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 DEPARTMENT OF
 WATER RESOURCES

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

<i>In Re: SRBA</i>	)	
	)	
Case No. 39576	)	Subcase Nos: 67-15263, <i>et al.</i> (Hood)
	)	See Ex. A
	)	
	)	

**United States' Reply in Support of Its Motion to Alter or Amend Special Master's
 Report and Recommendation, Findings of Fact, and Conclusions of Law**

On February 28, 2025, the United States of America, on behalf of the Department of the Interior - Bureau of Land Management ("United States") moved to alter or amend the Special Master's Report and Recommendation ("R&R"). Claimants Keith and Karen Hood ("the Hoods") responded, objecting on the merits and to the United States' reference to Idaho Rule of Civil Procedure ("Rule") 59(e) in its motion. Because the parties have stated their positions fully on the merits of the R&R's priority date recommendations, the United States respectfully provides this brief reply in response regarding the Hoods' arguments relating to Rule 59(e). *See* Hoods' Response to USA's Motion to Alter or Amend Special Master's Report & Recommendation, Findings of Fact, and Conclusions of Law ("Response") at 3–6.

SRBA Administrative Order 1 (“AO1”) provides that a party must move to alter or amend the Special Master’s R&R in order to participate in a challenge before the presiding judge. AO1 on its face provides no standard of review for motions to alter or amend, and there is limited caselaw on the issue. However, after the reference to AO1 and Rule 59(e), the remainder of the United States’ motion is clear that it seeks pre-judgment reconsideration of the R&R on the basis of the existing trial record, not a new trial based on new evidence. As a practical matter, Rule 59(e) would not otherwise apply, because there is no judgment of the Court. Rule 59 establishes procedures for altering or amending a judgment. In this matter, no final judgment will be entered until the presiding judge reviews the R&R and either modifies or adopts it. *See* AO1 § 13(f); 14(b).

Accordingly, the reference to Rule 59(e) should not be interpreted as a request for a new trial, but instead, simply as a reference to some of the governing case law which indicates that “a motion to alter or amend in AO1, is similar to a motion under Rule 59(e), I.R.C.P.” and “[t]he case history on Rule 59(e) I.R.C.P. sets the appropriate standard and rationale for Paragraph 13, AO1.” Order on the Motion of the United States to Alter or Amend the Special Master’s Recommendation, Subcases 65-20033, *et al.* (Apr. 27, 2000) (referencing the R&R procedures contained in AO1 § 13). The Order clarifies that a motion to alter or amend under AO1 is “addressed to the discretion of the [special master].” *Id.* (citing *Lowe v. Lym*, 103 Idaho 259, 263, 646 P.2d 1030 (1982)). The United States referenced Rule 59(e) solely for this reason.

However, the caselaw on what standard applies to motions to alter or amend is mixed. In comparison to the order in Subcase 65-20033, *see supra*, Special Master Haemmerle found in another sub case that “[a] Motion to Alter or Amend is treated as a Motion for Reconsideration

pursuant to I.R.C.P. 11(a)(2).”¹ Order on Motions to Alter or Amend, Subcases 57-11124, *et al.* (June 26, 1997). Contrary to Rule 59(e), “[a] motion for reconsideration need not be supported by any new evidence or authority.” *Fragnetta v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012). “When deciding the motion for reconsideration, the district court must apply the same standard of review that the court applied when deciding the original order that is being reconsidered.” In other words, if the original order was a matter within the trial court’s discretion, then so is the decision to grant or deny the motion for reconsideration.” *Id.* (emphasis added). This is line with a procedure which, under AO1, is required to come before the issuance of any judgment in the case and is aligned with the substance of the United States’ requests in its motion. *See generally* United States’ Motion to Alter or Amend Special Master’s Report and Recommendation, Findings of Fact, and Conclusions of Law (“Motion”), Subcases 67-15263, *et al.* (Feb. 28, 2025); *see also* Response at 4 (“[T]he United States is effectively asking the Special Master to reconsider what was already decided.”). Accordingly, the United States respectfully notes that, while its citation to AO1 would be controlling over its citation to Rule 59(e), and the case law is mixed, it appears that Rule 11.2(b) would be more applicable to the nature of its motion than Rule 59(e).

For the reasons set forth in the Motion, the United States respectfully requests that the Special Master reconsider all evidence previously presented by the parties and, given that evidence and the arguments made by the United States regarding the impact of quantity and forfeiture on priority dates, amend the R&R to recommend that the Hoods are entitled to three different priority dates, splitting the claims into five categories of claims: (1) claims on land within the 1935 Map and the 1936 License; (2) claims on land not within the 1935 Map but

¹ Rule 11(a)(2) has since been renumbered to 11.2(b).

within the 1936 License; (3) claims on land added in Section 9 in 1942; (4) claims on land within the 1935 Map but not within the 1936 License or 1942 Permit; and (5) claims on land not within the 1935 Map, 1936 License, or 1942 Permit onward. *See* U.S. Pre-Trial Brief at 2–3 & U.S. Table 1; U.S. Post-Trial Brief at 3–4 & U.S. Table 1; U.S. Ex. 30 (map showing the land in each claim).

Dated: March 28, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 28, 2025, I served true and correct copies of the foregoing document as follows:

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Ex. A

Subcase Nos:

67-15263
67-15264
67-15265
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