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DEPT. OF WATER RESOURCES

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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	)	
	)	
Case No. 39576	)	Subcase Nos: 67-15263 <i>et al.</i> (Hood)
	)	See Exhibit A
	)	
	)	

United States' Motion to Compel Discovery Responses

Pursuant to Idaho Rules of Civil Procedure 33, 34, 36 and 37, the United States of America, on behalf of the Bureau of Land Management ("United States" or "BLM") respectfully requests that the Court compel Claimants Keith and Karen Hood to respond to the United States' discovery requests served on September 29, 2023. Exhibit 1. The Hoods' responses to these requests were due November 13, 2023, but, to date, the Hoods have failed to "disclose, answer or respond" to the requests in compliance with Rules 33, 34 and 36. *See* I.R.C.P. 37(a)(4); Exhibit 2. Specifically, the Hoods have simply not responded at all to certain interrogatories and requests for production and have submitted evasive or incomplete responses to requests for admission. The United States conferred in good faith with the Hoods pursuant to I.R.C.P. 37(a)(1) and has been unable to resolve the dispute. Exhibit 3. The Hoods have now had more than 200 days since the United States first served its discovery requests to provide complete

discovery requests, far greater than the 30 days granted by rule. Accordingly, the United States respectfully requests that the Court enter an order compelling the Hoods to respond in full to its discovery requests.

Memorandum in Support

I. Introduction

This case involves the United States' objections to 27 of the Hoods' claims to use water. Each claim is asserted on federal land managed by the BLM and asserts a priority date of December 28, 1896. The United States objected to the claimed priority dates for each claim and has served discovery requests on the Hoods to develop the record regarding the history of the relevant parcels in advance of trial. Like all civil litigants, when served with timely discovery requests, the Hoods are obligated by the Idaho Rules of Civil Procedure to respond fully and in good faith. The Hoods have not done so. The United States' discovery requests were relevant to the Claimant's claims and the United States' objections and are certainly related to the subject matter of this action. I.R.C.P. 26(b)(1)(A). Accordingly, an order compelling the Hoods to respond in full is warranted.

II. Background

The Director's Reports for each of the Hoods' claims were issued on September 21, 2021, and each claim was recommended as claimed with, *inter alia*, an 1896 priority date. The United States timely filed objections to each Director's Report on November 23, 2021, checking the box for priority date and indicating that "the claimant does not have a valid water right with the elements claimed ... the evidence submitted by the claimants does not support the 1896 date of priority recommended by IDWR."

After an extended settlement period, this case was put on a trial schedule in May of 2023. Discovery opened on June 9, 2023, and closed on January 9, 2024. The United States timely served its discovery requests on Claimant on September 29, 2023. Their responses would be due October 29, 2023 - sufficient time for the Hoods to respond and for the United States to evaluate responses and whether, for example, depositions were needed to further develop the record in advance of the close of discovery. Claimants requested an extension of two weeks to their 30-day deadline on October 24, 2023, noting that they were busy with work on their ranch. The United States agreed, contingent on a two-week extension to the close of discovery, which the Hoods agreed to. Pursuant to this agreement, their responses would be due on November 13, 2023. The United States did not receive the Hoods' responses until November 21, 2024.

After reviewing the Hoods' incomplete responses, the United States sought to confer with the Hoods pursuant to Rule 37. Exhibit 3 (noting that "[t]his letter serves as the United States' conferral regarding your responses to the First Requests."). The United States objected to the Hoods responses to the Requests for Admission as evasive and insufficient, and objected that the Hoods had simply not responded at all to Interrogatories 9 & 23-36, and that certain other responses were insufficient or nonresponsive. Finally, the United States objected that the Hoods had not responded at all to any of the Requests for Production.

