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DEPARTMENT OF
WATER RESOURCES

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10

11 **IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE**
12 **STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

13 In Re SRBA) Subcase Numbers 55-10288B, 55-10289B,
14) 55-10290B, 55-10292B, 55-10293B,
15 Case No. 39576) 55-10295, 55-10296, 55-10297B,
16) 55-10298, 55-10299B, 55-10300,
17) 55-10301B, 55-10303B, and 55-13451
18) **LU RANCHING COMPANY, INC.'S**
19) **MEMORANDUM IN OPPOSITION TO**
20) **UNITED STATES' CHALLENGE OF**
21) **THE SPECIAL MASTER'S ORDER**
22) **ON MOTION TO ALTER OR AMEND**
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TABLE OF CONTENTS

I. INTRODUCTION	1
II. STANDARD OF REVIEW	1
III. STATEMENT OF THE CASE	2
IV. ARGUMENT	6
A. THE SPECIAL MASTER CORRECTLY STATED AND APPLIED IDAHO LAW OF PRIOR APPROPRIATION TO THE FACTS OF THIS CASE	6
B. THE SPECIAL MASTER CORRECTLY CONCLUDED THAT THE FACT THAT LU RANCHING'S PREDECESSORS IN INTEREST GRAZED AND WATERED THEIR CATTLE IN COMMON DOES NOT DEFEAT OR DIMINISH THE WATER RIGHTS.	11
C. THE FACT THAT THE PRIVATE WATER RIGHTS AT ISSUE ARE LOCATED ON WHAT ARE NOW FEDERALLY ADMINISTERED GRAZING ALLOTMENTS DOES NOT DEFEAT OR DIMINISH THESE RIGHTS, NOR DOES IT RENDER THEM INCAPABLE OF TRANSFER AS APPURTENANCES.	14
1. Under the Law of the Case, Stockwater Rights on Federal Land Can Be Transferred as Appurtenances to the Base Ranch Properties.	14
2. Federal Law Recognizes and Protects Water Rights Acquired on Public Lands.	16
D. THE AMENDMENTS TO THE WATER RIGHT DESCRIPTIONS SUGGESTED BY THE UNITED STATES ARE NOT SUPPORTED BY THE EVIDENCE. ..	18
1. 55-10288B	18
2. 55-10288B	19
3. 55-10296	19
4. 55-10297B	20
5. 55-10303B	21
V. CONCLUSION	22

TABLE OF AUTHORITIES

Cases

<i>Basinger v. Taylor</i> , 164 P. 522, 524-25 (Idaho 1917)	9
<i>Broder v. Water and Mining Company</i> , 101 U.S. 274 (1879)	16
<i>Clear Springs Foods, Inc. v. Clear Lakes Trout Company</i> , 136 Idaho 761 (2002)	13
<i>Cottonwood Water and Light Co. v. St. Michael's Monastery</i> , 29 Idaho 761 (1916)	7
<i>Crow v. Carlson</i> , 107 Idaho 461 (1984)	9, 12, 15
<i>Hage v. United States</i> , 51 Fed. Cl. 570 (2002)	7
<i>Hidden Springs Trout Ranch, Inc. v. Hagerman Water Users, Inc.</i> , 619 P.2d 1130, 1132-1133 (Idaho 1980)	7
<i>Higley v. Woodard</i> , 861 P.2d 101, 104 (Ct.App. 1993)	1
<i>Hunter v. United States</i> , 388 F.2d 148, 153 (S.D. Cal. 1967)	7
<i>In Re SRBA 39576 (Subcases 55-10288B et al.) Memorandum Decision and Order on Challenge</i> , Judge Wood, April 25, 2000, p. 18	9, 10, 13
<i>In Re SRBA Case 39576 (Minidoka National Wildlife Refuge v. United States)</i> , 996 P.2d 806, 811 (Idaho 2000)	7, 12
<i>In Re SRBA Case No. 39576, Subcase 65-05663B (Wood v. Troutt)</i> , Memorandum Decision and Order on Challenge and Order of Partial Decree ("Wood v. Troutt")	1, 11
<i>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</i> , Fifth Judicial District of the State of Nevada in and for the County of Nye, Case No. CV 14906, Findings of Fact and Conclusions of Law (October 8, 1999) ("Monitor Valley Decision");	15
<i>R.T. Nahas Co. v. Hulet</i> , 114 Idaho 23, 26 (1988).	12
<i>Rodriguez v. Oakley Valley Stone, Inc.</i> , 816 P.2d 326, 333 (1991)	1
<i>Smith-Nieland v. Reed</i> , 231 P. 102, 103 (Idaho 1924)	17
<i>Stepcoe Livestock Co. v. Gulley</i> , 295 P. 772, 775-776 (Nev. 1931)	7, 15
<i>Stevenson v. Steele</i> , 93 Idaho 4, 11 (1969)	7
<i>Sun Valley Ranches, Inc. v. Prairie Power Cooperative, Inc.</i> , 856 P.2d 1292, 1296 (1993)	13
<i>U.S. v. S. Volpe & Co.</i> , 359 F.2d 132, 134 (1 st Cir. 1966)	1, 11
<i>Village of Peck v. Denison</i> , 92 Idaho 747, 749-750 (Idaho 1969)	12
<i>Zolzzi v. Jackson</i> , 297 P.2d 1081 (Nevada 1956)	9

1	Statutes	
2	42 U.S.C. § 1752(h)	17
3	43 U.S.C. 315f	14
4	Taylor Grazing Act. 43 U.S.C. 315b.	4, 5, 9, 16, 17, 18
5	(Mining) Act of July 26, 1866, C. 262, Section 9, 14 Stat. 251, 43 U.S.C. § 661(a).	16
6	Federal Lands Policy and Management Act (FLMPA) of 1976, 43 U.S.C. § 1701 et seq.	17
7	I.C. § 42-106	12
8	I.R.C.P. 53(e)(2)	1

9	Other	
10	<i>Water Rights Laws in the Nineteen Western States</i> , Wells A. Hutchins, J.D., Vol. 1, p. 485.	9

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I. INTRODUCTION

LU Ranching Company, Inc. ("LU Ranching"), by and through its attorneys, respectfully submits this Memorandum in Opposition to United States' Challenge of the Special Master's Order on Motion to Alter or Amend. At issue is whether the Special Master was correct in recommending the above captioned water rights to LU Ranching with a priority date of June 10, 1876, which represents the date that LU Ranching's earliest predecessors first appropriated the water at issue. See Special Master's Report and Recommendation (February 27, 2003) ("Report and Recommendation"); see also Order on Motion to Alter or Amend and Amended Special Master's Report and Recommendation (April 15, 2004) ("Order on Motion to Alter or Amend").

