

Names of Parties Serving Document:

UNITED STATES OF AMERICA

SEE ATTACHMENT #1

Attorneys' Names and Addresses:

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Assistant Attorney General
Environment and Natural Resources Division

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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 Numbers: See Exhibit A, B, C,
)	and E
)	
Case No. 39576)	STIPULATION AND JOINT MOTION
)	FOR ORDER APPROVING
)	STIPULATION

DESCRIPTIVE SUMMARY

This document is the Stipulation and Joint Motion for Order Approving Stipulation, filed by the United States of America ("United States") and the private parties listed on Attachment #1 ("Private Parties").

STIPULATION

The United States and the Private Parties (collectively "Parties"), by and through their respective undersigned counsel, hereby stipulate and agree as follows as to the water right numbers listed on Exhibits A, B, C, D, E, and F, and the water right claims to be filed in the grazing allotments listed on Exhibit G (individually, "Water Right" or, collectively, "Water Rights"):

1. WITHDRAWAL OF OBJECTIONS AND RESPONSES BY PRIVATE PARTIES.

The Private Parties agree to dismiss with prejudice their objections and responses to the Water Rights listed on Exhibit A. The Parties agree and stipulate that the elements of each Water Right listed on Exhibit A should be decreed as described in Section 5, below.

The Private Parties agree to dismiss with prejudice their objections and responses to the Water Rights listed on Exhibit B, and to withdraw any motions or court filings which attempt to set aside partial decrees for stockwater rights held by the United States, as listed in Exhibit C. The Private Parties further agree that they will not challenge any other partial decree issued to the United States in the SRBA for stockwater purposes.

2. WITHDRAWAL OF OBJECTIONS BY UNITED STATES. The United States agrees to dismiss with prejudice its objections to the Water Rights listed on Exhibit E. The Parties agree and stipulate that the elements of each Water Right listed on Exhibit E should be decreed as described in Section 5, below.

3. CLAIMS NOT YET REPORTED. The Parties have a number of pending stockwater claims that have not yet been reported by IDWR ("unreported claims"). Such unreported claims

are listed on Exhibits D and F. The Parties agree and stipulate that the elements of the unreported claims should be decreed as described in Section 5, below. The Parties agree that they will not file objections or responses to the entry of partial decrees for the claims listed on Exhibit D and F if the elements of such claims conform to the provisions described in this Stipulation.

4. CLAIMS NOT YET FILED. The Private Parties have a number of stockwater claims that have not yet been filed with IDWR ("unfiled claims"). The name of the claimant and the grazing allotments in which these unfiled claims are located are listed on Exhibit G. Notwithstanding the provisions of Section 8 below, the Parties agree that they will not oppose the filing of the claims so long as they are made by the claimants and within the allotments identified in Exhibit G. Moreover, although the United States retains the right to file objections to individual elements of the claimed water right in order to ensure compliance with this Stipulation and to ensure consistency with the overlapping or competing claims of the United States, it will not object to the claims on the basis that they contain points of diversion or places of use on federal lands and it will not object to the priority date or the purpose of use so long as those elements conform to the provisions described in this Stipulation. In addition, the Parties agree that such claims shall be filed no later than December 31, 2002, and that in no event shall any stockwater claims be filed in the SRBA on the federal lands underlying the grazing allotments listed on Exhibit G after such date except by agreement between the United States and any affected Private Parties.