The Claimants replied on December 20, indicating that the Hoods were working on "revising/amending/clarifying our responses ... and should have it done by today." The United States did not receive any such revised, amended, or clarifying responses. Thus, the United States conferred again with the Hoods on January 2, 2024, and the Hoods responded that they were facing a family medical issue and that the discovery "isn't important right now." In light of the Hoods' family medical issue, the United States proposed extending the trial schedule such

that the Hoods would have until February 16, 2024 to respond to discovery. The Hoods agreed to that schedule, and the United States filed a motion to amend the trial schedule, which the Court granted on January 10, 2024.

One week later, on January 17, 2024, the Hoods filed a purported withdrawal of their claims. The Court held a hearing on their withdrawal on February 29, 2024, which Claimants did not attend. At that hearing, at the United States' request, the Court vacated the existing trial schedule. Finally, at the second hearing on the Hoods' withdrawal, the Hoods indicated that they intended to withdraw their claims without prejudice. The United States opposed, noting that at this late stage, any withdrawal should be with prejudice. The Hoods asked instead to proceed towards trial, and the Court set a new trial schedule, in which written discovery closes on May 13, 2024.

In light of the new schedule, the United States re-sent its December 2023 conferral letter and discovery requests on April 8, 2024, inquiring when it could expect to receive amended responses. On April 11, 2024, the Hoods reported that they would provide amended responses "by the end of next week..." i.e. April 19, 2024. That date has now passed, without the promised responses from the Hoods. The United States has expended substantial effort conferring with the Hoods, and diligently sought to resolve this dispute without the involvement of the Court. However, in light of the imminent closing of the written discovery period on May 13, and the United States' need to understand, for example, whether it will need to pursue oral depositions during the post-written-discovery deposition period closing June 12 in order to meet the July 12 dispositive motion deadline, the United States now moves to compel.

III. Argument

While the United States recognizes that the Hoods do not agree with the United States' objections to their claims, simple disagreement with an adverse party's theory of a case is not sufficient to evade discovery obligations. The Hoods' responses are insufficient in three ways. Their responses to the Requests for Admission ("RFAs") are evasive, advance apparent improper objections, and fail to comply with I.R.C.P. 36(a)(5)'s requirement to answer in full. The Hoods' responses to the Interrogatories are incomplete and thus per se improper, and they fail to comply with I.R.C.P. 33(b)(3)'s requirement that they be answered separately and fully. Finally, no response was made at all to the United States' Requests for Production ("RFPs"), and thus, they fail to comply with I.R.C.P. 34(B)(2)(b)'s requirement of a response to each request.

The "[s]upervision of discovery is a discretionary power of the trial court." *State v. Pendleton*, 172 Idaho 825, 537 P.3d 66, 71 (2023). The Idaho Rules of Civil Procedure allow "a party seeking discovery to move the court for an order compelling an answer to interrogatories or production of documents if the party upon whom discovery was served failed to respond or provided an evasive or incomplete disclosure, answer or response." *Christiansen v. Potlatch #1 Fin. Credit Union*, 169 Idaho 533, 541, 498 P.3d 713, 721 (2021). The Court has "broad discretion ... in determining whether or not to grant a motion to compel", *Kirk v. Ford Motor Co.*, 141 Idaho 697, 700–01, 116 P.3d 27, 30 (2005), and "[v]iolations of discovery rules must be dealt with as they arise and as they are acknowledged by the trial court. If they are not, the party unreasonably avoiding legitimate discovery will be rewarded for its intransigence, to the detriment of the innocent party." *Gem State Roofing, Inc. v. United Components, Inc.*, 168 Idaho 820, 829, 488 P.3d 488, 497 (2021). Finally, "[p]ro se litigants are not accorded any special

consideration simply because they are representing themselves and are not excused from adhering to procedural rules.” *Nelson v. Nelson*, 144 Idaho 710, 718, 170 P.3d 375, 383 (2007).

a. Requests for Admission

Pursuant to Rule 36(A)(1), the United States served 41 RFAs on the Hoods seeking their position on a number of facts, the application of law to those facts, and/or their opinions about either. The United States’ RFAs can broadly be split into three categories: requests related to ownership of the claimed places of use and points of diversion (RFAs 1-15), requests related to the chain of title and relevant documents of the Hoods’ predecessors (RFAs 16-30), and requests related to the Hoods’ use of the relevant parcels (RFAs 31-41).