II. STANDARD OF REVIEW

In Idaho, the district court is required to adopt a special master's findings of fact unless they are clearly erroneous. See *In Re SRBA Case No. 39576, Subcase 65-05663B (Wood v. Troutt)*, Memorandum Decision and Order on Challenge and Order of Partial Decree ("*Wood v. Troutt*"), citing I.R.C.P. 53(e)(2), *Rodriguez v. Oakley Valley Stone, Inc.*, 816 P.2d 326, 333 (1991); *Higley v. Woodard*, 861 P.2d 101, 104 (Ct.App. 1993). Specifically, the standard by which the district court is to review the special master's findings of fact has been outlined as follows:

A special master's findings, which a district court adopts in a non-jury action, are considered to be the findings of the district court. Consequently, a district court's standard for reviewing a special master's findings of fact is to determine whether they are supported by substantial, although perhaps conflicting, evidence. In other words, a referring district court reviews a special master's findings of fact under I.R.C.P. 53(e)(2) just as an appellate court reviews a district court's findings of fact in a non-jury action, i.e. using the "clearly erroneous" standard. An appellate court, in reviewing findings of fact, does not consider and weigh the evidence *de novo*. The mere fact that on the same evidence an appellate court might have reached a different result does not justify it in setting a district court's findings aside.

Id. at p. 6 (*internal citations omitted*).

Such deference to the special master's findings of fact is particularly appropriate given the special master's opportunity to fully evaluate the evidence and the credibility of witnesses. *Id.* at p. 7, citing *U.S. v. S. Volpe & Co.*, 359 F.2d 132, 134 (1st Cir. 1966). The special master's inferences and conclusions drawn from testimonial evidence, as well as the special master's inferences

1 regarding documentary evidence, are entitled to deference. *Id.* (“inferences from documentary
2 evidence are as much a prerogative of the finder of fact as inferences as to the credibility of
3 witnesses”). A reviewing court is charged with reviewing the evidence in the light most favorable
4 to the prevailing party. *Id.*

5 On matters involving the special master’s conclusions of law, “a special master’s
6 conclusions of law are not binding upon a district court, although they are expected to be
7 persuasive.” *Id.* Although freely reviewable by the district court, a special master’s conclusions of
8 law will be upheld by the district court provided the special master’s conclusions of law correctly
9 state the law. *Id.*

10 III. STATEMENT OF THE CASE

11 LU Ranching’s predecessors in interest were using open federal land and appropriating water
12 to a beneficial use, stockwatering, in the areas at issue since at least 1876.^{1/} Both documentary and
13 testimonial evidence was offered at trial to support the Special Master’s conclusions regarding the
14 initial appropriations and subsequent transfers of these rights as appurtenances to the base ranch
15 properties owned by LU Ranching and its predecessors in interest.

16 The original appropriations are traced back to LU Ranching’s original predecessor in
17 interest, Ezra Mills. LU Ranching entered into evidence an uninterrupted chain of title dating to the
18 first patent obtained by Ezra Mills. *See* Exhibit “X”: Chain of Title to LU Ranching Base Property,
19 including chart of properties, index of deeds, and 28 deeds and patents^{2/}; *see also* Exhibit “2”: LU
20 Ranching chain of title. Mr. Mills, as well as the other original patent holders, used both their
21 patented lands and surrounding unoccupied public lands and water thereon to support their
22 homesteads and their cattle. *See* Testimony of Dr. Chad Gibson, p. 386-387. As acknowledged by
23 the United States, the original patents, near areas which are now known as the South Mountain
24

25 ^{1/} Some evidence was presented that LU Ranching’s predecessors in
26 interest first engaged in cattle operations, and in conjunction therewith, grazed and watered
livestock within the area at issue as early as 1872. *See* Exhibit UU: Article.

27 ^{2/} Exhibit “X” was admitted into evidence by the Special Master, and
28 pages 1 through 9 thereof for illustrative purposes only. *See* Trial Transcript, p. 398.

1 Allotment, Cow Creek Allotment, and Cliffs Allotment, but were at the time wide open range,
2 provided for a homestead entry on 160 acres of land only. These small homesteads were
3 insufficient in and of themselves to support the operations of the original settlers. Dr. Chad Gibson
4 testified at trial as follows:

5 A. ... When you go back to homestead days when they had 160 acres, they
6 obviously had to use the land around them ... And so most of the ranches
7 have been developed as a combination of base property and outside property
8 ...

9 Q: So that your understanding would be that a homesteader with 160 acres 100
10 years ago would still only be able to graze one cow or a cow and a calf on that
11 160 acres in a year, correct?

12 A: That would be correct, yes.

13 *See* Trial Transcript, Testimony of Dr. Chad Gibson, p. 387, 389. As a practical matter, to sustain
14 the homestead, and certainly to sustain a cattle operation, use of the surrounding public range, and
15 the forage and water thereon, was absolutely necessary.

16 The original patents were issued in 1887 (Mills), 1910 (Ewings) and 1914 (Duncan). For
17 obvious reasons, the Court does not have the benefit of direct testimony from Mr. Mills, Mr. Ewings
18 or Mr. Duncan regarding their livestock operations. However, the fact that these original
19 homesteaders engaged in the livestock business and that they depended upon public lands to provide
20 forage and water can be properly inferred from the evidence presented at trial. Historic accounts of
21 the growth of the livestock industry in this area is well documented and recognized. *See* Exhibit
22 TT: Excerpts from Owyhee County Blue Book; *see also* Exhibit UU: Article from Enterprise Times;
23 Trial Transcript, Testimony of Dr. Chad Gibson, p. 391-392 (from the 1860s forward in Owyhee
24 County, the numbers of livestock increased rapidly, from a cattle population of about 30,000 head in
25 the early 1880s, expanding to upwards of 100,000 head of cattle and 150,000 sheep at the end of the
26 1880s). As testified to by Dr. Gibson, a 160 acre homestead site was sufficient only to support one
27 cow and one calf for a period of one year. *See* Trial Transcript, Testimony of Dr. Chad Gibson, p.
28 389. Out of absolute necessity, then, the original homesteaders would have turned to the public
lands for forage and water for their livestock.

Evidence that the original patent holders were engaged in the livestock industry also is

1 obtained by looking to the testimony of Mr. Thomas Skinner, who personally witnessed cattle
2 operations and, specifically, the use of forage and water by livestock belonging to some of LU
3 Ranching's predecessors in interest.^{3/} From about 1926 to the time he went to college, and in later
4 life when he returned to the area, Mr. Skinner was an eye witness to and obtained personal
5 knowledge regarding the ranching operations of LU Ranching's predecessors in interest in the areas
6 that are claimed by LU Ranching and are now at issue in this case. *See generally* Trial Transcript,
7 Testimony of Mr. Skinner, p. 461-512; *see also* Trial Transcript, Testimony of Mr. Skinner, p. 498-
8 499 (O'Keefe cattle operation), p. 500-502 (McKay cattle operation), p. 502, 504-505 (Shea cattle
9 operation), p. 502-504 (Mendieta cattle operation), p. 505-508 (Mills and Stanford cattle
10 operations), p. 508-509 (Staples and Lowry cattle operations).

11 Evidence supporting the conclusion that the water at issue herein was used for livestock
12 purposes by LU Ranching's predecessors also is found in the grazing records and evidence of
13 grazing preferences awarded to LU Ranching's predecessors in interest and later transferred,
14 through LU Ranching's chain of title, to LU Ranching. *See* Trial Exhibits A, C, D, E, F, G, H, I, M,
15 P, S, V (demonstrating BLM recommendations for preferences on federal allotments, grazing
16 permits, and transfers of grazing permits involving LU Ranching and its predecessors in interest);
17 *see also* Trial Transcript, Testimony of Dr. Chad Gibson, p. 370-384.

