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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 Nos. 57-11124 et.al.
	)	
	)	United States' Memorandum
	)	in Support of Motion for
Case No. 39576	)	Summary Judgment
	)	

Descriptive Summary

This is the United States' memorandum in support of its motion for summary judgment.¹

Introduction

Under well established principles of state law, a water right claimant must demonstrate that he or she has had exclusive use and control over the water claimed. The purpose of this memorandum is to demonstrate that a private claim to stockwater for use on the federal public land cannot satisfy this basic prerequisite.

¹ The United States' motion for summary judgment and this accompanying memorandum are submitted pursuant to the Special Master's May 10, 1996 trial scheduling order which set an initial summary judgment deadline for July 13, 1996.

Congress has repeatedly acted to prevent individuals from acquiring exclusive control over the land and water resources needed for grazing on public lands. Given these directives, the private claimants in these consolidated cases, Harry Richard Bass, Henry Brandau, Ted K. Blackstock, Chipmunk Grazing Association, and Joyce Livestock Company, (hereinafter "private claimants") cannot demonstrate the exclusivity required to acquire a water right under state law.²

In this memorandum, the United States is not providing additional argument as to why it should be decreed the stockwater rights it has claimed in these consolidated cases. Argument on this issue is unnecessary because the private parties who filed objections to the United States claims to water, by failing to respond to the United States' Requests for Admission, have admitted that the United States is the first beneficial user of these water rights.³ See Request for admission #3, attached as

²This brief presents the arguments of the United States that Idaho law does not allow anyone other than the landowner (the United States) to own a stockwatering right on public lands. If the Court decides that Idaho law provides otherwise, and permits a person other than the landowner to own such water rights, then the particular individual circumstances of these nonlandowner claims for stockwatering water rights would need to be explored through discovery in the months ahead. Moreover, the Court may have to address the issue whether, and the extent to which, such state law claims may conflict with federal law. The United States reserves the right to brief, if necessary, the factual and legal issues presented after such discovery, in further proceedings in this case.

³Each of the private parties were served with very limited, and nearly identical discovery on June 17, 1996. The purpose of that discovery was to prepare for this summary judgment briefing. Answers to the requests for admission in that discovery were due on or before July 1, 1996. I.R.C.P. 36(a). The private parties
(continued...)

Appendix A. Under Idaho Rule 36(b), this matter is conclusively established in these consolidated cases. Accordingly, the United States is entitled to summary judgment with respect to all of its claims for stockwater identified on Appendix B.

Background

These consolidated sub-cases involve claims to water rights for stockwatering purposes where both the point of diversion and the place of use are on the federal public land.⁴ Most of the claims involve de minimis amounts of water, but some are larger.

³(...continued)
filed a motion for extension of time until July 3rd to respond. As indicated in that motion, counsel for the United States consented to this first extension of time until July 3rd. The private parties did not respond to any of the discovery by the July 3rd deadline, have not responded to this date, and, in a July 11th "Second Motion to Extend Time for Responding to United States First Set of Interrogatories, Requests for Admissions and Request for Production of Documents" filed by the private claimants in subcase 57-00243, indicated they do not intend to supply answers to discovery until after the Court's July 13, 1996 summary judgment deadline has passed. Under Idaho Rules of Civil Procedure 36(a) and (b), the private parties are therefore bound by the requests for admission that they have failed to answer. Their July 11th second motion for extension of time is untimely, being filed eight days after their first motion for extension of time had passed, appears to have been filed in the wrong case (57-00243 is not on the Special Master's May 29, 1996 consolidation order), and should be summarily denied.

⁴This statement is accurate with respect to all of the consolidated subcases except 57-04008 and 57-10375. These subcases are private claims to stockwater where the claimed place of use does not appear to be on the federal public land. Accordingly, these subcases are subject to a different legal analysis than the rest of the consolidated cases and should be severed from this proceeding. Counsel for the United States has discussed the issue with respect to these subcases with counsel for the private claimants.

Some of the claims are to use water from undeveloped sources, others have been developed and involve some type of diversion and collection improvements.

The claimed priority dates for these water rights range from 1863 to 1989. Some of the rights claimed by the United States already have a license or decree, others are "constitutional claims," asserting a right to water based on first beneficial use. None of the water rights claimed by the private parties have been previously recognized by a state issued license or court decree in their name.