i. Improper Objection to Scope

In their responses, the Hoods repeatedly assert that the United States’ “requests are outside the scope of protest.” Exhibit 2, Response to RFAs 1-4, 8, 9-10, 11, 12-13, 14-15, 16, 18(a)-(f), (h)-(k), 19(a)-(d), (f)-(k), (m), (p), 20(a)-(u), 21(a)-(j), 23(a)-(c), (e), (g)-(i). As an initial matter, it is unclear whether the Hoods are raising this as an objection pursuant to I.R.C.P. 36(a)(6). If this constitutes an objection, the United States moves pursuant to I.R.C.P. 36(a)(7) to determine that the objection is not justified.

The Hoods appear to misunderstand the current stage of this proceeding. In their combined response to RFAs 1-4, they elaborate on their objection, stating that “[t]hese requests are outside the scope of protest that grazing activities that occurred on unclaimed property under the control of the United States prior to our predecessors receiving patents were not conveyed to the predecessors and that the settlers would have acquired their own water rights....” The response goes on to make arguments related to the content of specific documents and historical cattle ownership. At this stage, the United States will not respond substantively to the Hoods’

assertions.¹ The Hoods' response, which appears to be essentially an objection that they believe the United States' position is incorrect, is a question for trial, where the Court will determine if the United States' objections to the Hoods' priority date is legally and factually correct. At this stage, in discovery, the only questions for the Court are (1) whether the United States' RFAs are about facts, the application of law to fact, opinions about either, or the genuineness of documents; and (2) whether they are within the scope of Rule 26(b)(1). Rule 26(b)(1) is broad: "[p]arties may obtain discovery regarding any nonprivileged matter that is *relevant* to any party's claim or defense..." It is clear that the United States' requests are proper within the scope of Rule 36.

The Hoods cannot seriously contend that the United States' RFAs, which track the use and ownership of the parcels, the federal permitting and patent history on the relevant parcels, the Hoods' chain of title, and the Hoods' use, are irrelevant to trial on this matter. The "scope of discovery encompasses far more than what will be considered admissible under the Idaho Rules of Evidence." *Phillips v. E. Idaho Health Servs., Inc.*, 166 Idaho 731, 743 (2020). Rather, the Hoods are attempting to convert their legal disagreement with the United States' theory of the case into a discovery objection. This is plainly improper. The Hoods' objections appear to best be interpreted as objections that these are matters for trial. By rule, "a party must not object solely on the ground that the request presents a genuine issue for trial." I.R.C.P. 36(a)(6). The Court should determine that the Hoods' 'out of scope' objections are improper and order them to respond to the RFAs.

ii. Improper Responses

¹ The United States reserves all rights to contest the Hoods' legal and factual contentions before the Court at the appropriate time.

Rule 36 requires an answer either be admitted, or specifically denied. I.R.C.P. 36(a)(5). A denial must “fairly respond to the substance of the matter.” *Id.* Even where the Hoods have provided answers, they have not complied with this provision.

As an initial matter, the Hoods did not respond with a simple “admit” or “deny” to any of the United States’ RFAs. Even where the Hoods have advanced what appears to be an objection to the United States’ requests, *see infra* Section III(a)(i), they in many cases also provide narrative responses which are non-responsive to the United States’ RFAs. Because the Hoods do not state that they “admit” to any RFA, they are apparently denying all 41 RFAs, but even those implied denials are nonresponsive, because the Hoods fail to “specifically” deny, and “fairly respond to the substance of the matter” per I.R.C.P. 36(a)(5). While numerous responses are problematic, and without waiving specific objections regarding each answer, several particularly problematic examples are provided for the Court:

REQUEST FOR ADMISSION NO. 14: Admit that as of the claimed priority date of December 28, 1896, the United States owned the legal land descriptions described as the base property in Request for Admission No. 12. If your answer differs by legal land description, then please list the legal land descriptions for which you admit, and for which you deny.