18 As testified to by Dr. Gibson, in order to be awarded a grazing preference in a grazing
19 adjudication, LU Ranching's predecessors in interest would have had to demonstrate both prior use
20 for livestock operations and commensurate base property. The prior-use rule that was finally
21 adopted stated that you had to have grazed in the area for two consecutive years, or three years not
22 consecutively out of the previous five years, prior to the enactment of the Taylor Grazing Act in
23 1934. *See* Trial Transcript, Testimony of Dr. Chad Gibson, p. 389-391. Accordingly, evidence of
24 the grazing preferences adjudicated by the BLM and awarded to LU Ranching and its predecessors
25 in interest under the Taylor Grazing Act is evidence that LU Ranching's predecessors grazed, and
26

27 ^{3/} Mr. Skinner was born on August 16, 1917. *See* Trial Transcript,
28 Testimony of Mr. Thomas Skinner, p. 459.

1 therefore also appropriated water for stockwatering, in the claimed places of use prior to the
2 enactment of the Taylor Grazing Act in 1934. *See* Trial Transcript, Testimony of Dr. Chad Gibson,
3 p. 390 (“Q: So that where you see in one of these adjudication records Galo Mendieta’s name
4 appearing in connection with a particular allotment, would you infer from that either Mr. Mendieta
5 or someone he bought a ranch from had previously grazed in that area? A: Yes.”)

6 The evidence also supports the conclusion that the stockwater rights acquired by LU
7 Ranching’s predecessors in interest were transferred as appurtenances with the base ranch
8 properties. First, with only one exception, each of the deeds transferring the base ranch properties
9 contained language transferring all appurtenances, which would include the stockwater rights, with
10 the base ranch property.^{4/} *See* Exhibit “X”: Chain of Title to LU Ranching Base Property,
11 including chart of properties, index of deeds, and 28 deeds and patents; *see also* Exhibit “2”: LU
12 Ranching chain of title. Second, and most importantly, none of LU Ranching’s predecessors in
13 interest reserved water rights in the deeds transferring the base ranch properties, as they would have
14 been required to under Idaho law in order to retain the water rights. Third, LU Ranching’s
15 predecessors in interests acquired and transferred grazing permits concurrently with the transfer of
16 the base ranch properties, which evidences an intent to transfer the ranch and the ranching
17 operations as a whole, including rights to forage and water rights on the allotments. *See* Trial
18 Exhibits A, C, D, E, F, G, H, I, M, P, S, V (demonstrating BLM recommendations for preferences
19 on federal allotments, grazing permits, and transfers of grazing permits involving LU Ranching and
20 its predecessors in interest); *see also* Trial Transcript, Testimony of Dr. Chad Gibson, p. 370-384.

21
22 ^{4/} While the deed conveying land comprising of the Duncan and Mills
23 homesteads from William and Nita Lowry to LU Ranching does not explicitly contain a
24 clause conveying appurtenances, the direct testimony from Mr. William Lowry is that it was
25 his intent to convey the water rights as appurtenances to the base ranch property. *See*
26 Testimony of William A. Lowry, p. 284-296. This intent is further supported by the fact that
27 Mr. Lowry’s livestock and LU Ranching’s livestock continuously used lands within the
28 South Mountain and Cow Creek Allotments for both forage and water, and the BLM
recognized the transfer of the grazing preference right for these allotments from Mills to the
Lowrys. The Special Master specifically found that Mr. Lowry intended to convey water
rights relating to the grazing of cattle on the federal land and that no evidence was offered by
the United States to contradict this direct evidence of intent. Accordingly, Mr. Lowry
transferred any rights he had relating to the grazing on federal land. *See* Special Master’s
Report and Recommendations, p. 8.

1 Fourth, evidence was produced that the base ranch properties would have little or no economic
2 value without the water rights at issue because the water rights were necessary to support the
3 livestock or ranching operation as a whole. *See* Trial Transcript, Testimony of Dr. Chad Gibson, p.
4 386-387. Finally, the un rebutted direct testimony of one of LU Ranching's predecessors in interest,
5 Mr. William Lowry, was that it was his intent to transfer the water rights on the allotments with the
6 base ranch property. *See* Trial Transcript, Testimony of William Lowry, p. 296.

7 The Special Master held that the evidence presented at trial supported the conclusion that LU
8 Ranching's predecessors in interest were using open federal land and the water thereon from the
9 dates that the original patent holders occupied and commenced working on their homesteads and,
10 therefore, LU Ranching is entitled to a priority date of June 10, 1876 which represents the date their
11 earliest predecessors used the water at issue in common with the others. *See* Special Master's
12 Report and Recommendation, p. 10-11. This conclusion is supported by the totality of the evidence
13 and the applicable law and is entitled to deference by reviewing courts.

14 IV. ARGUMENT

15 A. THE SPECIAL MASTER CORRECTLY STATED AND APPLIED IDAHO 16 LAW OF PRIOR APPROPRIATION TO THE FACTS OF THIS CASE

17 The vast majority of the United States' challenge is focused on the Special Master's findings
18 of fact. However, interspersed within the United States' arguments regarding the Special Master's
19 findings of fact are arguments regarding the law applied to this case. Among the arguments raised
20 by the United States is the contention that the Special Master misstated the law with respect to the
21 prior appropriation doctrine. *See* United States' Memorandum, p. 31. However, the law of prior
22 appropriation, as stated and applied by the Special Master is correct. Notwithstanding, the United
23 States would have this court adopt a view of western water law that reverses over 150 years of legal
24 precedent, regarding western water right and water law.

25 The State of Idaho is a prior appropriation state, and the right to divert and use
26 unappropriated water of any natural stream is guaranteed by the Idaho State Constitution. *See*
27 Const. Art. 15 § 3. "Constitutional", "beneficial use" or "appropriative" water rights, such as those

1 at issue in the present case, are based on this Constitutional guarantee. Such water rights are
2 acquired and given priority based on the date the water is first diverted and put to beneficial use.
3 *See* Const. Art. 15, § 3; *see also In Re SRBA Case 39576 (Minidoka National Wildlife Refuge v.*
4 *United States)*, 996 P.2d 806, 811 (Idaho 2000). As recognized by the United States,^{5/} the elements
5 of an appropriative or beneficial use water rights are an intent to divert water for a beneficial use.
6 *See Hidden Springs Trout Ranch, Inc. v. Hagerman Water Users, Inc.*, 619 P.2d 1130, 1132-1133
7 (Idaho 1980).