5. WATER RIGHT DESCRIPTIONS. The Parties agree and stipulate that the water right claims listed on Exhibits A, D, E, and F, and the water right claims to be filed pursuant to Section 4 above, shall be decreed consistent with the following:

A. Priority Dates.

i. Claims for which the United States has not yet received a partial decree. If the United States has not yet received a partial decree for a water right claim, the following shall apply. For claims on lands administered by the Bureau of Land Management, the United States shall receive a water right with a priority date which is the later of a) the claimed priority date or b) June 28, 1934. For claims on lands administered by the Forest Service, the United States shall receive a water right with a priority date which is the later of a) the claimed priority date or b) the date of the federal reservation of such lands. On Forest Service lands, the federal reservation date for claims on what is presently the Sawtooth National Forest is June 12, 1905, and the federal reservation date for claims on what is presently the Nez Perce National Forest is May 10, 1906. The overlapping or competing claims of the Private Parties shall have a priority date that is one-day senior to the United States' priority date, unless the Private Parties can provide a patent or deed for their "base property," as such term is defined in 36 C.F.R. § 222.1 and 43 C.F.R. § 4100.0-5, that precedes this date, in which case the Private Parties shall receive a priority date that is this more senior date.

ii. Claims for which the United States has received a partial decree for an undeveloped source. If the United States has received a partial decree for a water

right claim and the source is undeveloped (i.e., instream or an undeveloped spring), the Private Parties' water rights shall be decreed as described in the last sentence of section 5A(i) above.

iii. Claims for which the United States has received a partial decree for a developed source. If the United States has received a partial decree for a water right claim and the source is developed, the overlapping or competing claims of the Private Parties shall have a priority date that is one-day junior to that of the United States' priority date as described in the decree. However, if the Private Parties can provide 1) evidence of stockwatering use of the water source preceding the priority date of the United States' decree, and 2) a patent or deed for their "base property," as such term is defined in 36 C.F.R. § 222.1 and 43 C.F.R. § 4100.0-5, that is at least as senior as the water use date, the Private Parties' priority date shall be the water use date. Moreover, if the priority date of the United States' decree is based on beneficial use and such date significantly predates the date of the development, the overlapping or competing claims of the Private Parties shall have a priority date that is one-day senior to that of the United States' priority date.

iv. Claims for which the United States has a Public Water Reserve 107 reservation. If the United States has a claim or a decree for a spring under Public Water Reserve 107 ("PWR 107"), the overlapping or competing claims of the Private Parties shall have a priority date that is one-day junior to that of the United States' priority date, unless the Private Parties can provide 1) evidence of

stockwatering use of the water source preceding the United States' priority date, and 2) complete chain-of- title documentation for their "base property," as such term is defined in 36 C.F.R. § 222.1 and 43 C.F.R. § 4100.0-5, that is at least as senior as the water use date, in which case the Private Parties' priority date shall be the water use date.

- B. Purpose and Place of Use of Water Rights. The Parties agree that the purpose of use of the Water Rights listed on Exhibit E and Exhibit F, and the water right claims to be filed pursuant to Section 4 above, is only for the watering of livestock lawfully within a permitted federal grazing allotment and that the number of livestock within the allotment shall not exceed the amount authorized by a federal grazing permit. The Parties agree that the purpose of use of the state-law based Water Rights listed on Exhibits A, C and D is only for the watering of livestock lawfully within a permitted federal grazing allotment. The Parties further agree that the place of use of the state-law based Water Rights listed on Exhibits A, C, D, E and F, and the water right claims to be filed pursuant to Section 4 above, shall remain *in situ*.

6. CONFORMING DOCUMENTS. The Parties agree that they will execute and file any necessary documents with the SRBA Court and IDWR to conform the elements of the claims listed on Exhibits A, D, E, and F, and the water right claims to be filed pursuant to Section 4 above, to the provisions described in this Stipulation.

7. GRAZING PERMITS AND MANAGEMENT OF FEDERAL LANDS. The Parties agree that the Water Rights listed on Exhibits A, C, D, E and F, and the water right claims to be

filed pursuant to Section 4 above, shall not alter the rights of a permittee under a valid grazing permit nor impede the authority of the United States to manage federal lands.

