



U.S. Department of Justice

Environment and Natural Resources Division

90-6-2-63C

Reply to:

David E. Brown
General Litigation Section
P.O. Box 663
Washington, DC 20044-0663

Courier Address:

601 D Street, N. W.
Room 3526
Washington, D.C. 20004

Telephone (202) 305-0511
Facsimile (202) 305-0274

RECEIVED

APR 15 2003

April 10, 2003

Department of Water Resources

By Federal Express

Clerk of the Court
Snake River Basin Adjudication
253 3rd Avenue North
Twin Falls, Idaho 83303-2707
208-736-3011

Re: Subcase Numbers: 55-10288B, et al.
LU Ranching

Dear Clerk of the Court:

Enclosed is the original and one copy of the 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, in reference to the above mentioned subcases.

Please do not hesitate to contact me concerning this filing.

Sincerely,

David E. Brown
Paralegal
U.S. Department of Justice

Enclosure

Names of Parties Filing Document:

UNITED STATES OF AMERICA

Attorneys' Names and Addresses:

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division

LARRY A. BROWN
Attorney, U.S. Dept. of Justice
General Litigation Section
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724
Ph.: (202) 305-0435 FAX: (202) 305-0274

**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

)
) **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**

I. INTRODUCTION

LU Ranching Company (hereinafter "LU") claimed thirteen stockwater rights and one domestic water right located on the public land^{1/} LU is authorized to use for livestock grazing. The Special Master recommended that LU is entitled to a priority date of June 10, 1876 for all of the water rights at issue. Recommendation, p. 11. The United States respectfully moves the Special Master to amend the recommended priority dates, as identified below, because the facts do not support the finding that water rights located upon public land were perfected by LU's predecessors, and then transferred to LU in accordance with Idaho law. The United States also respectfully moves the Special Master to amend individual water right recommendations that contain various errors in water right descriptions, as identified below.

II. BACKGROUND

LU's grazing preference to use the South Mountain Allotment^{2/} and the Cow Creek Allotment is attached to the base property purchased in 1965 by William and Nita Lowry from Galo Mendieta, and then conveyed in 1976 to LU. Trial Transcript, p. 333 (Testimony of Timothy C. Lowry). The South Mountain Allotment contains all of the public land places of use for the stockwater rights at issue in Subcases 55-10288B, 55-10289B, 55-10290B, 55-10292B, and 55-10293B. Exhibit 21. The Cow Creek Allotment contains all of the public land places of

^{1/} The term "public land" means "any land and interest in land owned by the United States . . . and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership . . ." 43 U.S.C. § 1702(e).

^{2/} "*Allotment* means an area of land designated and managed for grazing of livestock." 43 C.F.R. § 4100.0-5 (*italics in original*). The water right claims at issue should be wholly located within either the South Mountain Allotment, the Cow Creek Allotment, or the Cliffs Allotment.

use for the stockwater rights at issue in Subcases 55-10295, 55-10296, 55-10297B, 55-10298B, 55-10299B, and 55-10300. Exhibit 20.

LU's grazing preference to use the Cliffs Allotment is attached to the base property purchased in 1984 by LU from Donald J. and Elizabeth McKay. Trial Transcript, p. 333 (Testimony of Timothy C. Lowry). The Cliffs Allotment contains about 151 public land places of use for the stockwater right at issue in Subcase 55-10303B, and the only public land place of use for the domestic water right at issue in Subcase 55-13451. Exhibit 21.

III. ARGUMENT

A. Water Right Claim 55-10301B Should Have Been Recommended as Disallowed

The Special Master recommended 55-10301B with a public land place of use. Recommendation, 55-10301B dated February 27, 2003. Mr. Timothy C. Lowry admitted that LU did not intend to claim stockwater on public land in water right 55-10301B (the Chimney Pot Allotment) because a fence excludes LU's cattle from the public land where the water source is located. Trial Transcript, pp. 326-327. The United States respectfully requests the Special Master to amend the Recommendation so that Water Right Number 55-10301B is recommended as disallowed.

B. The Descriptions Of Sources, Points Of Diversion, And/Or Places Of Use In Twelve Other Stockwater Rights Should Be Amended

1. 55-10288B

Under Source, "Unnamed Streams" should be amended to "Unnamed Stream" because this right contains only one unnamed stream tributary to Long Tree Creek. Under Point of Diversion (hereinafter "POD"), the recommended POD is not contained within the South

Mountain Grazing Allotment and should be deleted; two instream beginning points should be added; and two instream ending points should be added in accordance with the attached proposed Amended Special Master's Report and Recommendation (hereinafter "SMRR").^{3/} Under Place of Use (hereinafter "POU"), T.07S., R.06W., Section 35, SENE should be deleted because it is not within the South Mountain Grazing Allotment. Trial Transcript, pp. 58-59 and 324-325.

2. 55-10289B

Under Source, "Unnamed Streams" tributary to "Juniper Creek" should be deleted because 55-10289B contains no such source. Under POD, T.08S., R.05W., Section 28, NENW should be added as "Instream Beginning Point B1," and other instream beginning and ending points should be clearly defined in accordance with the attached proposed Amended SMRR.

3. 55-10290B

Under Source, "Unnamed Streams" tributary to "Buck Creek" and "Buck Creek" tributary to "Juniper Creek" should be deleted because 55-10290B contains no such sources on public land within the South Mountain Allotment. Under POD, T.08S., R.05W., Section 34, NENW should be added as "Instream Beginning Point B1" and T.08S., R.05W., Section 34 NESE should be added as "Instream Ending Point E2." Other instream beginning and ending points should be clearly defined in accordance with the attached proposed Amended SMRR.

^{3/} The attached proposed Amended SMRR's were prepared by, Mr. Fredric W. Price, a water rights specialist employed by the United States Department of the Interior, Bureau of Land Management (hereinafter "BLM"), and a witness at trial. The proposed Amended SMRR's are based upon Exhibits 20, 21, 22, and 23. The BLM's recommendations for amendment are indicated by bold and strikeout for deletions and bold and underline for additions.

4. 55-10292B

Under POD, eight instream beginning and ending points should be added to complete the description of the PODs, and instream beginning and ending points should be clearly defined, all according to the attached proposed Amended SMRR.

5. 55-10293B

For Water Right 55-10293B, the Special Master recommended that all of the sources, PODs, and POUs be described on private land. LU Ranching intended to claim public land, and the District Court intended to split 55-10293 so that 55-10293B listed sources, PODs, and POUs solely on public land. Therefore, the Special Master should delete and then describe all sources, PODs, and POUs in accordance with the attached proposed Amended SMRR.

6. 55-10295

Under POD, two PODs should be added to complete the description of the PODs and all PODs should be clearly defined in accordance with the attached proposed Amended SMRR.

7. 55-10296

Under POD, two PODs should be added to complete the description of the PODs and all PODs should be clearly defined in accordance with the attached proposed Amended SMRR.

8. 55-10297B

Under source, "Unnamed Stream" tributary to "Jordan Creek" should be deleted because no such source exists on public land in the Cow Creek Allotment. Under POD, three PODs should be deleted because they lie outside the Cow Creek Allotment, four PODs should be added to complete the descriptions, and all PODs should be clearly defined in accordance with the

attached proposed Amended SMRR. Under POU, two POUs should be deleted because there is no stream that runs through T.05S., R.06W., Section 14, NWSE and T.05S., R.06W., Section 23, SWNE.

9. 55-10298

Under POD, ten acre tracts should be identified and PODs should be clearly defined in accordance with the attached proposed Amended SMRR. Under POU, a remark should be added to limit the use of water in T.05S., R.06W., Section 1, NESE to the Cow Creek Allotment because that particular tract only partially lies within the Cow Creek Allotment.

10. 55-10299B

Under POD, one beginning point and two ending points should be added to complete the description, ten acre tracts should be defined, and instream beginning and ending points should be clearly identified, all in accordance with the attached proposed Amended SMRR.

11. 55-10300

Under POD, one beginning point and two ending points should be added to properly complete the description of the PODs, and instream beginning and ending points should be clearly identified, all in accordance with the attached proposed Amended SMRR.

12. 55-10303B

Under Source, the "Unnamed Streams" tributary to "Corral Creek" should be amended to read "Unnamed Stream" tributary to "Corral Creek" because the water right has only one source that is an unnamed stream tributary to Corral Creek. The POD should be amended to delete T.09S., R.04W., Section 18, Lot 3 (SENWSW) because the legal description lies outside the

Cliffs Allotment. Eleven descriptions of instream beginning and ending points should be added so that descriptions of all points of diversion are complete, and instream beginning and ending points should be defined as proposed in the attached proposed Amended SMRR to clearly define beginning and ending points. Under POU, T.09S., R.04W., Section 18, NWSW should be deleted because the POU lies outside the Cliffs Allotment and is already claimed in 55-10293B; and T.09S., R.05W., Section 33, NWNW should be deleted because the claimed source does not run through the described tract. The Special Master should amend the water right description in accordance with the attached proposed Amended SMRR.