8 For purposes of stockwatering, the intent to appropriate is evidenced by diversion of water
9 from its natural source or by watering livestock directly from the source. *See Hage v. United States*,
10 51 Fed. Cl. 570 (2002), *citing Hunter v. United States*, 388 F.2d 148, 153 (S.D. Cal. 1967). In
11 Idaho, the conclusion that the watering of livestock results in a beneficial use water right entitled to
12 full protection under Idaho law is well established and is consistent with similar interpretations in
13 other western prior appropriation states. *See Stevenson v. Steele*, 93 Idaho 4, 11 (1969), *citing*
14 *Cottonwood Water and Light Co. v. St. Michael's Monastery*, 29 Idaho 761 (1916) [the “decree
15 distributed water among various appropriators who had claimed water for beneficial purposes such
16 as irrigation, domestic use and watering livestock ... under both the decree and the law of (Idaho)
17 respondents’ appropriation of Warm Springs water for winter watering of stock is entitled to the
18 protection afforded by law”]; *see also Stepcoe Livestock Co. v. Gulley*, 295 P. 772, 775-776 (Nev.
19 1931) (mere turning of livestock upon the public domain carrying streams held to be an
20 appropriation of water for stockwatering purposes); *Hage v. United States*, 51 Fed. Cl. 570 (2002),
21 *citing Hunter v. United States*, 388 F.2d 148, 153 (S.D. Cal. 1967).

22 In the present case, the Court’s recommended priority date of 1876, based upon the date of
23 first appropriation of the water, is fully supported by the evidence. LU Ranching entered into
24 evidence an uninterrupted chain of title dating back to the first patent obtained by Ezra Mills. *See*
25 Exhibit “X”: Chain of Title to LU Ranching Base Property located in Idaho, including chart of
26 properties, index of deeds, and 28 deeds and patents. There is evidence that the original settlers,

27 ^{5/}

See United States’ Memorandum, p. 32

1 including Ezra Mills, were engaged in the livestock business at least as of the date they entered upon
2 their homesteads and certainly by the time their properties were patented to them by the United
3 States. Further, there was evidence presented that the original settlers, LU Ranching's direct
4 predecessors in interest, used both their patented lands and the surrounding unoccupied public lands
5 and the water thereon to support the cattle. *See* Trial Testimony of Dr. Chad Gibson, p. 386-387.
6 This is consistent with evidence of historic use of the range land and the water thereon in and
7 around Owhyee County. *See* Testimony of Mr. Lowry, p. 424-447; *see also* Exhibit TT: Excerpts
8 from the Owyhee County Blue Book.

9 Despite the above, the United States argues repeatedly that there is no evidence that many of
10 LU Ranching's predecessors were engaged in the livestock business or that they used the water at
11 issue for stockwatering, and the surrounding areas for forage. Such arguments are disingenuous.
12 Such arguments ignore the evidence of historic use provided by Dr. Chad Gibson, Mr. Thomas
13 Skinner, Mr. William Lowry, and Mr. Timothy Lowry, and also ignore documentary evidence of
14 historic use for livestock operations presented at trial. While it is true that it is not possible to
15 secure the direct testimony of Mr. Ezra Mills and the other original patent holders, as they are long
16 deceased, direct testimony was offered by Mr. Thomas Skinner who witnessed, first hand, the use of
17 the lands and waters at issue by LU Ranching's predecessors in interest for livestock operations
18 dating back to the 1920s. *See generally* Trial Transcript, Testimony of Mr. Skinner, p. 461-512; *see*
19 *also* Trial Transcript, Testimony of Mr. Skinner, p. 498-499 (O'Keefe cattle operation), p. 500-502
20 (McKay cattle operation), p. 502, 504-505 (Shea cattle operation), p. 502-504 (Medieta cattle
21 operation), p. 505-508 (Mills and Stanford cattle operations), p. 508-509 (Staples and Lowry cattle
22 operations). Further testimony of use of the water rights at issue by LU Ranching and its
23 predecessors in interest was also offered by Mr. William Lowry and Mr. Timothy Lowry. *See* Trial
24 Transcript, Testimony of Mr. William Lowry, p. 282, 287, 296-304; *see also* Trial Transcript,
25 Testimony of Mr. Timothy Lowry, p. 425-443.

26 In addition to the above, the fact that LU Ranching's earliest predecessors in interest used
27 the water and surrounding lands for stockwatering and grazing is supported by the United States'

1 own documents. After the Taylor Grazing Act was enacted, LU Ranching's predecessors were
2 awarded grazing preferences, and later transferred those grazing preferences to the parties in LU
3 Ranching's chain of title including, most recently, to LU Ranching. See LU Ranching Exhibits A,
4 C, D, E, F, H, I, L, M, N, P, R, S and Y; see also United States' Exhibit 5. To acquire a grazing
5 preference, the applicants had to, as an absolute prerequisite, demonstrate use of the subject areas
6 for grazing prior to the enactment of the Taylor Grazing Act. 43 U.S.C. 315b. As explained by Dr.
7 Chad Gibson at trial, "In order to have a grazing preference in 1962, the person that had that would
8 have had to have grazed those livestock prior to 1934, or purchased property from someone who had
9 grazed livestock prior to 1934 ... So the predecessor in interest could have established the right."
10 See Trial Transcript, Testimony of Dr. Chad Gibson, p. 375-376; see also Special Master's Report
11 and Recommendation, p. 6-7.

12 The United States also contends that there is no evidence that the water rights were conveyed
13 to LU Ranching and that "the Special Master also erroneously *tacked* LU's water use back to
14 presumed water use by Mills on public land in 1876." See United States' Memorandum, p. 43
15 (*emphasis added*). What the United States repeatedly calls "tacking" is actually the relation back
16 doctrine that is well recognized in western water law and under Idaho law in particular. *Basinger v.*
17 *Taylor*, 164 P. 522, 524-25 (Idaho 1917) (priority date of water right dates to date water was first
18 appropriated and put to beneficial use); *Hunter v. United States*, 388 F.2d 148 (9th Cir. 1967); see
19 also *Water Rights Laws in the Nineteen Western States*, Wells A. Hutchins, J.D., Vol. 1, p. 485.

20 The water rights at issue were properly conveyed as appurtenances to the base ranch
21 properties at issue and, therefore, the 1876 priority date is adequately supported in law and in fact.
22 The SRBA Court has already ruled that a water right can be conveyed without expressly mentioning
23 the water right in the same instrument that conveys the real property to which the water right is
24 appurtenant. See *In Re SRBA 39576 (Subcases 55-10288B et al.) Memorandum Decision and Order*
25 *on Challenge*, Judge Wood, April 25, 2000, p. 18, citing *Crow v. Carlson*, 107 Idaho 461 (1984);
26 see also e.g. *Zolzzi v. Jackson*, 297 P.2d 1081 (Nevada 1956) (water rights transfer with the land to
27 which they pertain unless there is a specific reservation of the water rights in the document of
28

1 transfer). The relevant inquiry is whether the grantor intended to transfer the water rights as
2 appurtenances as part of the conveyance of the base ranch property. As discussed, above, and
3 previously briefed at length, ample evidence has been presented supporting the Special Master's
4 ruling that LU Ranching's predecessors in interest were using open federal land and the water
5 thereon from the dates that the original patent holders occupied and commenced working their
6 homesteads. The uninterrupted chain of title presented as evidence at trial, taken together with
7 evidence of later grazing applications and transfers of grazing permits, testimony of historic grazing
8 practices, evidence that the base ranch property would have little or no economic value without the
9 water rights at issue, and, importantly, direct testimony that it was the intent of one of LU
10 Ranching's predecessors in interest to transfer the water rights with the base ranch property, join
11 together to provide clear and convincing evidence that it was the intent of each of LU Ranching's
12 predecessors to transfer the water rights with the base ranch property. Common sense also supports
13 this conclusion. As previously recognized by the Court, "where the use of the grazing allotments
14 and water rights are necessarily connected with the use and enjoyment of the base ranch property, it
15 is reasonable that a grant of the ranch would include both the grazing preference and the water rights
16 used thereon." *See In Re SRBA 39576 (Subcases 55-10288B et al.) Memorandum Decision and*
17 *Order on Challenge*, Judge Wood, April 25, 2000, p. 19-20.