8. NO FURTHER CLAIMS. The Private Parties agree that they will not file additional claims in the SRBA for water rights where the place of use or point of diversion is located on federal lands and the United States agrees that it will not file additional claims in the SRBA for water rights where the place of use or point of diversion is located on federal lands underlying the federal Grazing Allotments on which any of the Private Parties are grazing permittees, except by agreement between the United States and any affected Private Parties. This paragraph shall not affect or apply to any claims already filed in the SRBA by any Party as of the effective date of this Stipulation, nor shall it apply to the claims to be filed pursuant to Section 4 above.

9. APPROVAL OF STIPULATION AND ISSUANCE OF PARTIAL AND FINAL DECREES BY COURT. The Parties agree to support the Joint Motion for Order Approving Stipulation set forth below. If for any reason the Court does not approve the Stipulation and issue partial and final decrees for any of the Water Rights on the attached Exhibits pursuant to the terms of this Stipulation, this Stipulation is null and void and shall have no effect, and the Parties shall proceed with a determination of their water rights and/or objections under applicable law.

10. STIPULATION NOT TO BE USED AGAINST THE PARTIES. The Parties agree that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement and that nothing in this Stipulation, or any offers or compromises made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence to

show the validity or invalidity of any water right claims made by the Parties, or as an admission or concession of wrongdoing or liability, or shall be used in any manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those seeking approval of this Stipulation by the SRBA Court, for interpretation or enforcement of this Stipulation, or for a purpose contemplated by Idaho Rule of Evidence 408.

11. RESERVATIONS. The Parties agree that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement and that nothing herein shall be construed as precedent in any other proceeding or context. Nothing in this Stipulation shall be construed to deprive any federal official of authority to revise, amend, or promulgate regulations. Nothing in this Stipulation shall be construed to commit any federal official to expend funds not appropriated by Congress.

12. VOLUNTARY EXECUTION. This Stipulation was entered into and executed voluntarily by the Parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence.

13. BINDING EFFECT. This Stipulation shall be binding on any and all successors, assigns, heirs, executors, and administrators of each of the Parties.

14. COSTS AND ATTORNEY FEES. Each Party shall bear their own costs and attorney fees.

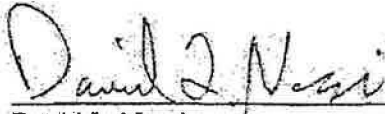
15. EFFECTIVE DATE. This Stipulation shall become effective upon execution by all of the Parties.

JOINT MOTION FOR ORDER APPROVING STIPULATION

The United States and the Private Parties request the Court to approve the foregoing Stipulation. The Order sought by this motion is fully in accordance with Idaho law. Such an Order would serve not only to facilitate the settlement between the United States and the Private Parties, thus streamlining the process, but would very likely have the effect of encouraging future settlements in the SRBA. The provisions of Idaho Rule of Evidence 408, as well as the policy underlying that rule and the policy of the SRBA Court, are directed at furthering the strong public policy favoring out-of-court settlement of disputes over litigation.

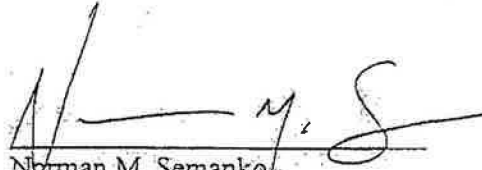
Wherefore, the United States and the Private Parties respectfully request that this Court grant this motion in all respects. The United States and the Private Parties further request oral argument and expedited consideration of this matter.

DATED this 28th day of August, 2002.