C. LU's Predecessors Did Not Perfect Stockwater Rights On Public Land

1. There is no evidence that Ezra Mills diverted stockwater from the sources claimed

The recommended 1876 priority date for all of the water rights at issue is based upon the date Ezra Mills entered into possession of a homestead. Recommendation, pp. 3-4 and 11. LU, however, did not prove that Ezra Mills diverted stockwater from the claimed sources,⁴ nor did LU prove that Ezra Mills diverted water for domestic purposes from a spring located on public land.⁵ In fact, there is no evidence in the record that Ezra Mills was in the livestock business and used public land to provide sustenance to livestock.

The evidence is that in 1881, Ezra Mills had a "ranch with fields . . . which can be converted into meadow land or made to produce wheat, barley, corn, pumpkins or potatoes."

⁴ Proof of a diversion device is not required. R.T. Nahas Company v. Hulet, 674 P.2d 1036, 1044 (Idaho App. 1983).

⁵ See Water Right Number 55-13451.

Exhibit UU, p. 2: “[L]ong stacks of timothy hay may be seen in the barnyard, around which hungry horses and faithful milch cows may gather in the winter and feed without starvation looking them in the face.” *Id.* The evidence simply does not support the finding that Ezra Mills had a livestock business that depended on public land grazing and that he diverted water from the water sources on public land claimed by LU beginning on June 10, 1876.⁹

“The test of a valid appropriation of water is its diversion from the natural source and its application to a beneficial use. . . .” Hidden Springs Trout Ranch, Inc. v. Hagerman Water Users, Inc., 619 P.2d 1130, 1132-1133 (Idaho 1980); Lemmon v. Hardy, 519 P.2d 1168, 1171 (Idaho 1974) (water right claimant must also have a possessory interest⁷ in the land designated as a place of use). The only evidence in the record that anyone actually diverted stockwater from any of the sources claimed in the South Mountain and Cow Creek Allotments is the testimony of William Lowry.⁸ Trial Transcript, pp. 291-293. Without waiving its arguments that LU’s priority date should not be earlier than September 23, 1976, the United States respectfully

⁹ There is no evidence that Ezra Mills diverted water for domestic purposes on public land at the location described in Water Right Number 55-13451.

⁷ A “possessory interest” is a right to exert control over certain land to the exclusion of others, coupled with an intent to exercise that right. RESTATEMENT OF THE LAW OF PROPERTY (VOLUME 1) § 7 (1936); *see also Sunol, et al. v. Hepburn, et al.*, 1 Cal. 254, 262 (Cal. 1850).

⁸ Mr. Lowry testified that after January 1, 1966, he grazed his own cattle on lands subject to a BLM permit. Trial Transcript, p. 291. Mr. Lowry purchased the Mendieta ranch land on December 13, 1965. Exhibit 2, p. 17. The Mendieta ranch land was base property for a grazing preference to use the Cow Creek Allotment and the South Mountain Allotment. Trial Transcript, p. 289; Exhibit R; Exhibit S (Bates Stamp Number 125).

requests the Special Master to amend the priority date to not earlier than December 13, 1965⁹ in the recommendations for 55-10288B, 55-10289B, 55-10290B, 55-10292B, 55-10293B, 55-10295, 55-10296, 55-10297B, 55-10298, and 55-10299B.

The only evidence in the record that anyone actually diverted water from sources claimed in the Cliffs Allotment is the testimony of Timothy C. Lowry. Trial Transcript, pp. 338-339. Therefore, the United States respectfully requests the Special Master to amend the priority date to not earlier than June 28, 1984¹⁰ in the recommendations for 55-10303B and 55-13451.

2. Furthermore, there is no basis for awarding an 1876 priority date for water right claims located on public land in the South Mountain Allotment and Cliffs Allotment

The Recommendation does not account for the fact that the property homesteaded by Ezra Mills is base property for LU's grazing preference in only the Cow Creek Allotment. See Affidavit of Tim Lowry dated October 29, 1998, In Re SRBA, Case No. 39576, Subcase Numbers 55-10288, et al., p. 3, filed simultaneously with LU Ranching Co.'s Motion for Summary Judgment, In Re SRBA, Case No. 39576, Subcase Numbers 55-10288 et al., dated October 29, 1998. Even if there were evidence that Ezra Mills diverted water from water sources

⁹ December 13, 1965 is the date Mr. Lowry purchased base property with a grazing preference attached which would have given Mr. Lowry a priority among other competitors for grazing use in the South Mountain Allotment and the Cow Creek Allotment. Exhibit 2, p. 17. Thus, December 13, 1965 is the first date Mr. Lowry could have been authorized by grazing permit to use public land in the Cow Creek Allotment and South Mountain Allotment for livestock grazing.

¹⁰ June 28, 1984 is the date LU purchased base property with a grazing preference attached which would have given LU a priority among other competitors for grazing use in the Cliffs Allotment. Exhibit 2, p. 26. Thus, June 28, 1984 is the first date LU could have been authorized by grazing permit to use public land in the Cliffs Allotment for livestock grazing.

on public land claimed in 55-10295, 55-10296, 55-10297B, 55-10298, 55-10299B, and 55-10300, which there is not, there is no basis for recommending the June 10, 1876 priority date for the water right claims located on public land in the South Mountain Allotment or in the Cliffs Allotment because the Ezra Mills homestead is base property only for LU's grazing preference in the Cow Creek Allotment. Without waiving its arguments that LU's priority date should not be earlier than September 23, 1976, the United States respectfully requests the Special Master to amend the priority date to not earlier than December 13, 1965^{11/} for stockwater rights with places of use in the South Mountain Allotment (recommendations for 55-10288B, 55-10289B, 55-10290B, 55-10292B, and 55-10293B) , and June 28, 1984^{12/} for the water rights with places of use in the Cliffs Allotment (recommendations for 55-10303B and 55-13451).

3. There is no evidence of preexisting perfected water rights on public land that could have been conveyed to successors in interest

There is no documentary evidence showing that any of LU's predecessors, including Ezra Mills, perfected stockwater rights or a domestic water right on public land. There is no testimony from any of LU's predecessors who competed for a grazing preference that they diverted stockwater or water for domestic uses from the sources claimed by LU. Therefore, the Special Master's recommendation that all of the water rights at issue should have an 1876 priority date is not supported by the evidence.

^{11/} See n.9, supra.

^{12/} See n.10, supra.

LU's grazing preference¹³ was obtained through BLM approved transfers of grazing preferences from William and Nita Lowry and Donald J. and Elizabeth McKay. The Lowry's obtained their grazing preference from a BLM approved transfer of grazing preference from Galo Mendieta. The McKays obtained their grazing preference from BLM approved transfers of grazing preference from W.F. Shea, and from Frank and Louise Maher.

For the South Mountain Allotment and the Cow Creek Allotment the documents in the record prove the following:

1. William and Nita Lowry conveyed ranch property to LU in 1976. Exhibit 2, p. 15.
2. William and Nita Lowry purchased the same ranch property from Galo Mendieta in 1965. Exhibit 2, p. 17.
3. Galo Mendieta did not own any water rights located on public land that were used in connection with a livestock operation dependent on the public land. Exhibit 10, pp. 2-3.
4. Galo Mendieta's predecessors, such as Pat O'Keefe, Exhibits 17 and 18, Harry F. Staples, Exhibit 6, William F. Flora, Exhibit 8, or the Staffords, Exhibit 9, did not own water rights located on public land used in connection with a livestock operation dependent on public land.

For the Cliffs Allotment, the documents in the record prove the following:

¹³ "Grazing preference or preference means a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee." 43 C.F.R. § 4100.0-5 (1999) (italics in original). "Base property means: (1) Land that has the capability to produce crops or forage that can be used to support authorized livestock for a specified period of the year, or (2) water that is suitable for consumption by livestock and is available and accessible, to the authorized livestock when the public lands are used for livestock grazing." 43 C.F.R. § 4100.0-5 (1999) (italics in original).

1. In 1984, Donald J. and Elizabeth McKay conveyed ranch property to LU. Exhibit 2, pp. 26-27; Exhibit 3.
2. The McKays acquired some of the ranch property from W.F. Shea in 1948. Exhibit 2, p. 304.
3. Shea did not own any water rights located on public land that were used in connection with a livestock operation dependent on public land. Exhibits 12 through 16.
4. George W. Meyers, Shea's predecessor, did not own any water rights on public land used in connection with a livestock operation dependent on public land. Exhibit 11.
5. The McKays acquired some of the property from Frank and Louise Maher in 1955. Exhibit 2, p. 7.
6. Mahers did not own any water rights located on the public land used in connection with a livestock operation dependent on the public land. Exhibit 4.
7. Mahers' predecessor, Clyde C. Foster, did not own water rights located on public land used in connection with a livestock operation dependent on the public land. Exhibit 5.