These cases can be divided into two groups. The first involves claims to stockwater made by the Bureau of Land Management. One or more of the private parties in these subcases, Harry Richard Bass, Henry Brandau, Ted K. Blackstock, Chipmunk Grazing Association, and Joyce Livestock Company, (the "private parties") objected to each of the BLM claims to stockwater.⁵ A list of these subcases is attached as Appendix B.

The second group is comprised of claims to stockwater on the federal public land made by the private claimants. The BLM filed objections to all of these claims on the ground that the point of diversion and place of use were on the federal public land. A list of these subcases is attached as Appendix C.

⁵Subcase no. 57-11607 is currently on the consolidation list, but should not be. This is a BLM claim for stockwater that has not been objected to by any other party. This unobjected to claim raises different legal issues and should be severed from these consolidated cases.

Only a few of the claims to stockwater on the two lists are in direct and obvious conflict. IDWR's policy was to recommend that where competing claims were filed, the right should be decreed to the owner of the land. Following this policy, IDWR disallowed most of the claims made by private parties to stockwater sources that were already claimed by the BLM. In most instances the private claimants in these consolidated cases did not object to the disallowance of their competing claim. Thus, the only time subcases on the two lists are in direct and obvious conflict is where a private claimant objected to the disallowance of their competing claim, or where IDWR, through accident or mistake, recommended the same water right to both the BLM and one of the private claimants.

Undisputed Facts

1. The private claimants in these cases, Harry Richard Bass, Henry Brandau, Ted K. Blackstock, Chipmunk Grazing Association, and Joyce Livestock Company have asserted claims to water rights where both the point of diversion and the place of use are located on land owned by the United States and managed by the Bureau of Land Management. A list of their claims is attached to this motion as Appendix C.
2. Except for their BLM issued grazing permits, the private claimants have no legally cognizable interest in the federal public lands which are claimed as the point of diversion and the place of use for the water rights at issue. Grazing permits are of limited duration, and may be revoked and cancelled. The United States has always had the authority to limit the number of livestock permitted to graze the public rangeland.
3. The private parties have not been the exclusive users of the water they are claiming in these consolidated cases. See Request for Admission #2, attached as Appendix A.

4. The United States is the first beneficial user of the water it has claimed in these consolidated cases. See Request for Admission #3, attached as Appendix A.

Argument

I. Standard of Review

Summary Judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c). There are no material facts in dispute that bear on the pure legal issues which are the subject of the United States' motion.

II. The private claimants cannot demonstrate exclusive dominion and control as required by state law.

The law of prior appropriation requires a water right claimant to demonstrate exclusive dominion and control over the water claimed.⁶ See, e.g. Jones v. Hanson, 320 P.2d 1007 (Mont. 1958) (without exclusive use of the water claimed, there can be no "valid appropriation of water for any purpose"); Lake Shore Duck

⁶Exclusivity, of course, is the defining characteristic of any type of private property interest. One need look no further than the definition of "property" in Black's law dictionary:

That which is peculiar or proper to any person; that which belongs exclusively to one . . . More specifically, ownership; the right to dispose of a thing in every legal way, to possess it, to use it, and to exclude every one else from interfering with it.

Black's Law Dictionary 1095 (5th ed. 1979).

Club v. Lake View Duck Club, 166 P. 309 (Utah 1917); Robinson v. Schoenfeld, 218 P. 1041, 1043 (Utah 1923) ("But for the purpose of effecting a valid appropriation of water under the statutes of this state we are decidedly of the opinion that the beneficial use contemplated in making the appropriation must be one that inures to the exclusive benefit of the appropriator and subject to his complete dominion and control.");⁷ Brasher v. Gibson, 406 P.2d 441, 449 (Ariz. App. 1965) (no water right where Defendant did not "exclude all of the public").

Each of the private claimants have admitted that they were not the exclusive users of the water rights they have claimed in these cases. See Undisputed Fact no. 3 above. Thus, as a matter of the state law of prior appropriation, the private claims to stockwater in these consolidated cases identified on Appendix C to this motion, should be dismissed. Even if it were not for this binding admission, however, any attempted exclusionary act on the federal rangeland is and always has been unlawful.