18 To prove intent to transfer the water rights as appurtenances, the United States apparently
19 wants LU Ranching to perform the impossible: to produce direct testimony from each of LU
20 Ranching's predecessors in interest dating back to Mr. Ezra Mills that they appropriated the subject
21 water for domestic or stockwatering purposes and intended to transfer the water rights as
22 appurtenances to the base ranch property. As with direct testimony regarding the initial
23 appropriations, this is something that is not possible. However, William Lowry, one of LU
24 Ranching's predecessors, did provide sworn testimony that it was indeed his intent to transfer the
25 water rights as appurtenances. In addition, LU Ranching produced overwhelming documentary and
26 historical evidence that it was the intent of LU Ranching's predecessors in interest to transfer the
27 ranching operation in its entirety which included both the base ranch property and the water rights
28

1 on public land necessary for the continued operation and viability of the ranch. The recognition of
2 the preference grazing right by the BLM in each of LU Ranching's predecessors in interest is also
3 compelling evidence of the intent to transfer. This evidence coupled with the law of the case are
4 more than sufficient to support the 1876 priority date recommended by the Special Master.

5 In Idaho, the district court is required to adopt a special master's findings of fact unless
6 they are clearly erroneous. In the present case, based on a full review of the documents and
7 testimony accepted in to evidence, and allowable inferences drawn from the same, the Special
8 Master found that "LU has ... been able to show that their predecessors in interest were using open
9 federal land and the water thereon from the dates that the original patent holders occupied and
10 commenced working their homesteads." See Special Master's Report and Recommendation, p. 10-
11 11; see also *Wood v. Troutt*, at p. 7, citing *U.S. v. S. Volpe & Co.*, 359 F.2d 132, 134 (1st Cir. 1966)
12 (the special master's inferences and conclusions drawn from testimonial evidence, as well as the
13 special master's inferences regarding documentary evidence, are entitled to deference). Importantly,
14 no evidence of non-use was presented by the United States to rebut the above. Nor did the United
15 States submit any evidence that it was *not* the intent of LU Ranching's predecessors to convey the
16 water rights together with the base ranch properties. The record in this case is devoid of any
17 contradictory evidence that the predecessors of LU Ranching did not intend to transfer these water
18 rights, and the conduct of the predecessors and the BLM with regard to the claimed water rights is
19 evidence of the intent to transfer. Accordingly, this Court should adopt the Special Master's
20 recommendation that under the laws of the state of Idaho as applied to the facts of this case, LU
21 Ranching is entitled to the claimed appropriative water rights as recommended with a priority date
22 of 1876.

23 **B. THE SPECIAL MASTER CORRECTLY CONCLUDED THAT THE FACT**
24 **THAT LU RANCHING'S PREDECESSORS IN INTEREST GRAZED AND**
25 **WATERED THEIR CATTLE IN COMMON DOES NOT DEFEAT OR**
DIMINISH THE WATER RIGHTS.

26 In an attempt to defeat LU Ranching's valid, appropriative water rights and recommended
27 1876 priority date, the United States argues use of stockwater in common with others on public
28 lands does not satisfy the test of a valid appropriation. The Special Master correctly rejected the

1 United States' argument, holding the following:

2 The United States asserted that because others were using the land and water,
3 in common, no one could obtain a water right. This assertion attacks the very
4 nature of the prior appropriation doctrine and would return water use to a
5 theory based upon exclusive possession and control of the water source.
Under prior appropriation multiple users can use the same source or point of
diversion. It is their respective priority dates that controls us and
administration, not exclusive possession.

6 Special Master's Report and Recommendation, p. 7. The Special Master's conclusions are correct
7 and are consistent with the law of the case in the SRBA. The fact that multiple parties appropriated
8 water from the same source does not prevent those right from coming into existence nor does it
9 cancel out those rights.

10 The law of the case in the SRBA, Idaho law generally, and the law throughout the western
11 states, recognizes that there often will be multiple appropriators using water from the same source.
12 In the SRBA, the Presiding Judge explicitly recognized that non-exclusive use of a source does not
13 defeat a water right claim. Presiding Judge Hurlbutt, Jr. held as follows:

14 [A]ll the waters of the state, when flowing in their normal channels, including the
15 waters of all natural springs and lakes within the boundaries of the state are declared
16 to be the property of the state ..." I.C. § 42-101. No river, lake, or spring is under any
exclusive dominion and control, *yet the legitimacy of appropriations made from*
these sources cannot be denied because access to the sources is not exclusive.
17 Absent a claim for a reserved right, all water within the boundaries of the state is
subject to appropriation. If there are a number of appropriations made from a single
source, those appropriations are administered "first in time, first in right."

18 *In Re SRBA Case No. 39576, Order Denying Challenges and Adopting Special Master's Report and*
19 *Recommendation, p. 3 (September 30, 1998) (emphasis added), citing Idaho Const. art. XV, § 3;*
20 *Village of Peck v. Denison, 92 Idaho 747, 749-750 (Idaho 1969).* In Idaho, the doctrine of first in
21 time is first in right is recognized by statute and in case law. *Id.*; *see also* I.C. § 42-106 ("As
22 between appropriators, first in time is first in right"); *see also Crow v. Carlson, 690 P.2d 916 (1984)*
23 *(water rights in Idaho are administered first in time, first in right); R.T. Nahas Co. v. Hulet, 114*
24 *Idaho 23, 26 (1988).*^{6/} Accordingly, any argument by the United States that use of water in common
25

26 ^{6/} In its brief, the United States argues that, as a result of decrees entered
27 in favor of the United States, there is the potential that there would be water rights decreed to
28 (continued...)

1 with others does not constitute a valid appropriation contradicts not only the clear law of the case,
2 but also unravels the first in time principle because anytime multiple parties used the same water in
3 common with each other, there could be no protection or protectable water right and, as to the senior
4 appropriator, as soon as someone else used that water, then the first in time appropriator would lose
5 his right by virtue of the fact that they would be using and appropriating water in common. Such a
6 proposition is inimical to the doctrine of prior appropriation and is unsupported by law.