David L. Negri
Larry A. Brown
United States Department of Justice

Attorneys for the United States of America



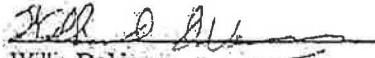
Norman M. Semanko
Travis L. Thompson
Barker, Rosholt & Simpson LLP

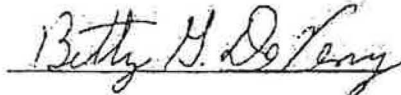
Attorneys for the following Parties:

Western Stockgrowers Association et al.
Broken Diamond Ranch
Brown, Birchie
Brown, Wallace
Butler, Raymond
Crockett, David
Kinsey Family LLP
Kunkel, Tom
Mathers Ranch
Tugaw Ranches
Williams, Inc.
Williams Properties LLC
William J & Thomas Williams

A.L. Cattle, Inc.
Bedke Family Limited Partnership
Bedke, Scott
Bedke, Karl U.
Bedke, Ray C.
Bowen, Todd
Branch, Weldon
Crater Butte Cattle Association
Diamond A Livestock, Inc.
DeVeny, Willis
DeVeny, Betty
Eckhardt Family Limited Partnership
Eckhardt, James
Eckhardt, Nellie
Faulkner Land & Livestock Company
Flying Triangle Inc.

Gardner, Luther
Lawrence Ranch Inc.
Lawrence, Ron
Layton, Eugene
Mathews, Bill J.
Mathews, Eugene
Pickett Ranch and Sheep Company
Poulton, Michael
Poulton, Gary
Richfield Cattle Association
Shingle Creek LLC
Shoulder Three Ranches Inc.
Tugaw, Joe
Warr, Keith
Whiteley, Winslow
Winecup, Inc.


Willis DeVeny


Betty DeVeny

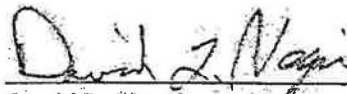
STIPULATION AND JOINT MOTION FOR ORDER APPROVING STIPULATION - Page 11

** TOTAL PAGE 03 **

State of Idaho)
) ss.
County of Ada)

DAVID L. NEGRI, duly sworn, upon oath, deposes and says:

That I am the party filing this Stipulation, and/or that I am the attorney for the party, and that I have read this Stipulation, know its contents and believe that the statements are true to the best of my knowledge.

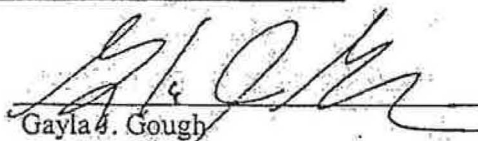


David L. Negri
United States Department of Justice
Environment and Natural Resources Division
General Litigation Section
550 West Fort Street, MSC 033
Boise, Idaho 83724
(208) 331-5943

Counsel for the United States of America

Subscribed and sworn before me on:

AUG 28, 2002



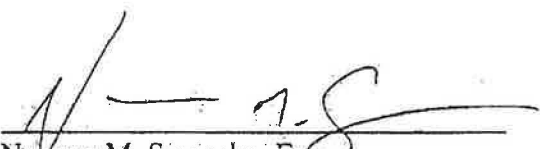
Notary Public for: Gayla J. Gough
Residing at: Kuna, Idaho
Commission expires: 11-17-2004

State of Idaho)
) ss.
County of Ada)

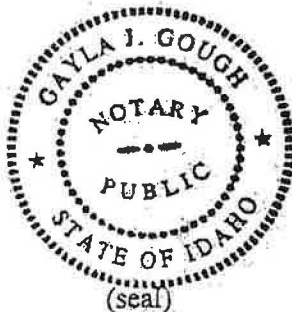
NORMAN M. SEMANKO, duly sworn, upon oath, deposes and says:

That I am the party filing this Stipulation, and/or that I am the attorney for the party, and that I have read this Stipulation, know its contents and believe that the statements are true to the best of my knowledge.

Dated 8/28/02


Norman M. Semanko, Esq.
Barker Rosholt & Simpson LLP
205 N. 10th Street, Suite 520
P.O. Box 2139
Boise, Idaho 83701-2139
Counsel for the Private Parties

Subscribed and sworn before me on: Aug 28, 2002



GAYLA J. GOUGH
(name of notary)
Notary Public for: Idaho
Residing at: KUNA IDAHO
Commission expires: 11-17-2004

State of Idaho)
) ss.
County of Idaho)

WILLIS DEVENY and BETTY DEVENY, duly sworn, upon oath, deposes and says:

That we are the parties filing this Stipulation, and that we have read this Stipulation, know its contents and believe that the statements are true to the best of our knowledge.

