

Movant's Name:
UNITED STATES OF AMERICA

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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 No. 34-12639
	)	
Case No. 39576	)	MOTION FOR SUMMARY JUDGMENT
	)	

DESCRIPTIVE SUMMARY

This is the United States' motion for summary judgment for subcase 34-12639.

MOTION FOR SUMMARY JUDGMENT

COMES NOW the United States, by and through the Bureau of Land Management (BLM), and moves this Honorable Court for an order entering summary judgment in the United States' favor on all elements of the water right as reported in the Director's Report on November 17, 1992 with the exception of reported remarks and non-irrigation uses. As grounds for this motion, the United States state that there is no genuine issue as to any

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material fact in the elements of the water right and that the United States is entitled to summary judgment as a matter of law.

There are no pending objections to this subcase. An objection filed by Mr. Vernon Roche was dismissed and Mr. Roche dismissed as a party by order of the Court dated June 7, 1996. Further, Idaho Department of Water Resources recommended this right in the Director's Report for Reporting Area 1 issued November 17, 1992. Subsequently, IDWR issued a response stating that the priority date it recommended was in error and that the United States may not be decreed a priority date earlier than the date of the decree of Utah Construction Co. v. Abbott, Equity No. 222 (D.E. 1923). The res judicata effect of the Abbott decree is the issue presently scheduled for summary judgment hearing in subcases 34-11576 and 34-11580. That issue is not contested by a party to this case.

The inclusion of non-irrigation remarks and the combined-use remark was determined not to be necessary in the decree of a stockwater right in the Special Master's Recommendation Re: Basin-wide Issue 12. Therefore, as a matter of law, those remarks should not be included in the decree for this right.

DATED this 21st day of June, 1996.

Respectfully submitted,



R. Lee Leivinger
Attorney, Environment and Natural
Resources Division

CERTIFICATE OF SERVICE

I certify that on the 21st day of June, 1995,
I served a true and correct copy of the United States' Motion for
Summary Judgment upon the following individual by United States
first-class mail, postage prepaid:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
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