The original Taylor Grazing Act applications for grazing permits cited above would contain the only evidence in the record regarding the existence of perfected water rights on public land. Each applicant for a grazing preference was competing for grazing privileges on public land pursuant to the provisions of the Taylor Grazing Act. Each applicant had the opportunity to offer water rights as dependent base property^{14/} to prove that the applicants' livestock operation

^{14/} "Property - shall consist of land and its products or stock water owned or controlled and used according to local custom in livestock operations. Such property is: (a) Dependent if public range is required to maintain its proper use" Exhibit BBB-2, p. 58; *see* 43 C.F.R. §§ 501.2 and 501.4 (1938).

depended upon stockwater rights located on public land, that proper use of perfected stockwater rights depended upon grazing operations on public land, and/or that stockwater rights were commensurate property. None of the applicants listed any stockwater rights located on public land on the applications for grazing permits. Trial Transcript, pp. 122-173; Exhibits 4-6 and 8-18.

During grazing preference adjudications, the Department of the Interior's Division of Grazing did not attach any grazing preference in the South Mountain Allotment, the Cow Creek Allotment, or the Cliffs Allotment to the stockwater rights that are now claimed by LU.¹⁵ All of LU's current grazing preference is attached to various tracts of privately owned ranch land, not water rights located on public land. Exhibits M and W. Thus, none of the applicants for grazing preferences supplied evidence of ownership or control of perfected stockwater rights located on public land to the grazing advisory boards or the Division of Grazing. If simply showing general grazing use of an area were sufficient to establish ownership of a stockwater right located upon public land, then itinerant livestock herdsman could have competed for grazing preferences on an equal footing with local owners of ranch land by offering stockwater rights as base property dependent upon the public land for proper use. See Exhibit BBB-1, p. 41. Instead, nomadic livestock herdsman who could not prove ownership of stockwater rights were excluded from public land grazing and put out of business, even though their livestock had consumed water located on public land in common with other stockgrowers' livestock for many years. See

¹⁵ Because a water right can be base property, grazing preferences can be attached to water rights. 43 C.F.R. § 4100.0-2 (1999) ("*Grazing preference* This priority is attached to base property owned or controlled by the permittee")

Exhibit BBB-1, p. 35; *see Robinson v. Schoenfield*, 218 P. 1041, 1042-1043 (Utah 1923); *cf. Lemmon*, 519 P.2d at 1171 (claimant must have possessory interest in land designated as place of use); *cf. Tattersfield v. Putnam*, 41 P.2d 228, 234-235 (Ariz. 1935) (appropriation cannot be made by temporary possessor of land designated as place of use); *cf. United States v. Schmutz*, 56 F.2d 269, 270 (D. Utah 1932); *cf. 2 R. BECK, WATERS AND WATER RIGHTS* § 12.02(c)(1) and n.52 (2000).

Here, there is no evidence in the record that any of the competitors for grazing preferences in the South Mountain, Cow Creek, or Cliffs Allotments offered the stockwater rights at issue to the Division of Grazing as dependent, commensurate base property in order to more effectively compete for grazing preferences.¹⁶ Thus, the evidence is not sufficient to show the stockwater rights at issue were preexisting perfected water rights capable of being transferred to others. *See* Memorandum Decision and Order on Challenge, Order Denying Motion to File Amicus Curiae Brief, Order of Recommitment to Special Master Cushman, *In Re SRBA*, Case No. 39576, Subcases 55-10288 A & B, et al. (hereinafter "District Court's Order"), p. 15 (quoting *Kinney on Irrigation and Water Rights* § 1011 (2nd Ed. 1912)) (landowner cannot convey something which the landowner does not own).

¹⁶ Without a water right license, permit, or certificate from the State of Idaho, investment in water developments is the only other evidence that could have been offered to prove ownership or control of water on public land. *See* Exhibit BBB-1, p. 7 (in order to have value, commensurate property "must be hooked up with range rights"); p. 10 (in Nevada and California, grazing use of public land is dependent upon water development investments made by stockmen, and water is 99% owned by stockmen); p. 42 (in Arizona and New Mexico, year-round water is as essential as feed, and water rights should be considered commensurate property). Thirteen of the water rights at issue are for in-stream stockwater; thus there was not, and could not have been, an investment made by the stockgrowers in a water development.

Without waiving its arguments that LU's priority date should not be earlier than September 23, 1976, the United States respectfully requests that the Special Master amend the priority date to not earlier than December 13, 1965¹⁷ for stockwater rights with places of use in the South Mountain Allotment and Cow Creek Allotment (recommendations for 55-10288B, 55-10289B, 55-10290B, 55-10292B, 55-10293B, 55-10295, 55-10296, 55-10297B, 55-10298, and 55-10299B) , and June 28, 1984¹⁸ for the water rights with places of use in the Cliffs Allotment (recommendations for 55-10303B and 55-13451).

D. Even If The Water Rights Were Perfected By LU's Predecessors,
The Water Rights Were Not Conveyed To LU In Accordance With Idaho Law

The Special Master recommended the water rights at issue with an 1876 priority date based upon the intention of William Lowry to transfer the water rights to LU by deed in 1976. Recommendation, p. 8. William Lowry's water use on public land was apparently tacked back to presumed water use on public land by Ezra Mills in 1876. Recommendation, p. 10. Even under the District Court's analysis of the various methods water rights might be conveyed, LU's earliest priority date for the stockwater rights on public land in the Cow Creek and South Mountain Allotments is 1965, and the earliest priority date for the water rights on public land in the Cliffs Allotment is 1984. See District Court's Order, pp. 12-25.

1. Water rights were not conveyed as appurtenances to grazing preferences

The District Court theorized that LU's water rights could have been transferred as appurtenances to grazing preferences that were conveyed in writing. *Id.* at 19-20. The District

¹⁷ See n.9, *supra*.

¹⁸ See n.10, *supra*.

Court suggested that silence as to the putative transfer of water rights could be overcome by evidence of the grantor's intent.¹⁹ Id. at 23.

As shown above, there is no evidence that LU's predecessors to grazing preferences ever owned the water rights at issue, and thus, LU's predecessors could not have conveyed the water rights to successors in interest to grazing preferences under any circumstances. Moreover, there is no evidence that LU's predecessors intended to transfer the water rights as an appurtenance to grazing preferences.

The evidence demonstrated that LU's predecessors did not have water rights on the public lands to which the grazing preference could be attached. The evidence further demonstrated that the grazing preferences were never attached to water rights, but were instead attached to ranch land base property. Accordingly, the water rights could not be conveyed as appurtenances to grazing preferences.

2. The evidence does not support the finding that grantors intended to convey the water rights at issue

The District Court suggested that the Special Master examine the grantor's intent to determine if any water rights were conveyed. District Court's Order, pp. 16, 21, 22, 23, and 24. Mr. William Lowry conveyed privately owned ranch property to LU on September 23, 1976. Mr. Lowry was, and continues to be, the President of LU. Exhibit 2, pp. 345-347; Trial Transcript, p.

¹⁹ The grantor of a grazing preference and the grantor of a transfer of a grazing preference is the BLM, not the holder of the grazing preference. See 43 U.S.C. § 315b and 43 C.F.R. §§ 4110.2 - 4110.2-3 (1999). Thus, the AUMs represented by the grazing preference, and the grazing preference itself, belong to the United States, not the temporary holder of the grazing preference. When base property is conveyed to another, filing an application for transfer of a grazing preference attached to the base property is essential for a property to continue to be qualified as a base property.

301; Exhibit 1, p. 4 (Deposition of Tim Lowry, p. 4, ln. 17). Mr. Lowry, 25 years after the ranch land conveyance, testified that he intended to convey the water rights at issue from himself to a corporation that he owns and operates. Trial Transcript, p. 296. Mr. Lowry's self-serving testimony should not be entitled to deference or weight, and should not have been relied upon as conclusive proof of a grantor's intent to convey the water rights at issue.²⁰ District of Columbia v. Murphy, 314 U.S. 441, 446 (1941) (testimony regarding intention can be considered, but is subject to the "infirmity of any self-serving declaration," and may not be persuasive or can be contradicted by other declarations and inconsistent acts); cf. Malcom v. Hammer, 127 P.2d 331, 337 (Idaho 1942) (acts or declarations that are self-serving, or in the interest of the parties making them, are generally not admissible). Even though Mr. Lowry testified that he intended to transfer the water rights to LU, the earliest priority date that LU could establish for water rights located on public land in the South Mountain and Cow Creek Allotments would be the date Mr.