7 The SRBA Court has explicitly held that the legitimacy of appropriations made from these
8 sources cannot be denied because access to the sources is not exclusive. *In Re SRBA Case No.*
9 *39576*, Order Denying Challenges and Adopting Special Master's Report and Recommendation, p.
10 3 (September 30, 1998). In application, the SRBA Court also has recognized that use of water in
11 common constitutes valid appropriations and has decreed water rights to parties who have,
12 historically, appropriated water in common with each other from the same source. *See e.g. In Re*
13 *SRBA Case No. 39576, Clear Springs Foods, Inc. v. Clear Lakes Trout Company*, 136 Idaho 761
14 (2002).

15 Under the doctrine of the law of the case, where a court states a principle of law in deciding
16 a case, that rule becomes the law of the case or precedent to be followed both in the lower court and
17 on subsequent appeals. *See Sun Valley Ranches, Inc. v. Prairie Power Cooperative, Inc.*, 856 P.2d
18 1292, 1296 (1993). In the present case, the SRBA District Court has already explicitly held that use
19 of water in common does not prevent a party from acquiring valid appropriative water rights.
20 Accordingly, the United States' arguments in this regard should be rejected outright.

21 //

22 //

23 //

24
25 ^{6/} (...continued)
26 both LU Ranching and the United States for the same place of use. The United States goes
27 on to suggest that, "LU's rights would have to be limited so that water would not be
28 allocated 'in excess of the amount actually used.'" *See United States' Memorandum*, p. 52-
53. However, under the prior appropriation doctrine, as explained by Judge Hurlbutt, the
rights instead must be administered first in time, first in right.

1 **C. THE FACT THAT THE PRIVATE WATER RIGHTS AT ISSUE ARE**
2 **LOCATED ON WHAT ARE NOW FEDERALLY ADMINISTERED**
3 **GRAZING ALLOTMENTS DOES NOT DEFEAT OR DIMINISH THESE**
4 **RIGHTS, NOR DOES IT RENDER THEM INCAPABLE OF TRANSFER AS**
5 **APPURTENANCES.**

6 **1. Under the Law of the Case, Stockwater Rights on Federal Land Can Be**
7 **Transferred as Appurtenances to the Base Ranch Properties.**

8 The SRBA District Court, through Judge Wood's Memorandum Decision and Order on
9 Challenge, has already ruled, based on the settled law of appurtenances, that stockwater rights on
10 federal land can be transferred as appurtenances to the base ranch properties provided there is a
11 sufficient nexus between the water right and the base ranch property, and the parties to the transfer
12 of the base ranch intended the subject water rights to be part of the transfer as appurtenances.
13 *See Memorandum Decision and Order on Challenge*, Judge Wood (April 25, 2000).
14 Notwithstanding the above, the United States now advances a new theory that the water rights
15 cannot be transferred as an appurtenance to the base ranch properties because, "there is no unity of
16 title between the water right, supposedly owned by LU, and the public lands designated as places of
17 use in the water rights at issue. Thus, there is no 'appurtenancy relationship' between the water
18 rights, the public lands designated as POU's or LU's ranch land."^{2/} The United States continues,
19 "the water rights that designate public lands (sic) as places of use could not be conveyed to LU
20 through a chain of title to LU's ranch land because there is no unity of title between the water rights
21 and the land designated as places of use." *See United States' Memorandum*, p. 44-45. To accept
22 the United States argument would be to subscribe to a riparian water right theory, based on the
23 principle that those who own the land, own the water. However, the Idaho is not a riparian state.
24 Second, this issue of whether the stockwater rights can be transferred as appurtenances to the base
25 ranch property has already been decided by the District Court which has held that they *can* be
26 transferred as appurtenances to the base ranch property even if the place of use for the water is on

26 ^{2/} The United States continues to refer to these lands as they exist today
27 as "public lands." They are not, specifically because they were withdrawn as grazing lands
28 and after the enactment of the no entries were allowed for homesteading, unless the
 Secretary found the lands more suitable for the production of agricultural crops. 43 U.S.C.
 315f.

1 federal land. Finally, the United States' argument flies in the face of over a century of federal law
2 offering protection to private water rights sited on federal land.

3 Judge Wood in his Memorandum Decision and Order on Challenge has already ruled, based
4 on the settled law of appurtenances, that stockwater rights on federal land can be transferred as
5 appurtenances to the base ranch properties provided a sufficient nexus is demonstrated between the
6 water right and the base ranch property and the parties to the transfer of the base ranch property
7 intended the subject water rights to be part of the transfer as appurtenances. *See Memorandum*
8 *Decision and Order on Challenge*, Judge Wood, p. 18-21 (April 25, 2000); *see also In the Matter of*
9 *the Determination of the Relative Rights in and to the Waters of Monitor Valley – Southern Part*
10 *(140-B), Nye County, Nevada*, Fifth Judicial District of the State of Nevada in and for the County of
11 Nye, Case No. CV 14906, Findings of Fact and Conclusions of Law (October 8, 1999) ("Monitor
12 Valley Decision"); *Stepcoe Livestock Company v. Gulley*, 295 P.2d 772 (Nevada 1931); *Crow v.*
13 *Carlson*, 690 P.2d 916 (Idaho 1984). No unity of title between the water right and the designated
14 place of use is required. Indeed, to impose such a requirement would be to impose a riparian theory
15 of ownership, which is inimical to the prior appropriation doctrine.

16 What is required is that there be a sufficient nexus between the water rights at issue and the
17 base ranch property coupled with intent by the grantor to transfer the water rights as appurtenances
18 to the base ranch property. *See Memorandum Decision and Order on Challenge*, Judge Wood, p.
19 18-21 (April 25, 2000). As set forth, above, the Special Master correctly concluded that there was a
20 sufficient nexus between the water rights and the base ranch property, and that there was sufficient
21 evidence to support the conclusion that LU Ranching's predecessors intended to, and did in fact,
22 transfer the water rights as appurtenances to the base ranch property.

23 The United States' arguments regarding unity of title between the water right and the
24 designated place of use runs afoul not only of the law of the case, as set forth in Judge Wood's
25 Memorandum Decision, but it also goes against 150 years of legal precedent, regarding western
26 water rights.

27 //

1 **2. Federal Law Recognizes and Protects Water Rights Acquired on Public**
2 **Lands.**

3 The United States incorrectly argues that the Taylor Grazing Act does not expressly
4 recognize those who use water on public lands as owners of a water right. *See* United States'
5 Memorandum, p. 32. Not only does the Taylor Grazing Act recognize these private water rights on
6 public lands, it explicitly provides for the protection of those rights. Through a savings clause in the
7 Taylor Grazing Act, and similar provisions in other federal statutes that both preceded and followed
8 the Taylor Grazing Act, private rights acquired under local custom, laws and decision are
9 recognized and afforded absolute protection.

10 Inexplicably, the United States never cites or mentions in its brief the federal law which is
11 the underlying basis for LU Ranching's claims to water rights under Idaho law. This glaring
12 omission in the United States' brief is telling because the Mining Act of 1866 (43 U.S.C. § 661)
13 cuts through the United States' arguments like a scythe through hay. By the Mining Act of 1866,
14 Congress acknowledged that certain property rights within the public domain were granted to
15 citizens of the United States and were entitled to protection. The applicable statutory provision,
16 now codified at 43 U.S.C. § 661, states, in pertinent part, as follows:

17 Whenever, by priority of possession, right to the use of water for mining,
18 agricultural, manufacturing, or other purposes, have vested and accrued, and the
19 same are recognized and acknowledged by the local customs, laws, and the decisions
 of courts, the possessors and owners of such vested rights shall be maintained and
 protected in the same.

