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Department of Water Resources

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

In Re SRBA	)	Subcase Numbers 55-10135, 55-11061
	)	55-11385, and 55-12452
Case No. 39576	)	
	)	JOYCE LIVESTOCK COMPANY'S
	)	MOTION TO SUPPLEMENT
	)	BRIEFS IN SUPPORT OF MOTION FOR
	)	SUMMARY JUDGMENT

I. INTRODUCTION

On March 8, 2002, Joyce Livestock Company (hereinafter "Joyce Livestock") filed a Motion for Summary Judgment. The basis for the summary judgment motion is twofold. First, Joyce Livestock seeks a judgment that it is the owner pursuant to Idaho law of a stockwater right, appurtenant to certain real property, with a priority date of 1898 as alleged in claim number 55-10135. Second, Joyce Livestock seeks judgment against the United States as to the United

States' claims in subcase numbers 55-11061, 55-11385 and 55-12452 because the United States has not, and cannot, establish that it owns a stockwater right based on constitutional appropriation. The United States opposed the Motion for Summary Judgment and, on March 21, 2002, filed a Memorandum in Opposition to Joyce Livestock Co.'s Motion for Summary Judgment. Joyce Livestock filed a Reply Brief to Memorandum In Opposition to Joyce Livestock Co.'s Motion for Summary Judgment on March 29, 2002. The Court has not yet ruled on the Motion for Summary Judgment. As discussed below, movant request that the Court consider the recent Ruling by the District Court Judge in the case of Wood v. Trout (May 13, 2002).

II. ARGUMENT IN SUPPORT OF MOTION TO SUPPLEMENT BRIEFS

The United States bases its claims on the constitutional, as opposed to statutory, method of appropriation. As previously briefed, in order to support such a claim, the United States must demonstrate that it placed the subject water to beneficial use. Because the United States is not the same party that actually appropriated or used the water, the only ways it can legitimately claim the rights are through an agency theory or by a showing that the right was conveyed from the party that actually appropriated the water. However, the United States did not allege an agency theory nor did it allege that the actual appropriators of the water, the ranchers, conveyed their interests to the United States. Rather, the only basis for the United States' constitutional appropriation claims was that the United States manages rangeland operations. However, the law of the case as it currently stands in the state of Idaho is that "the fact that the United States issues permits to operate on public lands *does not* make the United States the appropriator of water rights perfected by permittees" and "the fact that the United States gives 'permission' to

stockmen has no relevance to a claim that the United States is the appropriator under state law.”

See In Re SRBA Case No. 39576, subcase 72-15929C, Order Denying Motion to Alter or Amend, p. 8-9. (emphasis added); *see also In Re SRBA Case No. 39576, Order Denying Challenges and Adopting Special Master's Reports and Recommendations* (September 30, 1998).

Under the doctrine of the law of the case, this Court is bound to follow the precedent set in the SRBA litigation that managing rangeland operations and issuing permits do not qualify as acts of putting water to beneficial use. The strength and continued viability of the law of the case doctrine were recognized in the District Court's recent opinion *In Re SRBA Case No. 39576, Memorandum Decision and Order on Challenge; and Order of Partial Decree (Wood v. Trout)*, May 13, 2002 (“*Wood v. Trout*”).¹ In that Order, the District Court emphasized the particular importance of the law of the case doctrine in the SRBA. The Court wrote, in part:

The reason for applying law of the case as between special masters and the SRBA District Court is even more compelling ... Ultimately, the district court is charged with the specific duty of reviewing a special master's conclusions of law. Therefore, it is not within the purview of the authority conferred upon a special master to “reconsider” the prior legal rulings of the district court. Further, much of the benefit realized through the use of special masters is undermined if the district court has to repeatedly set aside a special master's conclusions of law for failing to follow a legal principle already set forth by the district court.

Wood v. Trout, at p. 9. In sum, “rulings by the district court are considered to be law of the case in the SRBA and the special masters are expected to follow such rulings.” *Id.* at p. 10.

In the present case, the only asserted basis for the United States' water right claims is beneficial use based on the United States' management of the rangeland. This theory of beneficial use has been rejected by the District in a prior case in the SRBA. Accordingly, under

¹ The District Court's decision *Wood v. Trout* was issued after briefing was completed in the present case.

the law of the case doctrine, reaffirmed by the District Court in *Wood v. Trout*, as a matter of law, applying the law of the case, the United States' claims must fail and Joyce Livestock's Motion for Summary Judgment should be granted.

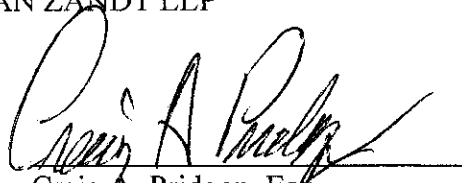
III. CONCLUSION

The *Wood v. Trout* decision is directly relevant to the determination of the Motion for Summary Judgment currently pending before the Court. Accordingly, Joyce Livestock respectfully requests that the Court grant this request to supplement the summary judgment briefing to include reference to and consideration of *Wood v. Trout*. In addition, for the reasons set forth, above, and in Joyce Livestock's Motion for Summary Judgment and Reply Brief to Memorandum In Opposition to Joyce Livestock Co.'s Motion for Summary Judgment, Joyce Livestock renews its request that this Court grant its Motion for Summary Judgment against the United States in its entirety.

DATED: July 2, 2002

Respectfully submitted,
McQUAID, METZLER, BEDFORD
& VAN ZANDT LLP

By:


Craig A. Pridgen, Esq.

DATED: July __, 2002

By:

Richard L. Harris, Esq.

Attorneys for Joyce Livestock Company

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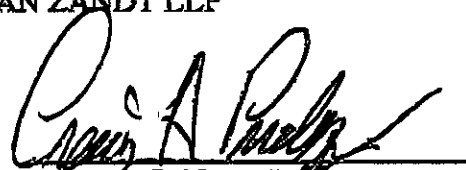
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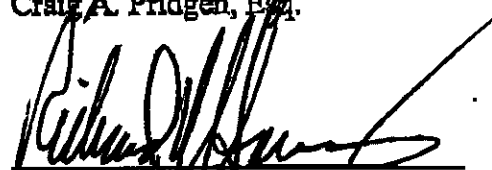
Respectfully submitted,
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By:


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DATED: July 2, 2002

By:


Richard L. Harris, Esq.

Attorneys for Joyce Livestock Company

CERTIFICATE OF MAILING

I certify that on July 2, 2002, I mailed the original and copies of the foregoing **JOYCE LIVESTOCK COMPANY'S MOTION TO SUPPLEMENT BRIEFS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to the following persons via Fed Ex or U.S. Mail, the original and/or copies, postage paid and addressed as follows:

1. Original to:

Clerk of the Court
Snake River Basin Adjudication
253 Third Avenue North
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Twin Falls, ID 83303-2707
(Via Federal Express)

2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098
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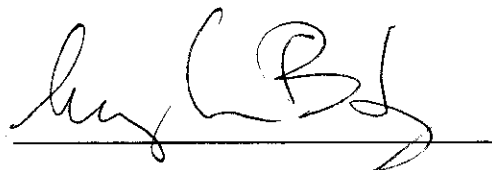
Chief, Natural Resources Division
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A handwritten signature in dark ink, appearing to read "Larry Brown", is written over a horizontal line.