RESPONSE: Outside scope of protest. Common practice at the time of the priority date requested was that settlers ran livestock over unfenced, unoccupied and unclaimed lands and no permits were needed from the federal govt.

REQUEST FOR ADMISSION NO. 16: Admit that the Charles R. Edwards did not own the entirety of his claimed base property until on or about December 14, 1934 when Elmo Edwards sold the 160 acres comprising the Nielson Patent #16246 to Charles R. Edwards.

RESPONSE: Outside scope of protest see above 1-4

REQUEST FOR ADMISSION NO. 24: Admit that you have no documentary evidence that any personal property in the form of rangeland livestock was conveyed in association with the buying and selling of legal land descriptions asserted as base property described in Request for Admission No. 12 among Hood’s predecessors-in-interest as described in Request for Admissions No. 18-23.

RESPONSE: Vaguely worded and confusing. We are not attorneys.²

REQUEST FOR ADMISSION NO. 33: Admit that the Bureau of Land Management issued a grazing permit for the Horse Flat Grazing Allotment to Keith & Karen Hood for the time period of March 14, 2013 to February 28, 2023.

RESPONSE: A matter of record in the grazing file.

These examples are particularly instructive of the problems with the Hoods' responses. The Hoods have provided evasive responses which simply are not responsive to the "substance of the matter." The United States' requests are discrete and specific, regarding matters that are firmly within the ambit of this case. Instead of answering, as required by the rules, the Hoods raise improper objections, provide extraneous information that is non-responsive to the specific request, or simply decline to answer one way or another on the basis that the information may exist somewhere else.

Accordingly, the Court should enter an order compelling the Hoods to state specifically what they admit or deny in response to each request for admission in compliance with Rule 36.

b. Interrogatories

The Hoods' responses to the United States' interrogatories are improper. As an initial matter, pursuant to Rule 33, the United States served 36 Interrogatories on the Hoods. Attachment 1, at 20-26. Up to 40 interrogatories are allowed by rule. I.R.C.P. 33(a)(1). The Hoods responded only to Interrogatory Nos. 1-22, apparently disregarding entirely Nos. 23-36. See Attachment 2, at 6. Regarding Nos. 23-36, this is plainly improper. A party "must serve its answers and any objections within 30 days after being served with the interrogatories." I.R.C.P.

² This is also a legally inappropriate objection. Idaho courts have long held that "[p]ro se litigants are not accorded any special consideration simply because they are representing themselves and are not excused from adhering to procedural rules." *Nelson v. Nelson*, 144 Idaho 710, 718, 170 P.3d 375, 383 (2007). The Hoods, while pro se, are also not unsophisticated litigants. As recently as 2022, the Hoods litigated a case before the Idaho Supreme Court regarding a water issue. See *Hood v. Poorman*, 171 Idaho 176 (2022).

33(b)(2). Further, each one must be “answered separately and fully in writing under oath.” *Id.*, (3).

Regarding the interrogatories which were responded to, several answers are provided in combined form. *See, e.g.*, Attachment 2, Response to Interrogatory 4-5; 7-8; 10-22. This is improper. Each interrogatory must be answered “separately.” I.R.C.P. 33(b)(3). Second, and more critically, a number of the responses are non-responsive. For example, in response to Interrogatory No. 7, regarding documents that the Hoods intend to introduce at trial or ask a witness to examine, the Hoods do not identify any documents specifically. Instead, they state simply that “most documents have been supplied” during settlement talks. This is not responsive to the actual request. Whether the United States has been supplied with documents has no bearing on the specific question of what the Hoods actually intend to introduce at trial.

