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MAY 03 1995

Department of Water Resources

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

BRIGETTE BILYEU, SPECIAL MASTER

In Re SRBA	)	
	)	CLOSING ARGUMENT PERTAINING TO
Case No. 39576	)	APRIL 19TH, 1995 HEARING ON
	)	COATES/SAN FELIPE vs:
	)	UNITED STATES/BLM and
	)	UNITED STATES MOTION TO
	)	WITHDRAW AND DEFER CLAIMS

TO: HONORABLE BRIGETTE BILYEU
SPECIAL MASTER

I, Wiley F. Smith request to submit the following closing argument comments and statements to be considered as part of the above listed hearing.

My comments are in reference to sub cases located in Basin 34, the upper end of Big Lost River Valley, north of the Sun Valley/Trail Creek Road and East and West of Highway 93 to Willow Creek Summit. Not including Sage Creek, Peck Canyon, or Howell Canyon. Legal descriptions can be supplied if necessary.

In this area, there are:

- 156 stockwater claims by BLM
- 5 actual BLM water sources where water has been diverted.
- 81 claims have no water what so ever.
- 34 claims are in the thousand springs swamp.
- 28 claims are water troughs which are on pipelines and are only places of use.
- 2 claims are on decreed private water leased to BLM.

Francis L. Smith is 85 years old. He has been in Lost River Valley for 75 years and on this ranch at Dickey for 61 years. I Wiley Smith am 56 years old and have been on this location all of my life. If the court desires, we are willing to produce notarized affidavits to substantiate our statements.

I strongly disagree with the statement offered by the United States which is on the bottom of page 3 and continued on the bottom of page 4 as # 1 reference contained in the motion submitted to the court- "MOTION TO WITHDRAW 18 DE MINIMIS STOCKWATERING CLAIMS AND REQUEST FOR EXPEDITED CONSIDERATION." and is as follows:

"1."

"As stated in the United States Brief on its Motion to Withdraw and Defer Claims, the BLM claims were made after an exhaustive and time-consuming examination of aerial photographs, project development files, review of IDWR license and permit files, and interviews with the range conservationists assigned to the District. Over 1900 work hours were devoted to aerial photographic interpretation alone.

The field investigations revealed that, perhaps due to the prolonged drought in the region, some of the sites identified on the aerial photos had dried up. Other sites that the aerial photo investigations indicated were existing water sources were found to not contain water sufficient for consumptive use for stock watering purposes."

This statement is no more than an excuse to claim expertise and creditability for an embarrassing performance by the United States Department of Justice and the Bureau of Land Management.

I claim no Degree or special training for aerial photograph interpretation, however, being involved with the Soil Conservation Service for 12 years, we were using aerials and stereoscopes in the 1960's and having done aerial color inferred photography for the Soil Conservation Service pertaining to river and stream green belt vegetation, I feel I have sufficient experience to determine that aerial photos are good for reference and are not accurate for final determination of existence of small amounts of surface water.

The drought has nothing to do with our objections against the United States on "NO WATER CLAIMS". There has never been water at these "no water claims" for at least 60 years. I did not file any "no water objections" to any BLM claims if there is or has been any visible usable moisture in the last 60 years.

I would like to clarify the term "dry hole" that was referred to several times in the hearing. In almost all sub cases termed "dry hole", there is no indication in the 10 acre diversion area of any old flow impression of any type and the ground contour gives no hint of an old spring or water source.

I do not place much value in the United States Department of Justice claim for expertise, knowledge, and ability in their stockwater claim filings. I feel it is not unreasonable to expect that the responsible person should be highly trained and knowledgeable in Hydrology. Based on the methodology used, and the information presented in the hearing, the accuracy error of 77 percent is unreasonable. This error factor could increase because several of the claims that have not been submitted for withdrawal still have to stand a court test. A few may be allowed to exist, but there are errors within those claims that must be corrected.

