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Department of Water Resources
Adjudication Bureau

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

Case No. 39576

)
) Subcase Nos. 34-02562, 34-04171,
)
)
)
) MOTION FOR SUMMARY JUDGMENT
)

Descriptive Summary

This is the United States' motion, on behalf of the Bureau of Land Management, for Summary Judgment in the above-referenced subcases.

Discussion

Claimant, the United States of America, by and through the its attorneys, pursuant to Rule 56 of the Idaho Rules of Civil Procedure, moves for entry of a summary judgment. As grounds therefor, Claimant states:

Background

The United States claims water right 34-02562 and 34-04171 for de minimis amounts of water for stockwatering purpose pursuant to the description of these rights in the Standard Form No. 5 (SF5) filed with the Court on August 14, 1996. The SF5s for these two claims contain a description of the elements of the rights that differ from the elements as claimed and recommended by IDWR in the Director's Report. These differences involve legal matters of proper form and content of the stockwater decree.¹ As such, the resolution of these differences are appropriate for summary judgment.

Pursuant to I.R.C.P. 56, summary judgment is appropriate where there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. *State v. Shama Resources Ltd. Partnership*, 127 Idaho 267, 899 P.2d 977 (1995); *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530-31, 887 P.2d 1034, 1037-38 (1994).

In the instant cases, there are no genuine issues of any material fact which are necessary to the determination of the questions of law. The legal issues presented are therefore ripe for determination under Rule 56.

The legal matters of form and content at issue in these

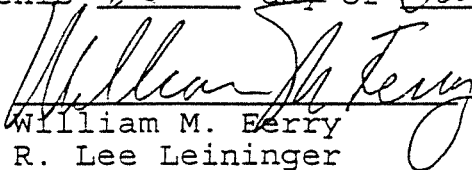
¹ The legal issues presented here for summary judgement include the necessity of certain remarks and statements included in a stockwater right and the inclusion of "wildlife" as a purpose of use. These issues have been decided in Basin-wide issue 12. Because the same issues exist for these subcases, they are ripe for summary judgement disposition.

subcases are also the subject of the *Special Master's Amended Recommendation Re: Basin-wide issue 12* and the United States' *Motion for Reconsideration* of that recommendation. This basin-wide issue will determine form and content questions applicable to these and other de minimis stockwatering rights. For this reason, the United States incorporates by way of reference and submits in support of this motion the attached *Motion for Reconsideration* of Basin-wide issue 12.

CONCLUSION

For the reasons set forth herein, and on the attached Motion for Reconsideration in Basin-wide issue 12, the United States respectfully requests this Court enter an Order pursuant to I.R.C.P. 56(c) concluding that the United States of America is entitled, as a matter of law, to the decree of a water right as stipulated to by the parties in the SF5 and as determined by Basin-wide issue 12, for subcases 34-02562 and 34-04171.

Respectfully submitted, this 16th day of July, 1996.


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