Next, in response to Interrogatory No. 9, which asks the Hoods to state the basis for any response to a request for admission which is anything other than an unqualified admission, the Hoods respond that “[w]e don't have the time to repeat those responses. We are a working cattle ranch and livestock operation. We also have outside employment to support our family and operation.” While the United States acknowledges that discovery imposes some burden on the Hoods, they are the moving party in this case, and some burden in litigation is to be expected. It is the Hoods who initiated this litigation by filing a motion to determine their water rights. The United States should not be denied reasonable discovery to develop its defenses simply because the Hoods chose not to respond – particularly where, as here, the Hoods have now had the equivalent of more than seven full discovery periods to respond to one set of discovery requests.

Finally, the Hoods' response to Interrogatory Nos. 10-22 is the most problematic. The United States asked a simple question regarding each claim: "[p]lease state what you believe to be the correct elements of [each claim], including but not limited to the priority date, and state the factual basis for the priority date." The Hoods responded "CR Edwards' original application and letter as a matter of record with the application." This is simply not responsive to the United States' requests. Establishing what elements the Hoods currently assert for their claims will significantly streamline trial, and is firmly within the bounds of Rule 26.

c. Requests for Production

Finally, the Hoods' responses do not acknowledge the United States' 13 RFPs in any way. It is unclear if this is because the Hoods object, or believe that they have no responsive records, or some other reason. Rather than speculate as to the Hoods' reasons, the United States simply asks that the Court order the Hoods to respond to the United States' requests in compliance with I.R.C.P. 34.

IV. Conclusion

The United States served proper and timely discovery on the Hoods. The Hoods, who have now been afforded over 200 days to respond to discovery requests which would normally be due in 30 days, have failed to respond to the requests in compliance with the Idaho Rules of Civil Procedure. Pursuant to the Court's discretionary authority to control discovery, and I.R.C.P. 37, the Court should enter an order compelling the Hoods to respond in full to the United States' discovery requests.

Respectfully submitted, April 30, 2024

TODD KIM
ASSISTANT ATTORNEY GENERAL
ENVIRONMENT & NATURAL RESOURCES DIVISION

/s/ Mark Widerschein

MARK J. WIDERSCHIN

KATHERINE LAUBACH

Trial Attorneys

United States Department of Justice

Environment & Natural Resources Division

Natural Resources Section

Counsel for the United States

CERTIFICATE OF SERVICE

I certify that on April 30, 2024, I served true and correct copies of the foregoing UNITED STATES' MOTION TO COMPEL as follows:

via FEDEX:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
Twin Falls, ID 83303-2707

via First Class U.S. Mail, pre-paid:

KEITH & KAREN HOOD
PO BOX 100
CAMBRIDGE, ID 83610-0100

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098



Matthew H Smith

Exhibit A

Subcase Nos:

67-15263
67-15264
67-15265
67-15266
67-15267
67-15268
67-15269
67-15270
67-15271
67-15272
67-15273
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67-15277
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67-15280
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67-15287
67-15288
67-15289

EXHIBIT 1

TODD KIM

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Counsel for the United States of America

**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 No.: 67-15263 et. al.**
) **See Exhibit A**
)
) **UNITED STATES' FIRST SET OF REQUESTS**
) **FOR ADMISSION, INTERROGATORIES,**
) **AND REQUESTS FOR PRODUCTION TO**
) **KEITH R. AND KAREN M. HOOD**
)

TO: Keith R. and Karen M. Hood
P.O. Box 100
Cambridge, ID 83610-0100

Pursuant to Rules 26, 33, 34, and 36 of the Idaho Rules of Civil Procedure (“IRCP”), the United States of America, on behalf of the Bureau of Land Management, through undersigned counsel, hereby serves these interrogatories, requests for admissions, and requests for production of documents (collectively, the “Requests”). **You are required to make your responses no later than thirty (30) days after service of these requests on you.**

I. General Instructions

A. These Requests cover all documents and information in your possession, custody or control and all documents and other sources of information to which you have access, regardless of whether the source is within your immediate possession or control. You must also consult all documents in the possession of your experts, consultants, agents, representatives, or other such third parties. If you cannot respond to a Request in full after exercising due diligence to secure the information, so state in your response, describe the nature and extent of your efforts, and, to the extent possible, produce whatever information you have.