The BLM employee tenure on a particular district is generally not very many years and I know for fact that no one in the BLM office has been over every acre of their ground. There are local people that have covered every acre of BLM ground on horse back or on foot and know that most of these claims are very erroneous.

While Mr. Blackstun was on the stand, he made reference to an irrigation well that had been dug and the aerial gives the indication that possibly the presence of water at some time would be the reason for reduced woody vegetation. This was an irrigation well that was drilled for a desert land entry in the late 1950's and ground was broken up to produce crop for one year and then was abandoned. Crawler Tractors with disc and plows removed the woody vegetation and the old ditches are still visible. At another irrigation well drilled on the BLM, it never produced water beyond the test stage because of very excessive sand problems and it was abandoned. The water is deep, there is no electric power present and economics will not justify pumping.

While Mr. Tom Coates was on the stand and being cross examined by United States Department of Justice Council, U.S. Council determined that Mr. Coates did not have time card or receipts to prove the number of hours involved in processing objections against the United States or the value of his hours.

I feel that Mr. Coates should have pointed out in the ranching industry, we don't have time cards or paper work to show where each hour was allocated, but the fact is that in his case as well as mine, for each hour we spent in discovery, plotting, documenting and filing objections, we were letting our own work go undone. For each hour of time necessary to prove the excessive errors in accuracy of the BLM's claims and to protect our own water claims, we receive no financial income for our time involved.

Some examples of what I feel are unreasonable BLM Claims:

34-13348 BLM stockwater claim on each 40 acres over the top of a buried irrigation pipeline with 2 feet of dirt cover and a mile long and provides no surface water. They claim an 1884 priority date and year around use. The pipeline was installed in 1955 and is drained during the non irrigation season.

34-12515 BLM stockwater claim with point of diversion and place of use in the same 40 acres with an 1884 Priority date. BLM installed a pipeline and Wiley Smith installed a trough in 1992 to provide water in this unit for the first time in history. Private Decree water is used to fill this BLM pipeline.

34-07447 BLM stockwater claim on diverted water to two water troughs with a priority date of 1884 and year around use. In 1976 BLM and owner of decree irrigation water agreed that water owner would allow use of his water in BLM Pipeline only during period when livestock grazed this allotment and then water would go back into irrigation system. Use period is about 5 weeks each year.

34-13354 BLM stockwater claim for instream use with 1884 priority date and year around use in a dry creek high water channel. Since 1887 this water is used for irrigation and is diverted 1- 1/2 mile upstream near the mouth of the canyon. At this point of diversion the stream usually produces 2 c.f.s in August. This is a porous gravel channel which requires approximately 200 c.f.s. of water to reach 2 miles, which is the bottom end of the BLM claim and which is on private land. The only time this channel has water is during a cloudburst and during very high water snow melt.

34-12894 is for 1810 head of cattle

34-12894A is for 1810 head of cattle

34-12895 is for 1810 head of cattle

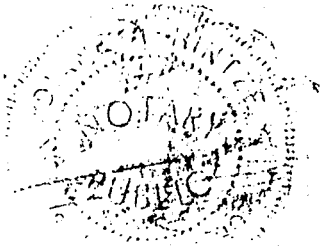
34-12895A is for 1810 head of cattle

These BLM stockwater claims are all on the same 40 acres in the Thousand Springs Swamp for a total of 7240 head of cattle for year around use. Approximately one half of this 40 is under water year around and the other half is an alkali island.

Because of the very high amount of errors on the claims with about 1% of claims being totally and completely accurate and because of the excessive number of claims filed where there is no water, I feel that the BLM and Department of Justice used poor methods and unreasonably poor judgement in the filing of their stockwater claims in Basin 34.

Wiley F. Smith 4-28-95
Wiley F. Smith, Date

Subscribed and sworn to before me this 28th day of April, 1995.



Sharon A. Houtz
Notary Public for Idaho
Residing at: Mackay
My Commission expires: 2-13-99