²⁰ William Lowry's statement is inconsistent with the Warranty Deed where William A Lowry and Nita Lowry conveyed ranch land to LU Ranching Company, which is the best evidence of the grantor's intent in 1976. Exhibit 2, p. 15. The deed has no clause that conveys appurtenances. The deed has no description of water rights whatsoever. The deed is unambiguous and conveys only ranch land. If the water rights on public land were as important to the livestock operation as Mr. Lowry would have this Court believe, then the water rights with places of use designated on land not owned by Lowry should have been described in the deed that conveyed the ranch land to LU, as required by Idaho law. Gard v. Thompson, 123 P. 497, 502 (Idaho 1912).

Lowry could first have used water on public land, which was December 13, 1965.^{21/} Similarly, the earliest priority date that LU could establish for the water rights located on the Cliffs Allotments would be June 28, 1984.^{22/}

There is no extrinsic evidence of the intent of grantors of ranch land conveyances regarding the transfer of the water rights at issue. The Lowry/LU Warranty Deed conveys only ranch property. Exhibit 2, p. 15. The McKay/LU Warranty Deed conveys ranch property and specifically described water rights, contains a clause that conveys unnamed appurtenances, and purports to convey "1,635 AUM's, Federal Grazing Permits" which were not McKays to convey.^{23/} Exhibit 2, p. 26. The Lowry/LU Deed does not even have a clause that conveys appurtenances. Neither the Lowry/LU deed nor the McKay/LU deed describe any water rights located on public land. There is no evidence that any of the grantors in LU's chain of title, except William Lowry through his own testimony, intended to convey the water rights at issue.

Without any written conveyance of the water rights whatsoever, LU cannot now improve its priority date over all other water users by "tacking" its use of water sources back to the date of earlier water uses by unknown stockgrowers who allowed their livestock to roam at large on public land in common with livestock owned by other stockgrowers:

The great weight of authority upon this subject throughout the Western States now holds that a parol or verbal sale of a water right, accompanied by actual

^{21/} See n.9, supra.

^{22/} See n.10, supra.

^{23/} "The regional grazer is vested with authority, in his discretion and in the light of all facts and circumstances, to issue or refuse to issue a grazing license. . . ." 43 C.F.R. § 501.9 (1938); see 43 C.F.R. § 4110.2-3 (1999).

possession and use for some beneficial purpose, is valid as between the parties to such an agreement. But, in such a case it is further held that the grantee does not acquire the grantor's priority, but that he acquires a new right as an appropriator by actual diversion, dating only from the date of the transfer and such actual possession, which is, in effect, the same as though the grantee had upon that date consummated the appropriation himself.

2 C. KINNEY, IRRIGATION AND WATER RIGHTS § 999; *see* § 997; *see also* § 787. According to the most recent deeds in LU's chain of title, ranch land was conveyed to LU on September 23, 1976 and June 28, 1984. In this case, the warranty deeds conveying ranch land are the best evidence of the grantors' intent.²⁴ The deeds do not convey any water rights located on public land, as required by Idaho law. Gard v. Thompson, 123 P. 497, 502 (Idaho 1912) ("a water right is real estate, and any interest therein is an interest in real estate, if [LU's predecessors] secured a water right . . . [they] could not transfer it to another except by a written conveyance, such as would convey the title to real estate.").²⁵ There is no evidence, except the self-serving testimony of William Lowry, that the grantors in LU's chain of title intended to convey the water rights at

²⁴ Daugharty v. Post Falls Highway Dist., 9 P.3d 534, 538 (Idaho 2000) (when construing an instrument that conveys an interest in land, courts seek to give effect to the intent of the parties to the transaction; the intent of the parties is determined by viewing the conveyance instrument as a whole); City of Kellog v. Mission Mtn. Interests Ltd., Co., 16 P.3d 915, 919-920 (Idaho 2000) (interpretation of an unambiguous deed is a question of law to be settled by its plain language; ambiguity exists only if the language of the conveyance instrument is subject to conflicting interpretations). Here, the language in the deeds is not ambiguous. The intent of the grantors was to convey ranch land.

²⁵ *See* I.C. § 42-101 ("such right shall become the complement of, or one of the appurtenances of, the land or other thing to which, through necessity, said water is being applied"); I.C. § 42-220 ("all rights to water confirmed under the provisions of this chapter, or by any decree of court, shall become appurtenant to, and shall pass with a conveyance of, the land for which the right of use is granted."); I.C. § 42-1402 ("right confirmed by such decree or allotment shall be appurtenant to and shall become a part of the land on which the water is used, and such right will pass with the conveyance of such land, and such decree shall describe the land to which such water shall become so appurtenant.").

issue. Therefore, the United States respectfully requests that the Special Master amend LU's recommended priority date to not earlier than September 23, 1976 for water rights with places of use in the South Mountain Allotment and Cow Creek Allotment (recommendations for 55-10288B, 55-10289B, 55-10290B, 55-10292B, 55-10293B, 55-10295, 55-10296, 55-10297B, 55-10298, and 55-10299B) , and June 28, 1984 for the water rights with places of use in the Cliffs Allotment (recommendations for 55-10303B and 55-13451).

DATED this 10th day of April, 2003.

Respectfully submitted,

UNITED STATES OF AMERICA

A handwritten signature in cursive script, reading "Larry A. Brown", is written over a horizontal line.

Larry A. Brown

Of Attorneys for the United States

CERTIFICATE OF SERVICE

I certify that on April 10, 2003, I served a true and correct copy of foregoing **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; 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:

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

Mr. Richard L. Harris
Attorney at Law
1023 Arthur Street
Caldwell, ID 83605

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

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

Mr. Craig A. Pridgen
Attorney at Law
McQuaid, Metzler, Bedford & Van Zandt, LLP
221 Main Street, 16th Floor
San Francisco, CA 94105


Signature of person serving document

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) PROPOSED
) AMENDED SPECIAL MASTER'S REPORT AND RECOMMENDATION
) (based on SMRR dated 02/27/2003)
Case No. 39576)
) WATER RIGHT 55-10288B

NAME AND ADDRESS: LU RANCHING
C/O WILLIAM A LOWRY
P O BOX 415
JORDAN VALLEY, OR 97910

SOURCE:	LONE TREE CREEK	Tributary:	JORDAN CREEK
	~~UNNAMED STREAMS~~		~~LONE TREE CREEK~~
	UNNAMED STREAM		<u>LONE TREE CREEK</u>

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED
13,000 GALLONS PER DAY.

PRIORITY DATE: _____

POINT OF DIVERSION:			Within Owyhee County	
T07S	R06W	S35	SENE	~~(Instream Ending Point)~~
T08S	R05W	S05	NWSW	(Instream Beginning Point) B1
T08S	R05W	S05	NWSW	(Instream Ending Point) E1
T08S	R05W	S06	SWNE	(Instream Beginning Point) B2
T08S	R06W	S01	LOT 1 (NENE)	(Instream Ending Point) E2

PURPOSE AND PERIOD OF USE:			
Purpose of Use	Period of Use	Quantity	
Stockwater	06-15 TO 12-31	0.02 CFS	

PLACE OF USE:	Stockwater		Within Owyhee County
	~~T07S~~ R06W S35		SENE
	T08S R05W S05		NWSW
	T08S R05W S06		SWNE
	T08S R05W S06	LOT 3	(NENW)
	T08S R05W S06	LOT 4	(NWNW)
	T08S R05W S06		SENW
	T08S R06W S01	LOT 1	(NENE)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED
BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL
UNIFIED DECREE. I.C. SECTION 42-1412(6).

PAGE 2 - PROPOSED AMENDED SPECIAL MASTER'S REPORT FOR SUBCASE 55-10288B;
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 NUMBERS 55-10288B, ET AL.

In Re SRBA) PROPOSED
) AMENDED SPECIAL MASTER'S REPORT AND RECOMMENDATION
) (based on SMRR dated 02/27/2003)
Case No. 39576)
) WATER RIGHT 55-10289B

SOURCE:	JUNIPER CREEK	Tributary:	OWYHEE RIVER, NORTH FORK
	~~UNNAMED STREAMS~~		~~JUNIPER CREEK~~
	UNNAMED STREAMS		CHERRY CREEK

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED
13,000 GALLONS PER DAY.

