

RECEIVED
MAR 19 2003
Department of Water Resources

UNITED STATES OF AMERICA

JAMES F. HAGENBARTH
DAVID J. HAGENBARTH
MARGARET HAGENBARTH

Attorneys' Names and Addresses:

THOMAS L. SANSONETTI
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

DAVID L. NEGRI
United States Department of Justice
Environment and Natural Resources Division
General Litigation Section
550 West Fort Street, MSC 033
Boise, Idaho 83724
(208) 331-5943
Facsimile (208) 387-0842

MICHAEL C. CREAMER (ISB #4030)
JOHN M. MARSHALL (ISB #5628)
Givens Pursley LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701
(208) 388-1200
Facsimile: (208) 388-1300

JOHN E. BLOOMQUIST
PATTI L. ROWLAND
Doney, Crowley, Bloomquist & Uda, P.C.
108 S. Washington
P.O. Box 1418
Dillon, Montana 59725
(406) 683-8795
Facsimile (406) 683-8796

**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 Number: 31-10245, 31-10740
)
) **JOINT MOTION FOR ORDER**
) **APPROVING STIPULATION**
)
)

The United States of America, through the USDA Agricultural Research Service,
("United States") has filed objections in the above-captioned subcases to the water right claims
made by James F. Hagenbarth, David J. Hagenbarth, and Margaret Hagenbarth (collectively,

JOINT MOTION FOR ORDER APPROVING STIPULATION – Subcase Nos. 31-10245 and 31-10740

“Hagenbarths”). Contemporaneously with this Motion, the United States and the Hagenbarths (collectively, “Parties”) have filed a Stipulation and Subordination Agreement (“Stipulation”) to resolve the objections of the United States. The Parties now jointly move this Court for an Order approving the Stipulation, based upon the following.

1. The Stipulation completely and finally resolves the dispute between the Parties.

2. The Stipulation provides that the Hagenbarth Claims shall be subordinated to certain water rights partially decreed to the United States (“United States’ Water Rights”). The Stipulation further provides that any water right decrees resulting from the Hagenbarth Claims shall include language incorporating the subordination provisions of the Stipulation. Because the Stipulation provides that the Hagenbarth Claims shall be subordinated to the United States’ Water Rights, such language on the face of the decree is appropriate. *See* I.C. § 1412(6) (“The decree shall contain or incorporate a statement of each element of a water right as stated in subsections (2) and (3) of section 42-1411, Idaho Code, as applicable.”); I.C. § 1411(2)(j) (elements of a water right include “such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director”); *see also State v. Idaho Conservation League*, 955 P.2d 1108, 1113 (Idaho 1998) (“provisions which set forth or clarify the manner in which water is to be administered may be included in a water rights decree”); *State v. Nelson*, 951 P.2d 943, 947 (Idaho 1998) (“a provision is to be included in a decree if it is necessary to define or for the efficient administration of a water right”).

3. In addition to the United States, certain other parties (Mr. Larry Singleton and the Mud Lake Water Users Association) have objected to the water right claims made by the

Hagenbarths ("Hagenbarth Claims"). Although settlement discussions are ongoing, these objections to the Hagenbarth Claims have not yet been resolved.

4. A Scheduling Order has been entered by the Court with discovery and litigation deadlines approaching. Because objections remain to the Hagenbarth Claims, these deadlines presumably will not be vacated. The United States cannot allow these deadlines to pass without assurance from the Court that the Court will accept the agreement of the Parties and include, on the decree, the necessary language incorporating the subordination provisions.

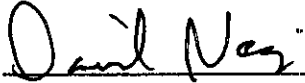
5. The Order sought by this Motion is fully in accordance with Idaho law. Such an Order would serve not only to facilitate the settlement between the Parties, thus streamlining the process, but would very likely have the effect of encouraging future settlements in the SRBA. The provisions of Idaho Rule of Evidence 408, as well as the policy underlying that rule and the policy of the SRBA Court, are directed at furthering the strong public policy favoring out-of-court settlement of disputes over litigation.

Accordingly, the Parties respectfully request that this Court grant this Motion in all respects. The Parties further request oral argument and expedited consideration of this matter.

A proposed Order is attached to this Motion.

DATED this 17 day of March, 2003. ,

UNITED STATES OF AMERICA



David L. Negri
United States Department of Justice

JAMES F. HAGENBARTH
DAVID J. HAGENBARTH
MARGARET HAGENBARTH



John M. Marshall
Givens Pursley LLP

Patti L. Rowland
Doney, Crowley, Bloomquist & Uda, P.C.

CERTIFICATE OF SERVICE

I certify that on March 17, 2003, I served a true and correct copy of the foregoing **STIPULATION AND SUBORDINATION AGREEMENT** and proposed Order upon the following individuals as follows:

Original by United States mail, postage prepaid and BY FACSIMILE to:

Clerk of the Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

Copies by United States mail, postage prepaid and BY FACSIMILE to:

Givens Pursley LLP	Doney, Crowley, Bloomquist, & Uda P.C.
Michael C. Creamer	John E. Bloomquist
John M. Marshall	Patti L. Rowland
P.O. Box 2720	P.O. Box 1418
Boise, ID 83701	Dillon, MT 59725

Attorneys for Margaret, David J. and James F. Hagenbarth

Ray W. Rigby
P.O. Box 250
Rexburg, ID 83440
Attorney for Larry Singleton

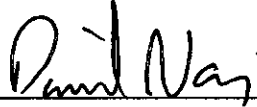
Kent W. Foster
Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405
Attorney for Mud Lake Water Users, Inc.

Copies by United States mail, postage prepaid to:

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

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-0098

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



David L. Negri