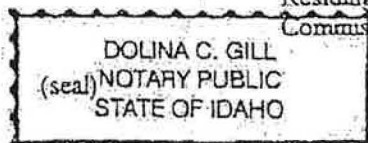
Dated Aug 27 2002

Willis E. DeVeney
Willis DeVeney
P.O. Box 1160
Riggins, Idaho 83549

Subscribed and sworn before me on: Aug 27 2002

Dolana C. Gill
(name of notary)

Notary Public for: Idaho
Residing at: Riggins
Commission expires: 1-18-2006

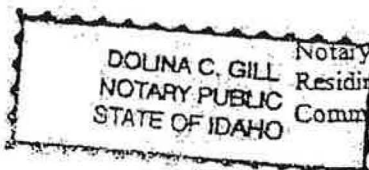


Betty G. DeVeney
Betty DeVeney
P.O. Box 1160
Riggins, Idaho 83549

Subscribed and sworn before me on: Aug 27, 2002

Dolana C. Gill
(name of notary)

Notary Public for: Idaho
Residing at: Riggins
Commission expires: 1-18-2006



(seal)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August, 2002, I served a true and correct copy of the foregoing **STIPULATION AND JOINT MOTION FOR ORDER APPROVING STIPULATION**, by depositing a copy thereof in the U.S. mail, postage prepaid, or by other service where indicated, upon the following:

Original to:

BY OVERNIGHT DELIVERY:

Clerk of the Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

Copies to:

U.S. Department of Justice
General Litigation Section
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

BY HAND DELIVERY:
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David J. Barber, Deputy Attorney General
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Boise, ID 83711-4449

Willis & Betty DeVeny
P.O. Box 1160
Riggins, Idaho 83549



David Negri

Attachment 1
Claimants/Objectors/Respondents

Western Stockgrowers Association et al.
Broken Diamond Ranch
Brown, Birchie
Brown, Wallace
Butler, Raymond
Crockett, David
Kinsey Family LLP
Kunkel, Tom
Mathers Ranch
Tugaw Ranches
Williams, Inc.
Williams Properties LLC
William J & Thomas Williams

Richfield Cattle Association
Shingle Creek LLC
Shoulder Three Ranches Inc.
Tugaw, Joe
Warr, Keith
Whiteley, Winslow
Winecup, Inc.

A.L. Cattle, Inc.
Bedke Family Limited Partnership
Bedke, Scott
Bedke, Karl U.
Bedke, Ray C.
Bowen, Todd
Branch, Weldon
Crater Butte Cattle Association
DeVeny, Willis
DeVeny, Betty
Diamond A Livestock, Inc.
Eckhardt Family Limited Partnership
Eckhardt, James
Eckhardt, Nellie
Faulkner Land & Livestock Company
Flying Triangle Inc.
Gardner, Luther
Lawrence Ranch Inc.
Lawrence, Ron
Layton, Eugene
Mathews, Bill J.
Mathews, Eugene
Pickett Ranch and Sheep Company
Poulton, Michael
Poulton, Gary

STIPULATION AND JOINT MOTION FOR ORDER APPROVING STIPULATION

- Page 1

EXHIBIT E
Permittees' Reported Claims

67-11043 James Eckhardt
67-11045 James Eckhardt
67-11059 James Eckhardt

67-14083 Weldon Branch

69-10049 Lawrence Ranch Inc.

78-10002 Lester Lowe/Todd Bowen

78-10338 Shingle Creek LLC
78-10339 Shingle Creek LLC
78-10340 Shingle Creek LLC