POINT OF DIVERSION:		Within Owyhee County	
T08S R05W S20	SWNE	(Instream Beginning Point)	<u>B2</u>
T08S R05W S20	NESW	(Instream Ending Point)	<u>E2</u>
T08S R05W S20	SESW	(Instream Beginning Point)	<u>B3</u>
<u>T08S R05W S28</u>	<u>NENW</u>	<u>(Instream Beginning Point)</u>	<u>B1</u>
T08S R05W S28	SENW	(Instream Ending Point)	<u>E1</u>
T08S R05W S29	SENW	(Instream Ending Point)	<u>E3</u>

PLACE OF USE:	Stockwater		Within Owyhee County
	T08S R05W S20		SWNE
	T08S R05W S20		SENW
	T08S R05W S20		NESW
	T08S R05W S20		SESW
	T08S R05W S28		NENW
	T08S R05W S28		SENW
	T08S R05W S29		NENW
	T08S R05W S29		SENW

///

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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) PROPOSED
) AMENDED SPECIAL MASTER'S REPORT AND RECOMMENDATION
) (based on SMRR dated 02/27/2003)
Case No. 39576)
) WATER RIGHT 55-10290B

NAME AND ADDRESS: LU RANCHING
C/O WILLIAM A LOWRY
P O BOX 415
JORDAN VALLEY, OR 97910

SOURCE:	~~UNNAMED STREAMS~~	Tributary:	~~BUCK CREEK~~
	~~BUCK CREEK~~		~~JUNIPER CREEK~~
	UNNAMED STREAMS		JUNIPER CREEK

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED
13,000 GALLONS PER DAY.

PRIORITY DATE: _____

POINT OF DIVERSION:				Within Owyhee County	
<u>T08S</u>	<u>R05W</u>	<u>S34</u>	<u>NENW</u>	<u>(Instream Beginning Point)</u>	<u>B1</u>
T08S	R05W	S34	NENW	(Instream Ending Point)	<u>E1</u>
T08S	R05W	S34	NESE	(Instream Beginning Point)	<u>B2</u>
<u>T08S</u>	<u>R05W</u>	<u>S34</u>	<u>NESE</u>	<u>(Instream Ending Point)</u>	<u>E2</u>
T08S	R05W	S35	LOT 4 (SWSW)	(Instream Beginning Point)	<u>B3</u>
T08S	R05W	S35	LOT 4 (SWSW)	(Instream Ending Point)	<u>E3</u>

PURPOSE AND PERIOD OF USE:	Purpose of Use Stockwater	Period of Use 06-15 TO 12-31	Quantity 0.02 CFS
-------------------------------	------------------------------	---------------------------------	----------------------

PLACE OF USE: Stockwater Within Owyhee County
 T08S R05W S34 NENW
 T08S R05W S34 NESE
 T08S R05W S35 LOT 4 (SWSW)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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) PROPOSED
) AMENDED SPECIAL MASTER'S REPORT AND RECOMMENDATION
) (based on SMRR dated 02/27/2003)
Case No. 39576)
) WATER RIGHT 55-10292B

NAME AND ADDRESS: LU RANCHING
C/O WILLIAM A LOWRY
P O BOX 415
JORDAN VALLEY, OR 97910

SOURCE: CABIN CREEK Tributary: JUNIPER CREEK
UNNAMED STREAMS CABIN CREEK

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED
13,000 GALLONS PER DAY.

PRIORITY DATE: _____

POINT OF DIVERSION: Within Owyhee County

T08S R05W S23	NWSE	(Instream Beginning Point) <u>B1</u>
<u>T08S R05W S23</u>	<u>NWSE</u>	<u>(Instream Ending Point) E1</u>
<u>T08S R05W S35</u>	<u>NWNW</u>	<u>(Instream Beginning Point) B2</u>
<u>T08S R05W S35</u>	<u>NWNW</u>	<u>(Instream Ending Point) E2</u>
<u>T08S R05W S35</u>	<u>SENW</u>	<u>(Instream Beginning Point) B3</u>
<u>T08S R05W S35</u>	<u>NESW</u>	<u>(Instream Ending Point) E3</u>
T08S R05W S35	NESE	(Instream Beginning Point) <u>B5</u>
<u>T08S R05W S35</u>	<u>LOT 2 (SWSE)</u>	<u>(Instream Beginning Point) B4</u>
<u>T08S R05W S35</u>	<u>LOT 1 (SESE)</u>	<u>(Instream Ending Point) E5</u>
<u>T09S R05W S02</u>	<u>LOT 1 (NENE)</u>	<u>(Instream Beginning Point) B6</u>
T09S R05W S02	SENE	(Instream Ending Point) <u>E4, E6</u>

THERE ARE TWO POINTS OF ENDING WITHIN SENE, S02, T09S, R05W.

PURPOSE AND			
PERIOD OF USE:	Purpose of Use	Period of Use	Quantity
	Stockwater	06-15 TO 12-31	0.02 CFS

PLACE OF USE:	Stockwater	Within Owyhee County
	T08S R05W S23	NWSE
	T08S R05W S35	NWNW
	T08S R05W S35	SENW
	T08S R05W S35	NESW
	T08S R05W S35	NESE
	T08S R05W S35	LOT 2 (SWSE)
	T08S R05W S35	LOT 1 (SESE)

T09S R05W S02 LOT 2 (NWNE)
T09S R05W S02 SWNE
T09S R05W S02 SENE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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) PROPOSED
) AMENDED SPECIAL MASTER'S REPORT AND RECOMMENDATION
) (based on SMRR dated 02/27/2003)
Case No. 39576)
) WATER RIGHT 55-10293B

NAME AND ADDRESS: LU RANCHING
C/O WILLIAM A LOWRY
P O BOX 415
JORDAN VALLEY, OR 97910

SOURCE: CORRAL CREEK Tributary: CABIN CREEK
UNNAMED STREAMS CORRAL CREEK

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED
13,000 GALLONS PER DAY.

PRIORITY DATE: _____

POINT OF DIVERSION:			Within Owyhee County	
~~T08S~~	~~R04W~~	~~S30~~	~~NWNESE~~	~~(Instream Beginning Point)~~
~~T08S~~	~~R04W~~	~~S31~~	~~SEWNNE~~	~~(Instream Ending Point)~~
~~T08S~~	~~R04W~~	~~S31~~	~~NESENE~~	~~(Instream Beginning Point)~~
~~T08S~~	~~R04W~~	~~S31~~	~~SWSE~~	~~(Instream Ending Point)~~
~~T08S~~	~~R05W~~	~~S25~~	~~NWNESE~~	~~(Instream Beginning Point)~~
~~T08S~~	~~R05W~~	~~S36~~	~~SWNWNE~~	~~(Instream Beginning Point)~~
~~T09S~~	~~R05W~~	~~S12~~	~~NENW~~	~~(Instream Beginning Point)~~
~~T09S~~	~~R05W~~	~~S12~~	~~SWSE~~	~~(Instream Ending Point)~~
<u>T09S</u>	<u>R04W</u>	<u>S05</u>	<u>LOT 5 (NWNW)</u>	<u>(Instream Beginning Point) B3</u>
<u>T09S</u>	<u>R04W</u>	<u>S06</u>	<u>LOT 1 (NENE)</u>	<u>(Instream Ending Point) E3</u>
<u>T09S</u>	<u>R04W</u>	<u>S06</u>	<u>LOT 2 (NWNE)</u>	<u>(Instream Beginning Point) B2</u>
<u>T09S</u>	<u>R04W</u>	<u>S06</u>	<u>LOT 4 (NWNW)</u>	<u>(Instream Beginning Point) B1</u>
<u>T09S</u>	<u>R04W</u>	<u>S06</u>	<u>LOT 12 (SWNW)</u>	<u>(Instream Ending Point) E1</u>
<u>T09S</u>	<u>R04W</u>	<u>S06</u>	<u>LOT 12 (SWNW)</u>	<u>(Instream Beginning Point) B4</u>
<u>T09S</u>	<u>R04W</u>	<u>S07</u>	<u>LOT 7 (NWNW)</u>	<u>(Instream Ending Point) E4</u>
<u>T09S</u>	<u>R04W</u>	<u>S07</u>	<u>LOT 4 (SESWSW)</u>	<u>(Instream Ending Point) E5</u>
<u>T09S</u>	<u>R04W</u>	<u>S07</u>	<u>NESE</u>	<u>(Instream Beginning Point) B5</u>
<u>T09S</u>	<u>R04W</u>	<u>S07</u>	<u>SESWSE</u>	<u>(Instream Beginning Point) B6</u>
<u>T09S</u>	<u>R04W</u>	<u>S18</u>	<u>LOT 1 (NWNW)</u>	<u>(Instream Ending Point) E6</u>
<u>T09S</u>	<u>R04W</u>	<u>S18</u>	<u>LOT 2 (SWNW)</u>	<u>(Instream Ending Point) E2</u>

<u>T09S R04W S18</u>	<u>NESW</u>	<u>(Instream Beginning Point)</u>	<u>B7</u>
<u>T09S R04W S18</u>	<u>LOT 3 (NWSW)</u>	<u>(Instream Ending Point)</u>	<u>E7</u>

