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JUN 28 1996

Department of Water Resources

Movant's Name:

UNITED STATES OF AMERICA

Attorneys' Names and Addresses:

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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. 34-12487/34-12512
Case No. 39576	)	
	)	UNITED STATES' MOTION FOR SUMMARY
_____	)	JUDGMENT ON PRIORITY DATE

DESCRIPTIVE SUMMARY

This is the United States' Motion for Summary Judgment¹
relating to the issue of priority date.²

I. BACKGROUND

¹This motion only addresses the issue of priority date. A second issue, purpose of use, was raised by IDWR's report on review of SF5s. However, the Court has set that issue for summary judgment hearing on September 12, 1996 so that this issue is not addressed in this motion.

²Summary judgment was also scheduled in the subcase 34-02589. However, that subcase does not raise the priority date issue as the priority date recommended and agreed to by the parties in that case is August 10, 1962.

The United States filed timely claims for these water rights. Thereafter, IDWR recommended these water rights as claimed with a priority date of January 1, 1884. See pages from Director's Reports, Exhibits 1A and 1B hereto.

Objections to these claims were filed by the Waddoups. The objections, while checking each and every box, addressed the issue of whether the United States had a right to a federal reserved right under PWR 107.³

In its response to these objections, IDWR sought to amend the priority date for these objections, stating that it had made a typographical error and that the priority date should be March 16, 1923.⁴

The United States and the objectors, the Waddoups, reached an agreement regarding all elements of these rights. Standard Form No. 5s were submitted to the Court. In its report on Standard Form No. 5s, IDWR again asserted that it disagreed with its own recommended priority date. IDWR explained that it had determined that because these claims were within the geographic area adjudicated under the Utah Construction decree, and because the United States was allegedly subject to and bound by that decree, the United States was not entitled to a priority date earlier than the date of that decree.

³There was a claim asserted pursuant to PWR 107 as to the claim, 34-12487 but not 34-12512. The subcase number for that claim is 34-12487A.

⁴IDWR did not amend its report on these water rights as was apparently required under the prior statute. It is uncertain what effect this has on its recommendation. Certainly without proper notice, IDWR's amended recommendation is questionable.

The Court set this matter for summary judgment on the priority date issue for July 24, 1996. This motion is submitted relating to that summary judgment.

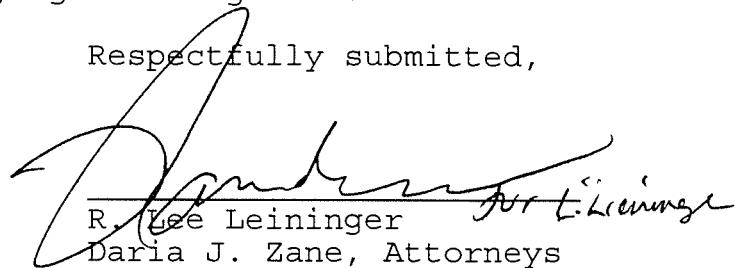
II. ARGUMENT

The United States is entitled to a water rights' decree for the priority date claimed. The United States is not precluded by the Utah Construction decree from asserting and obtaining water rights with priority dates earlier than the date of that decree, March 16, 1923. The reasons supporting the United States' position are set forth in Motion for Summary Judgment and Memorandum in Support of Summary Judgment and Appendices filed this date in Subcase Nos. 34-11645, et al., a copy of which is attached and incorporated herein.⁵

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the United States respectfully requests that summary judgment be granted.

Respectfully submitted,


R. Lee Leininger
Daria J. Zane, Attorneys
General Litigation Sec.
U.S. Dept. of Justice

DATED: 6/26/96

⁵The appendices have not been included in the original or service copies except the service copy on the Waddoups to avoid duplicating materials filed with the court this very date.