Prior to 1934, Congress had a simple, explicit policy with respect to grazing on the public domain--it authorized, even

⁷The Robinson decision is particularly relevant to the facts of this case. There, the Utah Supreme Court held that where "other stock owners having cattle on this range had enjoyed the same rights and privileges with respect to the waters of the springs here in question as did plaintiffs" no water right could result. The Court explained that where "the ownership and use proven by the plaintiffs were in no sense exclusive or subject to the complete dominion and control of the plaintiffs," the plaintiffs had failed to show "such appropriation or use of the waters" as could support a water right. Robinson, 218 P. at 1043.

promoted grazing, but directed that the public domain be kept as a commons, available to all who desired to graze on it. The Supreme Court described this "federal grazing commons" in the following way:

We are of opinion that there is an implied license, growing out of the custom of nearly a hundred years, that the public lands of the United States, especially those in which the native grasses are adapted to the growth and fattening of domestic animals, shall be free to the people who seek to use them . . . Everybody [has] used the open uninclosed country which produced nutritious grasses as a public common on which their horses, cattle, hogs and sheep could run and graze.

Buford v. Houtz, 133 U.S. 320, 326, 10 S.Ct. 305, 307 (1890); See also Omaechevarria v. Idaho, 246 U.S. 343, 352, 38 S.Ct. 323 (1918); McGinnis v. Friedman, 2 Idaho 393, 17 P. 635 (1888).

Congress enacted legislation to prevent exclusionary acts on the grazing commons with passage of the Unlawful Inclosures Act in 1885. Act of February 25, 1885, ch. 149, 23 Stat. 321, codified at 43 U.S.C. § 1061. The act prohibited all fencing or other exclusionary acts on public land where the person constructing the inclosure did not do so under claim or color of title and with the intent to enter the public lands and establish a permanent settlement.

Case law construing the Unlawful Inclosures Act explains it was intended to preserve access to the public domain. See e.g. Omaechevarria v. Idaho, 246 U.S. 343, 352, 38 S.Ct. 323, 327 (1918); McGinnis v. Friedman, 2 Idaho 393, 396, 17 P. 635, 636 (1888); Bircher v. U.S., 169 F. 589, 591 (Mont. 1909) ("The obvious intention of the statute was to make unlawful any

exclusive use and occupancy of any of the public lands without claim or color of title.")

Congress also sought to ensure the public's access to stockwater sources on the federal public land when it passed the Stockwater Reservoir Act of 1897. Act of January 13, 1897, ch. 11, 29 Stat. 484, codified at 43 U.S.C. § 952. The act allowed a right of way for private parties to construct stockwater reservoirs on unoccupied public lands. Use of such reservoirs, however, was subject to regulation by the Secretary of the Interior. Congress explicitly stated that these sources must remain available to the public for stock watering:

[A]ny person . . . engaged in breeding, grazing, . . . livestock may construct reservoirs upon unoccupied public lands . . . for the purpose of furnishing water to such livestock . . . provided, that such reservoir shall not be fenced and shall be open to the free use of any person desiring to water animals of any kind under such rules, regulations, and conditions as [the Secretary of the Interior] may prescribe . . . to protect livestock, to conserve water, and to preserve its quality and conditions: Provided, that such reservoir shall be open to the free use of any person desiring to water animals of any kind"

43 U.S.C. § 952 (emphasis added). The language, and the policy it reflects, could not be more clear: stockwatering reservoirs on the public rangelands were not to be under the exclusive control of any individual stock owner or company, but were to remain open so that all stockraisers could water their animals.

It is important to note that Congress applied this rule of common access even though the act clearly contemplated that the stockwater reservoirs would be privately financed and privately constructed. Significantly, Congress deleted a

proposed provision which would have given the person constructing the reservoir "exclusive possession and control" of the reservoir.⁸ 28 Cong. Rec. 3347-3348.

Congressional intent to preserve public, non-exclusive use of stockwater sources on the federal rangeland is further illustrated by the Stock Raising Homestead Act of 1916. Act of Dec. 29, 1916, ch. 9, 39 stat. 862, codified at 43 U.S.C. §§ 291-298 (repealed 1976). This Act attempted to promote homesteading of semi-arid regions that were not susceptible to crop farming but were able to support grazing. Congress directed the Secretary to designate these "stock-raising" lands and make them available for homesteading. 43 U.S.C. § 292 (repealed 1976).

