

JUN 28 1996

Department of Water Resources

LOIS J. SCHIFFER
Assistant Attorney General Environment and Natural Resources Division

BRUCE D. BERNARD
Attorney, General Litigation Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945
Denver, Colorado 80202
(303) 312-7319

RANDALL J. BRAMER
Special Assistant United States Attorney
Office of the General Counsel
United States Department of Agriculture

Counsel for the United States of America

IN RE: SRBA)
)
) Subcase Nos. See attached list
)
 CASE NO. 39576)
)
)
) **United States Motion For**
) **Summary Judgment**

DESCRIPTIVE SUMMARY

This is the United States' Motion for Summary Judgment concerning the *res judicata* effect of the *Utah Construction* decree on the United States.

MOTION

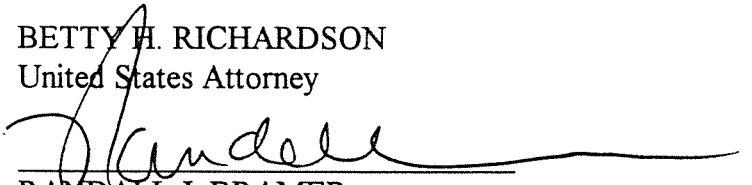
In accordance with Idaho R. Civ. P. 56, the United States moves this Court for an order that the United States is not precluded by the doctrine of *res judicata* from obtaining

a decree for water rights with a beneficial use priority date earlier than March 15, 1923, the date of adjudication of the Big Lost River and its tributaries in *Utah Construction v. Abbott*, Equity No. 222 (D.E. 1923). The United States is not precluded by *res judicata* because the United States was not a party to the *Utah Construction* adjudication. The undisputed facts demonstrate that the United States was not served, did not participate in the adjudication and did not waive its sovereign immunity to allow its joinder in the adjudication. Further, the United States cannot be barred by the doctrine of *res judicata* because the doctrine does not apply since there are different parties and different claims at issue in the Snake River Basin Adjudication. This motion is supported by the accompanying Memorandum in Support, Statement of Undisputed Facts and Order.

Respectfully submitted,

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division

BETTY H. RICHARDSON
United States Attorney



RANDALL J. BRAMER
Special Assistant United States Attorney
U. S. Department of Justice
380 E. Parkcenter Blvd., Suite 330
Boise, ID 83706
(208) 387-0835

BRUCE BERNARD
Attorney, General Litigation Section
Environment and Natural Resources Div.
U. S. Department of Justice
999 - 18th Street, Suite 945
Denver, CO 80202

DATED this 26 day of June, 1996

List Of Affected Subcases

United States' Motion for Summary Judgment Concerning The *Res Judicata*

Effect Of The *Utah Construction* Decree On The United States

34-11447

34-11509

34-11576

34-11580

34-11645

34-11659

34-11661

34-11662

34-11946

34-11947

34-11948

34-11949

34-11950

34-11951

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 Nos. See attached list
	)	
CASE NO. 39576	)	
	)	ORDER
	)	

Upon hearing oral argument, review of the pleadings and records, it is hereby
ORDERED, that The United States is not precluded by the doctrine of *res judicata* from
obtaining a decree for water rights with a beneficial use priority date earlier than March 15, 1923,
the date of adjudication of the Big Lost River and its tributaries in *Utah Construction v. Abbott*,
Equity No. 222 (D.E. 1923).

Brigette Bilyeu
Special Master
Reporting Area 1

CERTIFICATE OF MAILING

I certify that on the 26th day of June, 1996, I served a true and correct copy of this **United States Motion For Summary Judgment** by the following methods:

Original by Federal Express to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Copies by United States First Class Mail postage prepaid to:

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

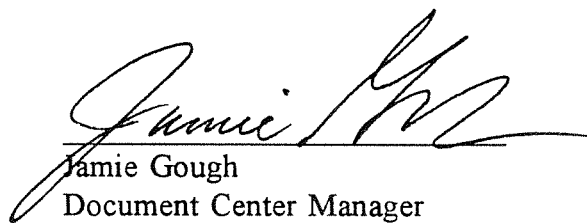
Young Harvey Walker
Rt. 1, Box 200
Arco, ID 83213

Vernon Roche
Star Rt.
Mackay, ID 83251

Gordon Fulton
Star Rt.
Mackay, ID 83251

Courtesy Copy to:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098


Jamie Gough
Document Center Manager
CACI, Inc.