20 The (Mining) Act of July 26, 1866, C. 262, Section 9, 14 Stat. 251, 43 U.S.C. § 661(a). The
21 rationale behind this statute is grounded in the history of the settlement of the west. Simply, it was
22 the policy of the United States to encourage the settlement and development of the west, and to
23 protect the rights of those who, through their efforts, acquired rights on the public domain. As
24 recognized by the United States Supreme Court, these vested rights "are rights which the
25 government had, by its conduct, recognized and encouraged and was bound to protect." *See Broder*
26 *v. Water and Mining Company*, 101 U.S. 274 (1879).

27 This policy of protecting vested rights continued through the enactment of the Taylor
28

1 Grazing Act which specifically protects water rights which vested prior to the enactment of that
2 statute. This savings provision provides, in pertinent part, as follow:

3 Nothing in this subchapter shall be construed or administered in any way to diminish
4 or impair any right to the possession and use of water for mining, agriculture,
5 manufacturing, or other purposes *which has heretofore vested or accrued under*
6 *existing law* validly affecting the public lands or which may be hereafter initiated or
7 acquired and maintained in accordance with such law.

8 Taylor Grazing Act, 43 U.S.C. § 315 (*emphasis added*). The United States' argument, that the
9 Taylor Grazing Act does not expressly recognize those who use water on public lands as owners of
10 a water right, would render this section of the Taylor Grazing Act meaningless. The law regarding
11 statutory construction is clear: each word and provision in a statute must be interpreted in a way that
12 gives it effect. *See Smith-Nieland v. Reed*, 231 P. 102, 103 (Idaho 1924) (it is a well settled rule that
13 requires construction to be adopted which will give effect to a statute as it is plainly written rather
14 than one that will render it meaningless and of no effect). In the present case, this means that the
15 Taylor Grazing Act recognizes and protects water rights which have vested or accrued prior to the
16 Taylor Grazing Act.

17 The protection of vested rights of certain parties in the public lands was expressed and
18 reserved again in recent legislation through the passage of the Federal Lands Policy and
19 Management Act (FLMPA) of 1976, 43 U.S.C. § 1701 et seq. The FLMPA states in the section
20 dealing specifically with grazing leases and permits as follows:

21 (h) Nothing in this Act shall be construed as modifying in any way law existing on
22 the date of approval of this Act [enacted October 21, 1976] with respect to the
23 creation of right, title, interest or estate in or to public lands or lands in National
24 Forests by issuance of grazing permits and leases.

25 42 U.S.C. § 1752(h). Thus, once it is proven that under local customs, laws and decisions, LU
26 Ranching and its predecessors in interest acquired a priority right to the stockwater at issue, then the
27 denial of those water rights would be, under this provision, unlawful.

28 It has been the consistent policy and stated intent of the United States government, through
the enactment of appropriate legislation, to protect and preserve the vested rights of private citizens
on public land. This protection extends to and protects the vested water rights acquired by LU
Ranching's predecessors. Under the law of Idaho and its local customs, laws and decisions, LU

1 Ranching and its predecessors in interest acquired vested rights to the stockwater at issue herein,
2 and transferred the same. As applied to this case, the appropriative water rights acquired by LU
3 Ranching and its predecessors in interest are thus entitled to full protection. *See* Special Master's
4 Report and Recommendation, p. 7 (the Taylor Grazing Act expressly recognized that those using
5 water on federal land prior to its enactment owned that right).

6 **D. THE AMENDMENTS TO THE WATER RIGHT DESCRIPTIONS**
7 **SUGGESTED BY THE UNITED STATES ARE NOT SUPPORTED BY THE**
8 **EVIDENCE.**

9 The United States argues that certain water right descriptions, as set forth in the Special
10 Master's recommended partial decrees, should be amended. The United States' proposed changes
11 are addressed, in turn, below.

12 **1. 55-10288B**

13 The United States contends that the T.07S, R 06 W, Section 35, SENE should not be
14 retained as a place of use because "it does not reside within the South Mountain Allotment." *See*
15 United States' Memorandum, p. 49. The testimony at trial, however, is that the fence surrounding
16 the South Mountain allotment does not follow the section lines and, therefore, there is a portion of
17 this particular quarter quarter section that is actually located within the South Mountain allotment.
18 *See* Trial Transcript, Testimony of William Lowry, p. 270-272; *see also* Trial Exhibit 20.^{8/}
19 Accordingly, this quarter quarter section should not be deleted as either a point of diversion or place
20 of use. Because this quarter quarter section includes areas both within and without the South
21 Mountain Allotment, however, LU Ranching previously offered that a general provision for the
22 definition or administration of this right would be appropriate. To that end, LU Ranching has
23 proposed, and the Special Master adopted, language for the definition or administration of this water
24 right that "the use of water within the SENE, Section 35, T.07S, R.06W is limited to the South
25 Mountain Allotment." *See* Special Master's Recommended Partial Decree for Water Right 55-

26 ^{8/} On the issue of whether the boundary for the South Mountain
27 allotment followed the section lines, the Special Master remarked that "it is obvious from
28 looking at the map that it doesn't follow the section line because then the lines aren't straight
... [u]nless the survey crew had been out drinking out (sic) week, those things don't follow
the section lines."

1 10288B. Such language is supported by evidence that LU Ranching has authorization for livestock
2 grazing within the South Mountain Allotment and that LU Ranching and its predecessors in interest
3 have used the area within the fenced allotment boundary for both grazing and watering. *See* Trial
4 Transcript, Testimony of William Lowry, p. 271-274.

5 The Special Master, having had the opportunity to fully review the evidence at trial,
6 recommended this quarter quarter section as a point of diversion and place of use for this water
7 right, with the above qualifying language. This finding of fact is entitled to deference, is consistent
8 with the evidence presented at trial, and should be upheld. Because this quarter quarter section
9 should not be deleted, there is no reason to amend the points of diversion as suggested by the United
10 States.

11 **2. 55-10289B**

12 The United States claims that the source described as “unnamed streams” tributary to
13 Juniper Creek should be deleted from the Special Master’s Report and Recommendation for this
14 water right. The unnamed streams tributary to Juniper Creek were initially recommended by the
15 Idaho Department of Water Resources (IDWR) in its Director’s Report. Contrary to the position
16 asserted by the United States, the IDWR, in application, apparently did not require further
17 identification of the unnamed streams tributary to Juniper Creek.

18 The language at issue is designed to encompass the draws, reaches, or streams that come into
19 Juniper Creek. Having reviewed and considered all of the evidence submitted at trial, including the
20 Director’s Report for this water right, the maps, and other documentary and testimonial evidence
21 regarding historic watering of cattle throughout this area by LU Ranching and its predecessors in
22 interest, the Special Master found and recommended that unnamed streams tributary to Juniper
23 Creek be included in the Partial Decree. This factual finding is entitled to deference, and should not
24 be disturbed on appeal.