At the same time, however, Congress specifically directed the Secretary not to designate "[l]ands containing waterholes or other bodies of water needed or used by the public for watering purposes" 43 U.S.C. § 300 (repealed 1976). Congress also authorized the Secretary to reserve the lands

⁸ The House report on the bill proposing the Act is worth noting. It states in relevant part:

[The Act] is not intended to give title to the land upon which the reservoirs are located, and the companies can only have control of such reservoirs under such rules and regulations as may be prescribed by the Secretary of the Interior, and only for such time as such reservoirs are maintained and water kept therein. The act also provides that the land shall not be fenced and shall be open to the free use of any person desiring to water animals of any kind.

H.R. Rep. No. 1527, 54th Cong., 1st Sess. (1896).

surrounding these water holes so that these water holes would "be kept and held open to public use" ⁹ Id.

The House report explained the obvious intent and effect of these provisions, stating that they were designed to prevent the private appropriation of stock watering sources:

This is a new section, and authorizes the Secretary of the Interior to withdraw from entry and hold open for the general use of the public, important water holes, springs, and other bodies of water that are necessary for large surrounding tracts of country; so that a person can not monopolize or control a large territory by locating as a homestead the only available water supply for stock in that vicinity.

H.R. Rep. No. 35, 64th Cong., 1st Sess. 18 (1916) (emphasis added).

With passage of the Taylor Grazing Act in 1934, Congress sought to better utilize and conserve the Nation's lands through more formal regulation of the public grazing program. Despite the changes, the guiding principle remained the same: individuals may use suitable land and water for grazing, but title to either resource cannot be acquired to the exclusion of others equally in need of access to those resources. The Act specifically provides that "[T]he creation of a grazing district or the issuance of a permit pursuant to the provisions of this subchapter shall not create any right, title, interest, or estate in or to the lands." §315b; See also United States v. Fuller, 409 U.S. 488, 494, 93 S.Ct. 801, 805 (1973). When a grazing permit

⁹ The Secretary subsequently used this authority to reserve every spring or waterhole on unappropriated unreserved public land. Public Water Reserve No. 107, Executive Order of April 17, 1926.

expires or when a rancher does not comply with its terms, the United States, as the proprietor of its lands, may allow other grazers to use the forage and the stockwater sources on the federal property.

The express language and legislative history of the acts discussed above make it absolutely clear that Congress never permitted a private party to acquire the exclusive right to forage or to water stock on the public domain. Thus the exclusivity required for a valid appropriation cannot be demonstrated by these private parties.¹⁰

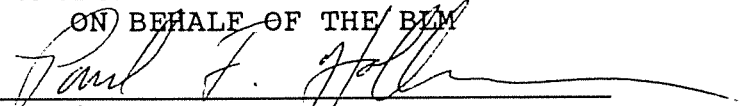
¹⁰Indeed any attempt to prove exclusionary acts on the public land would also be proof of a trespass on the public land. As demonstrated in this brief, any attempted exclusionary act on the public domain without color or claim of title was and is a trespass. Act of February 25, 1885, ch. 149, 23 Stat. 321, codified at 43 U.S.C. §§ 1061; United States v. Schmutz, 56 F.2d 269 (Utah 1932); See also McGinnis v. Friedman, 2 Idaho 393, 17 P. 635, (1888). The law in Idaho is well settled that "one who diverts water and puts it to a beneficial use by aid of trespass does not, pursuant to such trespass, acquire a water right. Any claim of right thus initiated is void." Bassett v. Swenson, 51 Idaho 256, 259, 5 P.2d 722 (1931); Wiel on Water Rights, 3d ed., § 221; and other cases); Compare Lemmon v. Hardy, 95 Idaho 778, 519 P.2d 1168 (1974), where the Supreme Court of Idaho reached the tentative conclusion that, "The rule as to trespass and water rights in Idaho appears to be that a water right initiated on the unsurveyed public domain is valid, but a water right initiated by trespass on private property is invalid." At 780, 1170. The Court based this tentative ruling on its reading of Kinney, The Law of Irrigation and Water Rights, § 687 at 1189, that a "settler upon the unsurveyed lands of the United States has never been regarded as a trespasser." This statement, regarding bona fide "settler[s]" on the public domain, is not by itself incorrect. The Lemmon court's statement, however, fails to recognize the important distinction between the legitimate "settler[s]" which are the subject of the quote from Kinney, and trespassers who assert control over rangeland without color or claim of title. Accordingly, the Lemmon court's statement is overly broad.