PURPOSE AND PERIOD OF USE:	Purpose of Use Stockwater	Period of Use 06-15 TO 12-31	Quantity 0.02 CFS
PLACE OF USE:	Stockwater,	Within Owyhee County	

<u>T08S R04W S30</u>	<u>NESSE</u>
<u>T08S R04W S30</u>	<u>SESE</u>
<u>T08S R04W S31</u>	<u>NENE</u>
<u>T08S R04W S31</u>	<u>NWNE</u>
<u>T08S R04W S31</u>	<u>SWNE</u>
<u>T08S R04W S31</u>	<u>SENE</u>
<u>T08S R04W S31</u>	<u>NENW</u>
<u>T08S R04W S31</u>	<u>LOT 1 (NWNW)</u>
<u>T08S R04W S31</u>	<u>SENW</u>
<u>T08S R04W S31</u>	<u>NESW</u>
<u>T08S R04W S31</u>	<u>SESW</u>
<u>T08S R04W S31</u>	<u>NWSE</u>
<u>T08S R04W S31</u>	<u>SESE</u>
<u>T08S R05W S25</u>	<u>NESSE</u>
<u>T08S R05W S25</u>	<u>SESE</u>
<u>T08S R05W S36</u>	<u>NWNE</u>
<u>T08S R05W S36</u>	<u>SWNE</u>
<u>T08S R05W S36</u>	<u>NWSE</u>
<u>T08S R05W S36</u>	<u>SWSE</u>
<u>T08S R05W S36</u>	<u>SESE</u>
<u>T09S R05W S01</u>	<u>NENE</u>
<u>T09S R05W S01</u>	<u>SENE</u>
<u>T09S R05W S12</u>	<u>NENW</u>
<u>T09S R05W S12</u>	<u>SENW</u>
<u>T09S R05W S12</u>	<u>NESW</u>
<u>T09S R05W S12</u>	<u>SWSE</u>
<u>T09S R04W S05</u>	<u>LOT 4 (NWNW)</u>
<u>T09S R04W S05</u>	<u>LOT 5 (SWNW)</u>
<u>T09S R04W S06</u>	<u>LOT 1 (NENE)</u>
<u>T09S R04W S06</u>	<u>LOT 2 (NWNE)</u>
<u>T09S R04W S06</u>	<u>LOT 7 (NWNE)</u>
<u>T09S R04W S06</u>	<u>LOT 10 (SWNE)</u>
<u>T09S R04W S06</u>	<u>LOT 4 (NWNW)</u>
<u>T09S R04W S06</u>	<u>LOT 5 (NWNW)</u>
<u>T09S R04W S06</u>	<u>LOT 12 (SWNW)</u>
<u>T09S R04W S06</u>	<u>LOT 13 (NWSW)</u>
<u>T09S R04W S06</u>	<u>LOT 14 (SWSW)</u>
<u>T09S R04W S06</u>	<u>SESW</u>

<u>T09S R04W S06</u>	<u>NWSE</u>
<u>T09S R04W S06</u>	<u>SWSE</u>
<u>T09S R04W S07</u>	<u>NENW</u>
<u>T09S R04W S07</u>	<u>LOT 1 (NWNW)</u>
<u>T09S R04W S07</u>	<u>LOT 2 (SWNW)</u>
<u>T09S R04W S07</u>	<u>LOT 3 (NWSW)</u>
<u>T09S R04W S07</u>	<u>LOT 4 (SWSW)</u>
<u>T09S R04W S07</u>	<u>SESW</u>
<u>T09S R04W S07</u>	<u>NESE</u>
<u>T09S R04W S07</u>	<u>NWSE</u>
<u>T09S R04W S07</u>	<u>SWSE</u>
<u>T09S R04W S18</u>	<u>NWNE</u>
<u>T09S R04W S18</u>	<u>NENW</u>
<u>T09S R04W S18</u>	<u>LOT 1 (NWNW)</u>
<u>T09S R04W S18</u>	<u>LOT 2 (SWNW)</u>
<u>T09S R04W S18</u>	<u>SESW</u>
<u>T09S R04W S18</u>	<u>NESW</u>
<u>T09S R04W S18</u>	<u>LOT 3 (NWSW)</u>

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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) PROPOSED
) AMENDED SPECIAL MASTER'S REPORT AND RECOMMENDATION
) (based on SMRR dated 02/27/2003)
Case No. 39576)
) WATER RIGHT 55-10295

NAME AND ADDRESS: LU RANCHING
C/O WILLIAM A LOWRY
P O BOX 415
JORDAN VALLEY, OR 97910

SOURCE: UNNAMED STREAM Tributary: BAXTER CREEK

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED
13,000 GALLONS PER DAY.

PRIORITY DATE: _____

POINT OF DIVERSION:			Within Owyhee County
	T05S R06W S02	NESESW	(Instream Ending Point) <u>E2</u>
	<u>T05S R06W S02</u>	<u>SENENW</u>	<u>(Instream Beginning Point) B2</u>
	<u>T05S R06W S11</u>	<u>NWNWNE</u>	<u>(Instream Ending Point) E1</u>
	T05S R06W S11	NESWNE	(Instream Beginning Point) <u>B1</u>

PURPOSE AND			
PERIOD OF USE:	Purpose of Use	Period of Use	Quantity
	Stockwater	06-15 TO 12-31	0.02 CFS

PLACE OF USE:	Stockwater	Within Owyhee County
	T05S R06W S02	SESW
	T05S R06W S02	SWSE
	T05S R06W S11	NWNE
	T05S R06W S11	SWNE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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) PROPOSED
) AMENDED SPECIAL MASTER'S REPORT AND RECOMMENDATION
) (based on SMRR dated 02/27/2003)
Case No. 39576)
) WATER RIGHT 55-10296

NAME AND ADDRESS: LU RANCHING
C/O WILLIAM A LOWRY
P O BOX 415
JORDAN VALLEY, OR 97910

SOURCE: UNNAMED STREAM Tributary: JORDAN CREEK

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED
13,000 GALLONS PER DAY.

PRIORITY DATE:

POINT OF DIVERSION:		Within Owyhee County	
T05S R06W S12	NWSWSW	(Instream Beginning Point)	<u>B1</u>
<u>T05S R06W S14</u>	<u>SWSWSE</u>	(Instream Ending Point)	<u>E1</u>
<u>T05S R06W S23</u>	<u>NENENW</u>	(Instream Beginning Point)	<u>B2</u>
T05S R06W S23	SESWNW	(Instream Ending Point)	<u>E2</u>

PURPOSE AND			
PERIOD OF USE:	Purpose of Use	Period of Use	Quantity
	Stockwater	06-15 TO 12-31	0.02 CFS

PLACE OF USE:	Stockwater	Within Owyhee County
	T05S R06W S11	SESE
	T05S R06W S12	SWSW
	T05S R06W S14	NENE
	T05S R06W S14	SWNE
	T05S R06W S14	SENE
	T05S R06W S14	NWSE
	T05S R06W S14	SWSE
	T05S R06W S23	NENW
	T05S R06W S23	SWNW
	T05S R06W S23	SENW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

///

PAGE 1 - PROPOSED AMENDED SPECIAL MASTER'S REPORT FOR SUBCASE 55-10296; 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 NUMBERS 55-10288B, ET AL.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED
BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL
UNIFIED DECREE. I.C. SECTION 42-1412(6).

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) PROPOSED
) AMENDED SPECIAL MASTER'S REPORT AND RECOMMENDATION
) (based on SMRR dated 02/27/2003)
Case No. 39576)
) WATER RIGHT 55-10297B

NAME AND ADDRESS: LU RANCHING
C/O WILLIAM A LOWRY
P O BOX 415
JORDAN VALLEY, OR 97910

SOURCE: UNNAMED STREAMS Tributary: TROUT CREEK
~~UNNAMED STREAM~~ ~~JORDAN CREEK~~

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED
13,000 GALLONS PER DAY.