25 **3. 55-10296**

26 The motivation behind the United States’ request to include T.05S., R.06W., Section 14,
27 SWSWSE and T.05., R.06W., Section 23, NENENW as points of diversion is, although not
28

1 explicitly stated, to exclude T05S R6W S23 NWNE as a place of use for this water right. As set
2 forth in LU Ranching's Opening Brief on Challenge, the stream segment flowing through T05S
3 R6W S23 NWNE should have been recommended as a place of use for this water right. Evidence
4 submitted at trial, including Exhibit 22, the Director's Report for this water right, and testimony of
5 historic use, support inclusion of this quarter quarter section as a place of use. The beginning and
6 ending points of diversion for this water right, as defined in the Director's Report, as defined in the
7 Special Master's Recommended Partial Decrees, and as depicted on the map (Exhibit 22), begin at
8 T05S R06W S12 NWSWSW where the stream begins, flowing through several quarter quarter
9 sections, including T05S R6W S23 NWNE at issue herein, finally ending without interruption at
10 T05S R06W S23 SESWNW. Accordingly, it was clearly the intent to include all points on the
11 stream between these beginning and ending points of diversion as places of use for this water right,
12 as depicted on United States' Exhibit 22.

13 As argued by LU Ranching in its Opening Brief, exclusion of T05S R6W S23 NWNE was
14 clearly erroneous and contrary to the evidence submitted in the case. Because T05S R6W S23
15 NWNE should be decreed as a place of use for this water right, the addition of the points of
16 diversion identified by the United States is not necessary to properly complete the description of the
17 points of diversion for this water right.

18 **4. 55-10297B**

19 The United States argues that the source designated as an unnamed stream tributary to
20 Jordan Creek should be deleted. The evidence at trial, including the Director's Report for this water
21 right, identifies this as an appropriate source. Similar to the unnamed streams tributary to Juniper
22 Creek at issue for water right 55-10289B, there is no error in including this stream as a source for
23 this water right.

24 Also at issue is the United States' request that T.05S., R.06W., Section 13, SWSW be
25 deleted as a point of diversion for this water right. However, Exhibit 22, prepared by the United
26 States, identifies this quarter quarter section as a beginning point of diversion for this water right.
27 Having judicially admitted that this is the beginning point of diversion for this water right, the
28

1 United States' request that it be deleted as a point of diversion should be denied.

2 The United States further requests that T.05S., R.06W., Section 14, NENE and SENE be
3 deleted, alleging that these legal descriptions were not properly claimed, reported or recommended
4 in 55-10297B. *See* United States' Memorandum, p. 51. This is a new argument not raised by the
5 United States in its Motion to Alter or Amend or briefing thereon. *See* Memorandum in Support of
6 United States' Motion to Alter or Amend the Special Master's Report and Recommendation,
7 Findings of Fact and Conclusions of Law, p. 5-6. Having failed to raise this issue before the Special
8 Master by way of the United States' Motion to Alter or Amend, the United States is estopped from
9 raising it now. Accordingly, the United States' request should be denied in its entirety.

10 Finally as to this water right, the United States argues that the places of use recommended as
11 T.05S., R.06W., Section 14, NESE and T.05S., R.06W., Section 23 SWNE should be deleted,
12 claiming that there is no water source within these quarter quarter sections. However, as a practical
13 matter, maps are limited in size and scope and, therefore, do not depict all water that may be in use
14 or that may flow into the relevant streams. The IDWR, following investigation, recommended these
15 quarter quarter sections as places of use, and these places of use were recommended by the Special
16 Master following consideration of all evidence presented at trial. These factual findings are entitled
17 to deference and, therefore, should not be reversed.

18 5. 55-10303B

19 The Special Master correctly recommended unnamed streams tributary to Corral Creek as a
20 source for this water right. This is consistent with the IDWR's recommendation as set forth in the
21 Director's Report for this water right. Further, the fact that small stream segments, reaches or draws
22 are not depicted on the map is not determinative of this issue. Accordingly, the Special Master's
23 recommendation, made following review of the evidence at trial, should be adopted.

24 Similarly, T.09S., R.05W., Section 33, NWNW should not be deleted as a place of use. The
25 evidence at trial, including the IDWR's Director's Report for this water right, recommends this
26 quarter quarter section as a place of use. Further, the applicable map, Exhibit 23, shows that while
27 the claimed source does not run through the center of this quarter quarter section, it does appear to

1 touch upon this quarter quarter section. Accordingly, this quarter quarter section must be included
2 in the partial decree to ensure the accuracy of the described water right. Having reviewed and fully
3 considered all of the evidence at trial, the Special Master properly recommended this quarter quarter
4 section as a place of use for this water right.

5 **V. CONCLUSION**

6 The United States would have this court reverse 150 years of legal precedent with regard to
7 western water rights by adopting principles that are inimical to the prior appropriation doctrine. The
8 failure of the United States in its brief to address the Mining Act of 1866 is telling indeed. Attempts
9 by the United States to have this court ignore the factual record and findings of the Special Master
10 must be rejected. Nor should the court be swayed by the United States' erroneous interpretations of
11 law. The United States' meritless challenge must be denied.

12
13 Dated this ____ day of August, 2004.

14 Respectfully submitted,

15 McQUAID BEDFORD & VAN ZANDT, LLP

16
17 By: _____
18 MICHAEL J. VAN ZANDT
19 ELIZABETH P. EWENS

20 LING & ROBINSON

21
22 By: _____
23 ROGER D. LING
24 BRIAN J. COFFEY

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2 in the partial decree to ensure the accuracy of the described water right. Having reviewed and fully
3 considered all of the evidence at trial, the Special Master properly recommended this quarter quarter
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12
13 Dated this 27 day of August, 2004.

14 Respectfully submitted,

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2 in the partial decree to ensure the accuracy of the described water right. Having reviewed and fully
3 considered all of the evidence at trial, the Special Master properly recommended this quarter quarter
4 section as a place of use for this water right.

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23 ROGER D. LING
24 BRIAN J. COFFEY

25 G:\Docs\21347\00 [Post-Trial Pleadings]\Response Challenge.wpd

1 **CERTIFICATE OF SERVICE**

2 I certify that on August 27, 2004, I served a true and correct copy of foregoing LU
3 **RANCHING COMPANY, INC.'S MEMORANDUM IN OPPOSITION TO UNITED**
4 **STATES' CHALLENGE OF THE SPECIAL MASTER'S ORDER ON MOTION TO**
5 **ALTER OR AMEND** upon the following individuals by placing the document in the United States
6 Mail, postage paid, and addressed as follows:

7 U.S. Department of Justice
8 General Litigation Section
9 Environment and Natural Resources Division
10 550 West Fort Street, MSC 033
11 Boise, ID 83724

12 Larry Brown
13 Attorney, U.S. Dept. of Justice
14 General Litigation Section
15 Environment and Natural Resources Division
16 550 West Fort Street, MSC 033
17 Boise, Idaho 83724

18 Chief, Natural Resources Division
19 Office of the Attorney General
20 State of Idaho
21 P.O. Box 44449
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Sarah Strickland