Conclusion

Congress has repeatedly acted to prevent individuals from acquiring exclusive control over the land and water resources needed for grazing on public lands. Given these directives, the private claimants cannot demonstrate the exclusivity required to acquire a water right under the state law of prior appropriation. Thus, as a matter of state law, a private party may not own a right for stockwatering purposes where the point of diversion and place of use are on federal public land.

Respectfully submitted this 15th day of July, 1996.

UNITED STATES OF AMERICA
ON BEHALF OF THE BLM



Daria J. Zane
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APPENDIX A

UNANSWERED DISCOVERY

NOTE: The attached requests to admit were served on each of the private claimants in consolidated cases 57-11124 et.al., except that Henry Brandau was not asked request for admission #3 because he did not object to any of the United States claims for water rights in these consolidated cases.

Requests for Admissions

1. With respect to each of the water rights you are claiming in these consolidated cases, admit that the United States owns the land claimed for both the point of diversion and the place of use.
2. Please admit that other stock owners have used the water you are claiming in these consolidated cases to water their stock.
3. Please admit that the United States was the first party to put the water it has claimed in these consolidated cases to a beneficial use.
4. Assuming for the sake of argument that you have a valid BLM grazing permit, please admit that the only right that you have to graze stock on land managed by the BLM is under a BLM issued grazing permit.

Interrogatories

5. State the basis of your objection to the United States' claims for water rights in these consolidated cases. With respect to this and all other interrogatories, please answer in a fashion that is responsive to the definition of "state the basis" in the definition section of this document.
6. Identify all other stock owners who have used the stockwater sources you are claiming in these consolidated cases to water their stock and state the approximate years of their respective uses.

7. With respect to each of the water rights you are claiming in these consolidated cases, do you contend that you were the first party to put the water claimed to beneficial use?
8. If your answer to the proceeding interrogatory was no, please identify the person whom you claim was the first beneficial user and explain your relationship to that person. Identify all documents that evidence the relationship between you and the person you claim was the first person to put the water to beneficial use.
9. If you contend that the United States was not the first beneficial user of the water rights it has claimed in these consolidated cases, state the basis of that contention and identify the person that you believe first put the water at issue to a beneficial use.
10. Do you contend that you were an "unwilling" agent of the United States with respect to any of the United States claims to stockwater in these consolidated cases? If so, please state the basis of your contention.
11. Identify all your claims to stockwater in these consolidated cases that are not developed sources, but are either undeveloped spring claims or instream claims.
12. Identify all of your claims to stockwater in these consolidated cases that were made to allow cattle to drink from an irrigation ditch or other diversion facility the primary purpose of which is not stockwatering.

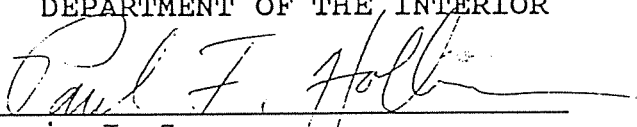
13. Identify all permits, licenses, or other permissions or legal justifications that you believe give you the right to graze stock on the federal public land.

Request for Production of Documents

1. Please produce each document identified in your responses to the foregoing interrogatories or requests for admissions and indicate on each document the number of the interrogatory or request for admission for which it is being produced.

Respectfully submitted this 17th day of June, 1996.

UNITED STATES OF AMERICA
ON BEHALF OF
BUREAU OF LAND MANAGEMENT
DEPARTMENT OF THE INTERIOR



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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

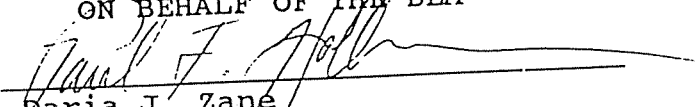
In Re SRBA	)	Subcase Nos. 57-11124 et.al.
	)	
	)	United States' Notice of Serving -
	)	Interrogatories, Requests for
Case No. 39576	)	Admissions and Requests for
	)	Production of Documents.

NOTICE

This is the United States' notice to the Court pursuant to Idaho Rule of Civil Procedure 33(a)(5) that on this day, June 17, 1996, the United States served a first set of interrogatories, requests for admissions, and requests for production of documents on Joyce Livestock Company, Chipmunk Grazing Association, Henry Brandau, Harry Richard Bass and Ted Blackstock, all of whom are parties in the above captioned consolidated cases.

