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Department of Water Resources
Adjudication Bureau

Movant's Name:
UNITED STATES OF AMERICA

Attorneys' Names and Addresses:

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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	)	Sub-case No.:	36-15450
	)		36-00030
	)		36-00104A
CASE NO. 39576	)		36-00104B
	)		36-00043A
	)		36-00084
	)		36-00012
	)		
	)		
	)	UNITED STATES' MOTION TO COMPEL	
	)	AND ORDER COMPELLING DISCOVERY	
	)		
	)		

Descriptive Summary

This document contains the United States' motion to compel discovery and order compelling discovery.

Motion

COMES NOW the United States of America through its counsel and moves this court to enter an ex-parte order compelling the Flying Triangle, Inc., William Brailsford, Fred L. Mavencamp, John Mavencamp, Joan and Shelby Wise, Nevada Omohundro, and Sharlene and Ronnie Wise (the Brailsford ditch water users), to provide all

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responses and to produce all records requested in the attached Request for Production of documents and Interrogatories and deliver the responses and records by 4:00 p.m. on March 23 to the office of the Hagerman National Fish Hatchery at 3059-D National Fish Hatchery Road, Hagerman, Idaho 83332, and continuing the expedited hearing for preliminary injunction which is scheduled for March 24, 1994, until March 25, 1994.

This motion is made under I.R.C.P. 1, 16(b), 33, 34, and 37. Those rules provide that the court may, regardless of timing, enter orders for the purpose of obtaining the just resolution of issues upon the merits.

In this case, the United States has sought a hearing for a preliminary injunction on March 24, 1994, to enjoin the defendants from diverting or allowing the diversion of water from Len Lewis Spring which the Hagerman National Fish Hatchery (Hatchery) has put to beneficial use under its State constitutional water rights. Reductions of flows to the Hatchery have caused and will continue to cause irreparable harm.

The Brailsford Ditch water users have no right to divert or have not diverted water from Len Lewis Spring prior to April 15 which the United States has appropriated for use at the Hatchery. The Brailsford Ditch water users have wasted and are wasting water from Len Lewis Spring and have no beneficial use for Len Lewis Spring water appropriated by the United States.

On March 20, 1994, George Lemmon, water master for water district 36A, stated that the Brailsford Ditch users were sending

an agent to take water flows at the Hatchery and oxygen readings at the bottom of the steelhead raceways at the Hatchery, to see how water was being used on the Hatchery, and to see the effects of water flows on the Hatchery and fish. Hatchery manager Bryan Kenworthy told the water master that the United States would allow the Brailsford Ditch water users to enter Hatchery property and take measurements if the Brailsford Ditch users provided access to agents of the United States to enter their property to take water measurements and provide records of crop information. The water master agreed to convey this information to the Brailsford Ditch water users. See attached declaration of Bryan Kenworthy.

On March 22, 1994, Lynn Babington and Layne Osborne, agents for the Brailsford ditch water users requested entry to the Hatchery to determine fish health. Hatchery manager Bryan Kenworthy requested access to the Brailsford Ditch users' lands and information on crops being irrigated, amount of water being used per acre and per crop, and related information, and informed said agents that the Hatchery would allow access in return for this information. See attached declaration of Bryan Kenworthy.

In order to prepare for cross-examination of the Brailsford Ditch users' witnesses and to prepare the United States' own witnesses for hearing, it is essential that the movants be provided with the information requested in the attached Request for Production of Documents and Interrogatories. The United States moves this court to enter an ex-parte order compelling the Flying Triangle, Inc., William Brailsford, Fred L. Mavencamp, John

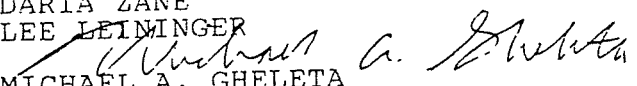
Mavencamp, Joan and Shelby Wise, Nevada Omohundro, and Sharlene and Ronnie Wise(the Brailsford ditch water users), to provide all responses and to produce all records requested in the attached Request for Production of Documents and Interrogatories and deliver the respnses aaaand records by 4:00 p.m. on March 23 to the office of the Hagerman National Fish Hatchery, 3059-D National Fish Hatchery Road, Hagerman, Idaho 83332, and continuing the expedited hearing for preliminary injunction which is scheduled for March 24, 1994, until March 25, 1994.

DATED this 27th day of March, 1994.

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