B. Pursuant to Rules 33, 34 and 36 of the IRCP, you have 30 days from the date of service of these Requests to provide a written response. You must serve your response by mail upon Objector’s counsel, who is identified below, or in any other manner agreed to by the parties.

C. Requests for Production. You must produce the documents requested herein in a timely fashion pursuant to Rule 34 of the IRCP and as set forth in General Instruction B. For each document you produce in response to these Requests, indicate the following on the document or in some other reasonable manner:

1. The number of the Request to which it responds; AND
2. The source of the document.

If anything is deleted from a document produced in response to these Requests, state:

1. The reason for the deletion;
2. The subject matter of the deletion; and
3. The identity of the person responsible for the deletion.

You may deliver photocopies of any document in lieu of originals.

D. Requests for Admission. You must answer each request for admission in a timely fashion pursuant to Rule 36 of the IRCP and as set forth in General Instruction B. Any request that goes unanswered within the time frame allowed by the IRCP will be deemed admitted. Any denial of a request for admission must set forth in detail the reasons why the answering party cannot truthfully admit the matter and must fairly meet the substance of the request. When good faith requires that you qualify your answer or deny only a part for the matter of which an admission is requested, you must specify the portions of the request to

which you admit and then deny or qualify your answer to the remainder. As set forth in Rule 36, that you may consider the matter about which a request has been made to be one that presents a genuine issue for trial does not, by itself, permit you to object to the request or deny it.

E. Interrogatories. You must answer each interrogatory in a timely fashion pursuant to Rule 33 of the IRCP and as set forth in General Instruction B. You must answer each interrogatory separately and fully in writing and under oath. The answers must be signed by the person making the answers.

F. When asked to “identify” a person, provide the person’s:

1. Full name;
2. Home address and telephone number;
3. Employer, business address, and telephone number; and
4. Position or occupation.

G. If the person is a corporation, partnership or other business entity, provide:

1. The full name of the business;
2. The type of business;
3. Its state of incorporation or organization;
4. Its date of incorporation;
5. The location and address of its principal headquarters; and
6. The name, title, and address of its chief responsible officer.

H. When asked to “identify” a document, provide the following:

1. The title or caption, or if it has no title, its subject matter;
2. Its date of origin;
3. An identification of the author(s);
4. An identification of the persons to whom it and all copies were sent;
5. The present location of the document; and
6. An identification of the custodian of the document.

If a document is not presently in your possession, custody or control, identify in whose possession, custody or control it may be found. If a document you have identified no longer exists, identify it and explain the circumstances of its loss or destruction.

I. Any objections to any portion of these Requests must specifically state the grounds for your objection. If you cannot respond to a Request in full after exercising due diligence to secure the information, so state in your response and, to the extent possible, produce whatever information you have. You may not give lack of information or knowledge as a reason for failure to respond to any portion of these Requests unless you have made reasonable inquiry and unless the information known or readily obtainable by you is insufficient to enable you to respond.

J. If you withhold any document requested below on a claim of privilege, identify the privilege you claim and identify and describe in detail all facts that support your assertion

of the privilege including, but not limited to:

1. The title or caption of the document, or if it has no title, its subject matter;
2. Its date of origin;
3. An identification of the author(s);
4. An identification of the persons to whom it and all copies were sent;
5. The present location of the document;
6. An identification of the custodian of the document;
7. The nature of the document withheld (i.e., letter, memorandum, telex, facsimile, tape, video cassette, etc.);
8. The general subject matter of the document;
9. Its disposition, if the document is no longer in the possession of or subject to the control of plaintiff; and
10. The basis on which any privilege is claimed.

K. Words used in the plural shall also mean and include the singular. Words used in the singular shall also mean and include the plural. "Or" and "and" shall be construed conjunctively and disjunctively to bring within the scope of these interrogatories any information that might otherwise be construed to be outside their scope. The past tense includes the present tense where the clear meaning is not distorted by change of tense.

