al., and the United States' Memorandum in Support of Motion to Alter or Amend the Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law; Subcase Numbers 55-10288B, et al., the United States Motion to Alter or Amend should be granted.

DATED this 18<sup>th</sup> day of December, 2003.

Respectfully submitted,

UNITED STATES OF AMERICA

  
\_\_\_\_\_  
Larry A. Brown  
Of Attorneys for the United States

**CERTIFICATE OF SERVICE**

I certify that on Dec. 18, 2003, I served a true and correct copy of foregoing **MEMORANDUM IN RESPONSE TO IDWR'S SUPPLEMENTAL DIRECTOR'S REPORT, SUBCASES 55-10288B et al.** upon the following individuals by placing the document in the United States Mail in Washington D.C., postage paid, and addressed as follows:

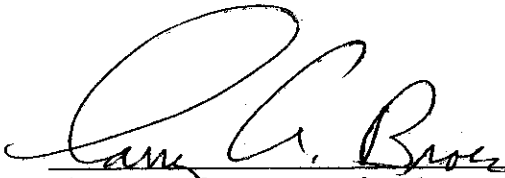
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