PRIORITY DATE: _____

POINT OF DIVERSION:		Within Owyhee County	
T05S R05W S18	LOT 3 (NWSW)	(Instream Beginning Point)	<u>B1</u>
T05S R06W S13	SENE	(Instream Beginning Point)	<u>B2</u>
T05S R06W S13	NENW	(Instream Beginning Point)	<u>B3</u>
~~T05S R06W S13~~	~~SWSW~~	~~(Instream Beginning Point)~~	
~~T05S R06W S14~~	~~NENE~~	~~(Instream Beginning Point)~~	
~~T05S R06W S14~~	~~SENE~~	~~(Instream Ending Point)~~	
<u>T05S R06W S14</u>	<u>SESE</u>	<u>(Instream Beginning Point)</u>	<u>B4</u>
T05S R06W S23	SWSE	(Instream Ending Point)	<u>B4</u>
<u>T05S R06W S24</u>	<u>SENW</u>	<u>(Instream Ending Point)</u>	<u>E3</u>
<u>T05S R06W S24</u>	<u>NENWSE</u>	<u>(Instream Ending Point)</u>	<u>E1</u>
<u>T05S R06W S24</u>	<u>SWNWSE</u>	<u>(Instream Ending Point)</u>	<u>E2</u>

PURPOSE AND PERIOD OF USE:	Purpose of Use	Period of Use	Quantity
	Stockwater	06-15 TO 12-31	0.02 CFS

PLACE OF USE:	Stockwater		Within Owyhee County
	T05S R05W S18	LOT 3 (NWSW)	
	T05S R05W S18	LOT 4 (SWSW)	
	T05S R05W S19	LOT 1 (NWNW)	
	T05S R06W S13	SWNE	
	T05S R06W S13	SENE	
	T05S R06W S13	NENW	

T05S R06W S13	SENW
T05S R06W S13	NESE
T05S R06W S13	NWSE
T05S R06W S13	SWSE
T05S R06W S13	SESE
~~T05S R06W S14~~	~~NESE~~
T05S R06W S14	SESE
T05S R06W S23	NENE
~~T05S R06W S23~~	~~SWNE~~
T05S R06W S23	SENE
T05S R06W S23	NESE
T05S R06W S23	NWSE
T05S R06W S23	SWSE
T05S R06W S24	NENE
T05S R06W S24	NWNE
T05S R06W S24	SWNE
T05S R06W S24	SENE
T05S R06W S24	NENW
T05S R06W S24	SENW
T05S R06W S24	NWSE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

In Re SRBA) PROPOSED
) AMENDED SPECIAL MASTER'S REPORT AND RECOMMENDATION
) (based on SMRR dated 02/27/2003)
Case No. 39576)
) WATER RIGHT 55-10298

PAGE 1 - PROPOSED AMENDED SPECIAL MASTER'S REPORT FOR SUBCASE 55-10298; 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 NUMBERS 55-10288B, ET AL.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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) PROPOSED
) AMENDED SPECIAL MASTER'S REPORT AND RECOMMENDATION
) (based on SMRR dated 02/27/2003)
Case No. 39576)
) WATER RIGHT 55-10299B

NAME AND ADDRESS: LU RANCHING
C/O WILLIAM A LOWRY
P O BOX 415
JORDAN VALLEY, OR 97910

SOURCE:	UNNAMED STREAMS	Tributary:	CHIMNEY CREEK
	CHIMNEY CREEK		SWISHER CREEK

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED
13,000 GALLONS PER DAY.

PRIORITY DATE: _____

POINT OF DIVERSION:		Within Owyhee County	
T04S R05W S31	<u>SENWNE</u>	(Instream Ending Point)	<u>E1</u>
T04S R05W S31	<u>NWSENE</u>	(Instream Beginning Point)	<u>B2</u>
T04S R05W S31	<u>NESENE</u>	(Instream Ending Point)	<u>E2</u>
T04S R05W S31	<u>SENENW</u>	(Instream Beginning Point)	<u>B1</u>
<u>T04S R05W S32</u>	<u>SWSWNE</u>	(Instream Beginning Point)	<u>B4</u>
<u>T04S R05W S32</u>	<u>SWSWNE</u>	(Instream Ending Point)	<u>E4</u>
T04S R05W S32	<u>SWSESW</u>	(Instream Beginning Point)	<u>B3</u>
<u>T04S R05W S32</u>	<u>NWNWSE</u>	(Instream Ending Point)	<u>E3</u>

PURPOSE AND PERIOD OF USE:	Purpose of Use	Period of Use	Quantity
	Stockwater	06-15 TO 12-31	0.02 CFS

PLACE OF USE:	Stockwater		Within Owyhee County
	T04S R05W S31		NWNE
	T04S R05W S31		SENE
	T04S R05W S31		NENW
	T04S R05W S32		SWNE
	T04S R05W S32		SESW
	T04S R05W S32		NWSE
	T04S R05W S32		SWSE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

//

PAGE 1 - PROPOSED AMENDED SPECIAL MASTER'S REPORT FOR SUBCASE 55-10299B;
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 NUMBERS 55-10288B, ET AL.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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) PROPOSED
) AMENDED SPECIAL MASTER'S REPORT AND RECOMMENDATION
) (based on SMRR dated 02/27/2003)
Case No. 39576)
) WATER RIGHT 55-10300

NAME AND ADDRESS: LU RANCHING
C/O WILLIAM A LOWRY
P O BOX 415
JORDAN VALLEY, OR 97910

SOURCE: TROUT CREEK, EAST FORK Tributary: TROUT CREEK
UNNAMED STREAMS TROUT CREEK, EAST FORK

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED
13,000 GALLONS PER DAY.

PRIORITY DATE: _____

POINT OF DIVERSION: Within Owyhee County

T05S R05W S02	<u>NE</u> SENW	(Instream Beginning Point)	<u>B2</u>
<u>T05S R05W S02</u>	<u>SW</u> SENW	(Instream Ending Point)	<u>E1</u>
T05S R05W S02	<u>NE</u> SESE	(Instream Beginning Point)	<u>B1</u>
T05S R05W S03	LOT 3 (<u>SE</u> ENW)	(Instream Beginning Point)	<u>B3</u>
<u>T05S R05W S03</u>	<u>SE</u> SENW	(Instream Ending Point)	<u>E2</u>
T05S R05W S03	<u>SW</u> SESW	(Instream Ending Point)	<u>E3</u>

PURPOSE AND			
PERIOD OF USE:	Purpose of Use	Period of Use	Quantity
	Stockwater	06-15 TO 12-31	0.02 CFS

PLACE OF USE:	Stockwater				Within Owyhee County
	T05S R05W S02				SWNW
	T05S R05W S02				SENW
	T05S R05W S02				NESW
	T05S R05W S02				NWSW
	T05S R05W S02				NWSE
	T05S R05W S02				SWSE
	T05S R05W S02				SESE
	T05S R05W S03				SWNE
	T05S R05W S03	LOT 3			(NENW)
	T05S R05W S03				SENW
	T05S R05W S03				NESW
	T05S R05W S03				SESW
	T05S R05W S03				NESE
	T05S R05W S03				NWSE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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) PROPOSED
) AMENDED SPECIAL MASTER'S REPORT AND RECOMMENDATION
) (based on SMRR dated 02/27/2003)
Case No. 39576)
) WATER RIGHT 55-10303B

NAME AND ADDRESS: LU RANCHING
C/O WILLIAM A LOWRY
P O BOX 415
JORDAN VALLEY, OR 97910

SOURCE:	UNNAMED STREAMS	Tributary:	NOON CREEK
	UNNAMED STREAMS		OWYHEE RIVER, NORTH FORK
	NOON CREEK		OWYHEE RIVER, NORTH FORK
	~~UNNAMED STREAMS~~		~~CORRAL CREEK~~
	<u>UNNAMED STREAM</u>		<u>CORRAL CREEK</u>
	CORRAL CREEK		CABIN CREEK
	CABIN CREEK		JUNIPER CREEK
	JUNIPER CREEK		OWYHEE RIVER, NORTH FORK
	OWYHEE RIVER, NORTH FORK		OWYHEE RIVER

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED
13,000 GALLONS PER DAY.

