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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
	)	SUBMISSION OF UNITED STATES
	)	- BLM EXHIBITS SUBJECT TO THE
	)	MOTION IN LIMINE TO EXCLUDE
	)	EVIDENCE [I.R.E. RULE 402]
_____	)	

JOYCE LIVESTOCK COMPANY'S SUBMISSION
OF UNITED STATES - BLM EXHIBITS SUBJECT TO THE MOTION
IN LIMINE TO EXCLUDE EVIDENCE [I.R.E. RULE 402]

Under separate cover, the undersigned has previously forwarded to this Court Joyce Livestock Company's Motion in Limine to Exclude Evidence Identified by the United States Bureau of Land Management [I.R.E. Rule 402]. Enclosed are two binders, each containing copies of the exhibits which are the subject of the motion in limine.

For the Court's convenience, and in order to avoid an inordinate amount of time expended reviewing these rather voluminous documents, the undersigned represents to the Court that none of these documents will contain specific statements that the United States – BLM is the owner of stockwater rights solely as a result of the terms and conditions of regulations promulgated by the United States and/or as a result of BLM instruction memoranda. This fact notwithstanding, it is respectfully submitted that the United States intends to introduce these documents in order to establish or support their claim that they own the stockwater rights as a result of their ownership of the public domain and as a result of the Taylor Grazing Act and the regulations and policies promulgated thereunder. Without waiving its right to object to any range management regulations or policies initiated by the BLM with respect to whether or not the same are enforceable or; as a result of their implementation, waiving a right to damages resulting from a "taking" with respect to the water appropriated and beneficially used, Joyce Livestock admits that the exhibits purport to regulate range use on the allotment, specifically with respect to grazing practices by Joyce Livestock and its predecessors. However, Joyce Livestock submits that said regulations and policies do not, thereby, establish a water right in favor of the BLM. Accordingly, if these exhibits are offered as evidence to support that the BLM owns a stockwater right, they are objectionable as being not relevant. This is particularly true under the express

provisions of the Taylor Grazing Act and specifically, 43 U.S.C.S. § 315b, which specifically provides: “[T]hat nothing in this Act shall be construed or administered in any way to diminish or impair any right to possession and use of water for mining, agriculture, manufacturing, or other purposes which have heretofore vested or accrued under existing law validly affecting the public lands or which may be hereafter initiated or acquired and maintained in accordance with such law.”

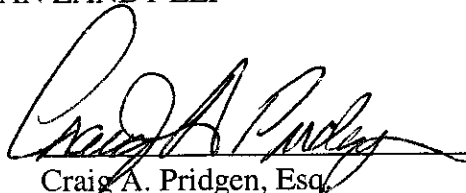
In addition, Exhibit 22 constitutes a history of Joyce Livestock Co.’s grazing preference in the Silver City grazing allotment, and was prepared by Michael J. Boltz for this litigation. Appended to that history are excerpts from the record, all of which will be identified as exhibits at the trial and referred to by both the United States and Joyce Livestock. Accordingly, Joyce Livestock is not attempting to preclude the introduction of the attachments to Mr. Boltz’ report; and in fact, does not necessarily object to Mr. Boltz’ historic summary contained in his report, which in many instances may in fact be helpful to the Court. The motion in limine is only directed to the issue as to whether or not the United States attempts to offer that report in support of its contention that the United States - BLM has acquired a stockwater right as a result of its administration and regulation of the allotments which are the subject matter of this litigation.

DATED: November 14, 2002

Respectfully submitted,

McQUAID, METZLER, BEDFORD
& VAN ZANDT LLP

By:



Craig A. Pridgen, Esq.

LAW OFFICES OF RICHARD L. HARRIS

DATED: November __, 2002

By: _____

Richard L. Harris, Esq.
Attorneys for Joyce Livestock
Company

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing instrument was served on the following this 14th day of November, 2002 by first class mail, postage prepaid.

U.S.D.I. Bureau of Land Management (Without copy of Exhibits)
Idaho State Office
1387 S. Vinnell Way
Boise, ID 83709

State of Idaho (Without copy of Exhibits)
Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, ID 83720-0098

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

United States Department of Justice (Without copy of Exhibits)
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Larry Brown (Without copy of Exhibits)
U.S. Dept. of Justice
Environment & Natural Resource Division
P.O. Box 663
Washington, DC 20044-0663


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JOYCE LIVESTOCK COMPANY'S MOTION
IN LIMINE TO EXCLUDE EVIDENCE IDENTIFIED
BY THE UNITED STATES BUREAU OF LAND MANAGEMENT