DATE: NOV-17-1992
PAGE: A-930

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

AJ5856NP

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: SPRING						
TRIBUTARY: SINKS						
34-12486	US DEPT OF INTERIOR BUREAU OF LAND MANAGEMENT IDAHO STATE OFFICE 3380 AMERICANA TERRACE BOISE ID 83706	01/01/1884	STOCKWATER	01-01 12-31	.09	CFS BENEFICIAL USE
NON-IRRIGATION-USES: STOCKWATER, 373 RANGE CATTLE						
POINT OF DIVERSION: T06N R24E S14						
PLACE OF USE: STOCKWATER						
T04N R24E S14						
REMARKS: THIS RIGHT AND OTHER RIGHTS COMMON TO THE SAME GRAZING ALLOTMENT SHALL BE LIMITED TO THE QUANTITY OF WATER BENEFICIALLY USED BY THE NUMBER OF STOCK WITHIN THE ALLOTMENT.						
BLM RECORD ID = 3403480063						
TOTAL QUANTITY: .09 CFS						
34-12487	US DEPT OF INTERIOR BUREAU OF LAND MANAGEMENT IDAHO STATE OFFICE 3380 AMERICANA TERRACE BOISE ID 83706	01/01/1884	STOCKWATER	01-01 12-31	.07	CFS BENEFICIAL USE
NON-IRRIGATION-USES: STOCKWATER, 225 RANGE CATTLE						
POINT OF DIVERSION: T03N R24E S04						
PLACE OF USE: STOCKWATER						
T03N R24E S04						
REMARKS: THIS RIGHT AND OTHER RIGHTS COMMON TO THE SAME GRAZING ALLOTMENT SHALL BE LIMITED TO THE QUANTITY OF WATER BENEFICIALLY USED BY THE NUMBER OF STOCK WITHIN THE ALLOTMENT.						
BLM RECORD ID = 3403480064						
TOTAL QUANTITY: .07 CFS						

Exhibit 1A

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: NOV-17-1992
PAGE: A-935

RIGHT
NUMBER

NAME & ADDRESS

PRIORITY
DATE PURPOSE OF USE FROM TO

PERIOD OF USE
MAXIMUM
QUANTITY
BASIS OF CLAIM

SOURCE: SPRING

TRIBUTARY: SINKS

34-12512

US DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
3380 AMERICANA TERRACE
BOISE ID 83706

01/01/1884 STOCKWATER

01-01 12-31

.09 CFS BENEFICIAL USE

TOTAL QUANTITY:

.09 CFS

NON-IRRIGATION-USES:
STOCKWATER, 373 RANGE CATTLE

POINT OF DIVERSION:
TOWN R24E S36

WUSWSE

PLACE OF USE: STOCKWATER

TOWN R24E S36

SUSE

REMARKS: THIS RIGHT AND OTHER RIGHTS COMMON TO THE SAME GRAZING
ALLOTMENT SHALL BE LIMITED TO THE QUANTITY OF WATER BENEFICIALLY
USED BY THE NUMBER OF STOCK WITHIN THE ALLOTMENT.
BLM RECORD ID = 340348089

01/01/1884 STOCKWATER

01-01 12-31

.01 CFS BENEFICIAL USE

34-12532

US DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
3380 AMERICANA TERRACE
BOISE ID 83706

NON-IRRIGATION-USES:
STOCKWATER, 234 RANGE CATTLE

POINT OF DIVERSION:
TOWN R22E S17

NEHMAN

PLACE OF USE: STOCKWATER

TOWN R22E S17

NHNM

REMARKS: THIS RIGHT AND OTHER RIGHTS COMMON TO THE SAME GRAZING
ALLOTMENT SHALL BE LIMITED TO THE QUANTITY OF WATER BENEFICIALLY
USED BY THE NUMBER OF STOCK WITHIN THE ALLOTMENT.
BLM RECORD ID = 3404582948

TOTAL QUANTITY:

.01 CFS

Ex by B. # 1 B

CERTIFICATE OF SERVICE

I certify that on the 26th day of June, 1996, I served a true and correct copy of the United States' Motion for Summary Judgment on Priority Date in Subcase Nos. 34-12487 and 34-12512, by first class, postage paid, mail on the following individuals:

1. Original to

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303 (by overnight)

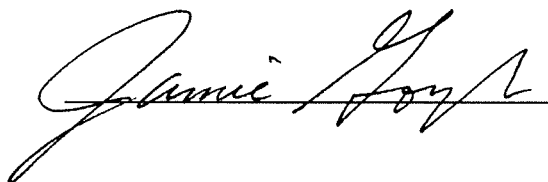
2. Copies to:

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

Jimmie K. and Elise L. Waddoups
HC 60, Box 230
Moore, Idaho 83255

3. Courtesy copy to:

Idaho Dept. of Water Resources
1300 N. Orchard St.
Boise, Idaho 83702

A handwritten signature in cursive script, appearing to read "Jamie Hays", written over a horizontal line.