Respectfully submitted this 17th day of June, 1996.

UNITED STATES OF AMERICA
ON BEHALF OF THE BLM


Daria J. Zane
Paul F. Holleman
Attorneys, Department of Justice
Environment and Natural Resources
Division

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of June, 1996, I caused a true and correct copy of the United States' Notice of Serving Interrogatories, Requests for Admissions and Requests for Production of Documents -- Notice to be served by United States mail, postage prepaid, on the following persons:

Special Master Fritz X Hammerle
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, Idaho 83303-2707
Also by FAX: 208-736-2121

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

Richard L. Harris
P.O. Box 1438
Caldwell, Idaho
83606-1438
Also by FAX: 208-459-1300


FELECIA LESESNE

APPENDIX B

BLM CLAIMS OBJECTED TO BY PRIVATE PARTIES

<u>SUBCASE NO</u>	<u>CLAIMANT</u>	<u>OBJECTOR</u>
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57-01045	BLM	BASS
57-01046	BLM	CHIPMUNK GRAZING
57-01047	BLM	CHIPMUNK GRAZING
57-01049	BLM	BASS
57-01050	BLM	BASS & BLM
57-01051	BLM	BASS
57-01053	BLM	BASS
57-01054	BLM	BASS
57-01057	BLM	BASS
57-01058	BLM	BASS
57-01059	BLM	BASS
57-01060	BLM	BASS
57-01061	BLM	BASS
57-01062	BLM	BASS
57-02372	BLM	BASS
57-02450	BLM	BASS
57-02468	BLM	BASS
57-02469	BLM	BASS
57-02484	BLM	BASS & BLM
57-07089	BLM	BASS
57-07154	BLM	BASS
57-07165	BLM	BASS & MALMBERG
57-07166	BLM	BASS & BLM
57-07168	BLM	BASS & BLM
57-07344	BLM	BASS
57-07354	BLM	BASS
57-07357	BLM	BASS
57-10979	BLM	BLACKSTOCK
57-11067*	BLM	BLM
57-11124	BLM	JOYCE LIVESTOCK
57-11125	BLM	JOYCE & BLM
57-11126	BLM	JOYCE & BLM
57-11127	BLM	JOYCE & BLM
57-11128	BLM	JOYCE LIVESTOCK
57-11129	BLM	JOYCE LIVESTOCK
57-11130	BLM	JOYCE LIVESTOCK
57-11131	BLM	JOYCE & BLM
57-11132	BLM	JOYCE LIVESTOCK
57-11133	BLM	JOYCE LIVESTOCK

57-11134	BLM	JOYCE LIVESTOCK
57-11138	BLM	BASS & BLM
57-11147	BLM	BLACKSTOCK
57-11148	BLM	CHIPMUNK GRAZING
57-11149	BLM	CHIPMUNK GRAZING
57-11156	BLM	CHIPMUNK & BLM
57-11157	BLM	CHIPMUNK & BLM
57-11158	BLM	CHIPMUNK GRAZING
57-11162	BLM	BASS
57-11164	BLM	BASS & BLM
57-11166	BLM	BASS
57-11170	BLM	CHIPMUNK GRAZING
57-11173	BLM	BASS
57-11176	BLM	CHIPMUNK GRAZING
57-11179	BLM	CHIPMUNK & BLM
57-11181	BLM	CHIPMUNK GRAZING
57-11183	BLM	CHIPMUNK, CHIPMUNK, & BLM
57-11319	BLM	BLACKSTOCK & BLM
57-11334	BLM	JOYCE LIVESTOCK
57-11341	BLM	JOYCE & BLM
57-11342	BLM	JOYCE LIVESTOCK
57-11343	BLM	JOYCE LIVESTOCK
57-11344	BLM	JOYCE & BLM
57-11345	BLM	JOYCE LIVESTOCK
57-11346	BLM	JOYCE LIVESTOCK
57-11350	BLM	BASS & BLM
57-11351	BLM	BASS

Records printed: 66

57-11067* BLM is the claimant and only objector in subcase 57-11067. This unobjected to claim raises different legal issues and should be severed from these consolidated cases.