PRIORITY DATE: _____

POINT OF DIVERSION:

T09S R04W S04	SESWSW	(Instream Beginning Point)	<u>B6</u>
<u>T09S R04W S08</u>	<u>SWNESE</u>	<u>(Instream Ending Point)</u>	<u>B6</u>
<u>T09S R04W S08</u>	<u>NESWSE</u>	<u>(Instream Beginning Point)</u>	<u>B7</u>
T09S R04W S08	NESWSE	(Instream Ending Point)	<u>E8</u>
T09S R04W S09	NWNESE	(Instream Beginning Point)	<u>B9</u>
T09S R04W S09	NWNWSE	(Instream Ending Point)	<u>E9</u>
T09S R04W S10	NWNESW	(Instream Beginning Point)	<u>B8</u>
T09S R04W S10	SENESE	(Instream Beginning Point)	<u>B1</u>
T09S R04W S15	NESWNW	(Instream Beginning Point)	<u>B2</u>
T09S R04W S15	SESESE	(Instream Ending Point)	<u>E2</u>
~~T09S R04W S18~~	~~LOT 3 - (SEWNWSW)~~	~~(Instream Beginning Point)~~	
T09S R04W S20	SESWNE	(Instream Beginning Point)	<u>B3</u>
T09S R04W S30	SESESW	(Instream Beginning Point)	<u>B5</u>
T09S R04W S30	NESESE	(Instream Beginning Point)	<u>B4</u>

T09S R04W S31	SESWNE	(Instream Ending Point)	<u>E4</u>
T09S R04W S31	SESENE	(Instream Ending Point)	<u>E3</u>
<u>T09S R04W S31</u>	<u>LOT 2 (SWSWNW)</u>	<u>(Instream Ending Point)</u>	<u>E1</u>
T09S R04W S31	NWSENW	(Instream Ending Point)	<u>E5</u>
T09S R05W S14	NWNWNW	(Instream Beginning Point)	<u>B10</u>
T09S R05W S21	NENWNW	(Instream Beginning Point)	<u>B13</u>
T09S R05W S22	NESESW	(Instream Ending Point)	<u>E11</u>
T09S R05W S22	SWSESE	(Instream Ending Point)	<u>E12</u>
T09S R05W S23	NWNESE	(Instream Beginning Point)	<u>B11</u>
<u>T09S R05W S25</u>	<u>SESWSE</u>	<u>(Instream Ending Point)</u>	<u>E7</u>
T09S R05W S26	NESESW	(Instream Beginning Point)	<u>B12</u>
<u>T09S R05W S28</u>	<u>SWSWNW</u>	<u>(Instream Ending Point)</u>	<u>E13</u>
T09S R05W S28	NWSWSW	(Instream Ending Point)	<u>E14</u>
T09S R05W S29	NESESW	(Instream Beginning Point)	<u>B15</u>
<u>T09S R05W S29</u>	<u>NENESE</u>	<u>(Instream Beginning Point)</u>	<u>B14</u>
<u>T09S R05W S32</u>	<u>SENESE</u>	<u>(Instream Beginning Point)</u>	<u>B18</u>
T09S R05W S32	SEWNNE	(Instream Ending Point)	<u>E10</u>
T09S R05W S32	NWSWNE	(Instream Ending Point)	<u>E18</u>
T09S R05W S32	NENENW	(Instream Ending Point)	<u>E15</u>
<u>T09S R05W S33</u>	<u>NWSWNW</u>	<u>(Instream Ending Point)</u>	<u>E17</u>
<u>T09S R05W S34</u>	<u>SENESE</u>	<u>(Instream Beginning Point)</u>	<u>B17</u>
<u>T09S R05W S35</u>	<u>NWSWSW</u>	<u>(Instream Ending Point)</u>	<u>E16</u>
<u>T09S R05W S35</u>	<u>SENESE</u>	<u>(Instream Beginning Point)</u>	<u>B16</u>

PURPOSE AND
PERIOD OF USE:

Purpose of Use
Stockwater

Period of Use
06-15 TO 12-31

Quantity
0.02 CFS

PLACE OF USE:

Stockwater

Within Owyhee County

T09S R04W S04	SWSW
T09S R04W S08	SENE
T09S R04W S08	NESE
T09S R04W S08	SWSE
T09S R04W S08	SESE
T09S R04W S09	NWNW
T09S R04W S09	SWNW
T09S R04W S09	NWSW
T09S R04W S09	SWSW
T09S R04W S09	SESW
T09S R04W S09	NESE
T09S R04W S09	NWSE

T09S R04W S09	SWSE
T09S R04W S09	SESE
T09S R04W S10	NESW
T09S R04W S10	SWSW
T09S R04W S10	SESW
T09S R04W S10	NESE
T09S R04W S10	SESE
T09S R04W S11	NWSW
T09S R04W S11	SWSW
T09S R04W S14	NWNW
T09S R04W S14	SWNW
T09S R04W S15	NENE
T09S R04W S15	SENE
T09S R04W S15	NENW
T09S R04W S15	NWNW
T09S R04W S15	SWNW
T09S R04W S15	SENW
T09S R04W S15	NESW
T09S R04W S15	SESW
T09S R04W S15	NESE
T09S R04W S15	SWSE
T09S R04W S15	SESE
T09S R04W S16	NENE
T09S R04W S17	NWNE
T09S R04W S17	NENW
T09S R04W S17	SWNW
T09S R04W S17	SENW
T09S R04W S17	NESW
T09S R04W S17	NWSW
T09S R04W S17	SWSW
T09S R04W S17	SESW
~~T09S R04W S18~~	~~LOT 3 (NWSW)~~
T09S R04W S19	SWNE
T09S R04W S19	SENE
T09S R04W S19	NESW
T09S R04W S19	SESW
T09S R04W S19	NWSE
T09S R04W S20	SWNE
T09S R04W S20	NENW
T09S R04W S20	NWNW
T09S R04W S20	SWNW
T09S R04W S20	NWSE
T09S R04W S20	SWSE
T09S R04W S22	NENE
T09S R04W S22	SENE
T09S R04W S22	NESE

T09S R04W S22		NWSE
T09S R04W S22		SWSE
T09S R04W S27		NWNE
T09S R04W S27		SWNE
T09S R04W S27		SWNW
T09S R04W S27		SENW
T09S R04W S27		NWSW
T09S R04W S28		NESE
T09S R04W S28		SWSE
T09S R04W S28		SESE
T09S R04W S29		NWNE
T09S R04W S29		NENW
T09S R04W S29		SENW
T09S R04W S29		NESW
T09S R04W S29		NWSW
T09S R04W S29		SWSW
T09S R04W S29		SESW
T09S R04W S30		NENW
T09S R04W S30	LOT 1	(NWNW)
T09S R04W S30	LOT 2	(SWNW)
T09S R04W S30	LOT 3	(NWSW)
T09S R04W S30		SESW
T09S R04W S30		SESE
T09S R04W S31		NENE
T09S R04W S31		NWNE
T09S R04W S31		SWNE
T09S R04W S31		SENE
T09S R04W S31		NENW
T09S R04W S31	LOT 1	(NWNW)
T09S R04W S31	LOT 2	(SWNW)
T09S R04W S31		SENW
T09S R04W S31		NESE
T09S R04W S31		NWSE
T09S R04W S32		NWNW
T09S R04W S32		SWNW
T09S R04W S32		NESW
T09S R04W S32		NWSW
T09S R04W S32		SWSW
T09S R04W S32		SESW
T09S R04W S32		SWSE
T09S R04W S32		SESE
T09S R04W S33		NWNE
T09S R04W S33		SWNE
T09S R04W S33		SENW
T09S R04W S33		NESW
T09S R04W S33		SWSW
T09S R04W S33		SESW
T09S R05W S14		NWNW

T09S R05W S15	NENE
T09S R05W S15	SENE
T09S R05W S15	NESE
T09S R05W S15	SWSE
T09S R05W S15	SESE
T09S R05W S21	NENW
T09S R05W S21	NWNW
T09S R05W S21	SENW
T09S R05W S21	NESW
T09S R05W S21	SESW
T09S R05W S22	NWNE
T09S R05W S22	SWNE
T09S R05W S22	NESW
T09S R05W S22	SWSW
T09S R05W S22	SESW
T09S R05W S22	NESE
T09S R05W S22	NWSE
T09S R05W S22	SWSE
T09S R05W S22	SESE
T09S R05W S23	NESW
T09S R05W S23	NWSW
T09S R05W S23	NESE
T09S R05W S23	NWSE
T09S R05W S25	NESE
T09S R05W S25	SWSE
T09S R05W S25	SESE
T09S R05W S26	SWNW
T09S R05W S26	NESW
T09S R05W S26	NWSW
T09S R05W S26	SESW
T09S R05W S27	NENE
T09S R05W S27	SENE
T09S R05W S27	NWNW
T09S R05W S28	NENE
T09S R05W S28	SWNE
T09S R05W S28	SENE
T09S R05W S28	NENW
T09S R05W S28	NWNW
T09S R05W S28	SWNW
T09S R05W S28	NESW
T09S R05W S28	SWSW
T09S R05W S28	SESW
T09S R05W S28	NWSE
T09S R05W S29	SESW
T09S R05W S29	NESE
T09S R05W S29	SESE

//
//

T09S R05W S32	NENE
T09S R05W S32	NWNE
T09S R05W S32	SWNE
T09S R05W S32	NENW
T09S R05W S33	SWNE
T09S R05W S33	SENE
~~T09S R05W S33~~	~~NWNW~~
T09S R05W S33	SWNW
T09S R05W S33	SENW
T09S R05W S34	SWNW
T09S R05W S34	NESW
T09S R05W S34	NWSW
T09S R05W S34	NESE
T09S R05W S34	NWSE
T09S R05W S35	NESW
T09S R05W S35	NWSW
T09S R05W S35	SWSW
T09S R05W S35	SESW
T09S R05W S35	NESE
T09S R05W S35	NWSE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).