APPENDIX C

PRIVATE CLAIMS ON PUBLIC LAND

<u>SUBCASE-NO</u>	<u>CLAIMANT</u>	<u>OBJECTOR</u>
57-04028	JOYCE LIVESTOCK	BLM
57-07512*	BASS / JUNAYO / ORNDORFF / REUCK	BLM
57-07516*	BASS / JUNAYO / ORNDORFF / REUCK	BLM
57-10373	CHIPMUNK GRAZING	BLM
57-10486	JOYCE LIVESTOCK	BLM & HULET
57-10487	JOYCE LIVESTOCK	BLM & HULET
57-10586*	JOYCE LIVESTOCK	JOYCE LIVESTOCK
57-10587	JOYCE LIVESTOCK	BLM & JOYCE LIVESTOCK
57-10588	JOYCE LIVESTOCK	BLM
57-10598	JOYCE LIVESTOCK	BLM & JOYCE LIVESTOCK
57-10660	CHIPMUNK GRAZING	BLM & CHIPMUNK
57-10770	JOYCE LIVESTOCK	BLM & JOYCE LIVESTOCK
57-10850	CHIPMUNK GRAZING	BLM
57-10851	CHIPMUNK GRAZING	BLM
57-10914	BRANDAU / CHIPMUNK / MALMBERG	BLM
57-10916	CHIPMUNK GRAZING	BLM
57-10917	BLACKSTOCK / JOHNSTONE / CHIPMUNK	BLM & CHIPMUNK
57-10918	CHIPMUNK GRAZING	BLM
57-10919A	BRANDAU(X2) / MALMBERG / CHIPMUNK	BLM
57-10919B	BRANDAU(X2) / CHIPMUNK / MALMBERG	BLM
57-10920	BLACKSTOCK / CHIPMUNK / JOHNSTONE	BLM
57-10921	CHIPMUNK GRAZING	BLM & CHIPMUNK
57-10923*	BLACKSTOCK / CHIPMUNK	CHIPMUNK GRAZING
57-10924	CHIPMUNK / JACA	BLM & CHIPMUNK
57-10930A	BASS / JUNAYO / ORNDORFF / REUCK	BLM
57-10930B	BASS / JUNAYO / ORNDORFF / REUCK	BLM
57-10930C	BASS / JUNAYO / ORNDORFF / REUCK	BLM
57-10930D*	BASS / JUNAYO / ORNDORFF / REUCK	BLM
57-10944	CHIPMUNK GRAZING	BLM & CHIPMUNK
57-10945*	CHIPMUNK GRAZING	CHIPMUNK GRAZING
57-10946	CHIPMUNK GRAZING	BLM
57-10947*	CHIPMUNK GRAZING	CHIPMUNK GRAZING

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57-07512* 57-07512 is a private claim for water involving a right that was previously licensed in the name of the BLM. In this proceeding, the private claimant simply filed the BLM's license in the private claimant's name. Because additional legal issues may arise in this case, it may need to be severed at some point in the future. The United States does not waive any of its legal rights regarding these additional legal issues. For the time being, however, the United States believes that this subcase can be handled with the others on the consolidated list.

57-07516* Same issue as 57-07512 above.

- 57-10586* All POD/POU in the SRBA application described public land. IDWR disallowed this claim in its entirety in favor of two BLM claims 57-11134 and 57-11179. Claimant objected to the disallowance of his claim.
- 57-10923* Some POD/POU in the SRBA application described public land. IDWR disallowed portions of this private claim in favor of overlapping BLM claim 57-11319.
- 57-10930D* This claim was part of a much bigger SRBA filing (57-10930) which IDWR recommended as four smaller claims (57-10930A, 57-10930B, 57-10930C, and 57-10930D). Portions of the parent claim (57-10930) were disallowed in favor of overlapping BLM claims.
- 57-10945* All POD/POU in the SRBA application described public land. IDWR disallowed this claim in its entirety in favor of BLM license 57-02446. In addition BLM claims in 57-10997, 57-10997A and 57-07121 also conflicted with this private claim. Claimant objected to the disallowance of this claim.
- 57-10947* All POD/POU in the SRBA application described public land. IDWR disallowed this claim in its entirety in favor of BLM claim 57-11179. Claimant objected to the disallowance of his claim.

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 1996, I caused a true and correct copy of the **United States Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment** to be served by United States mail, postage prepaid, on the following persons:

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