L. Please mail your responses to:

United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

and

Mark J. Widerschein
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 7611
Washington, D.C. 20044-7611

Or e-mail your responses to:

Mark.Widerschein@usdoj.gov.

M. Please note and comply with the duty to supplement and amend responses to this Request under IRCP 26(e).

N. You may attach extra pages for your responses if the space provided is insufficient.

DEFINITIONS

A. **"Document"** or **"documents"** shall be used in their broadest sense and include, but are not limited to, the originals, marked copies, translations and drafts, regardless of origin, whether sent or received, whether made and/or used internally, and both sides thereof, of the following items, whether printed, recorded, taped, written by hand, typed, or reproduced or stored by any mechanical or electronic process: agreements, brochures, communications, contracts, correspondence, deeds, diaries, endorsements appearing in or on any document or documents, letters, telegrams, telex, facsimile, messages, electronic messages, books, summaries or other records of telephone conversations or interviews, summaries or other records of personal conversations, photographs, charts, tabulations, purchase orders, receipts, sell orders, checks, canceled checks, letters of credit, envelopes or folders or similar containers, vouchers, analyses, studies, transcripts of hearings, pleadings and other documents filed in court actions, speeches, newspaper articles, reports, compilations, memos, maps, charts, graphs, tables, memoranda, consultant reports, minutes of meetings or conferences (however they are entitled), notes of any kind, plats or graphic portrayals of any kind, water rights decrees, water release records, prospectus-type material, extracts or summaries of other documents, logs, solicitations, summaries or records of negotiations or investigations, telegrams, tapes, video tapes, computer printouts, computer tapes, computer programs, microfiche, microfilm, computer-generated, computer-stored, electronically-stored matter, and any and all other writings, drawings, graphs, charts, photographs or other data compilations in whatever form they exist, however and by whomever produced, prepared, reproduced, disseminated, or made.

B. **"Relate," "refer," "related," "relating," "referring" or "regarding"** means having some bearing on an indicated subject matter or mentioning or reflecting the subject matter in any manner or context.

C. **"You" or "your"** means the Claimant(s) to whom these Requests are addressed, including, but not limited to, all past and present officers, directors, employees, agents, servants, representatives of each such entity or individual, and each past and present attorney of each such entity or individual.

D. **"Describe in detail"** means describe fully by reference to the underlying facts, rather than the ultimate facts or conclusions of law or facts, and particularize as to:

1. The identity of each person involved in each such event, including but not limited to persons employed by you and those persons purporting to act for you;
2. The specific acts of each person's participation in each such event;
3. The date and time of each such event; and
4. The address and location of each such event.

E. **"Claim" or "Claims"** means any or all of the twenty-seven claims filed in the Snake River Basin Adjudication identified in *Attachment A* to these requests.

F. **"Director's Report"** means a recommendation of a water right claim issued by the Director of the Idaho Department of Water Resources ("IDWR") that is filed with the

Snake River Basin Adjudication Court.

G. “**Your predecessors**” means any other previous owner of the places of use and/or points of diversion for the Claims.

H. “**Personal knowledge**” means knowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said.

I. “**United States**” means the United States of America, its agencies and instrumentalities, and any and all employees, representatives, and agents thereof acting in their official capacities.

J. “**Your land**” means any and all parcels containing the places of use you are claiming, underlying the points of diversion you are claiming, as well as the private land associated with the Claims, if any.

K. “**Grazing Permit**” or “**Term Grazing Permit**” means any permit, or other authorization in writing issued and approved by the United States, authorizing grazing of federal public lands by livestock (43 CFR §4100.0-5 (2005)).

L. “**Base Property**” means land that has the capability to produce crops or forage that can be used to support authorized livestock for a specified period of the year (43 CFR §4100.0-5 (2005)). It is capable of serving as a base of operation for livestock use of public lands within a grazing district (43 CFR §4110.2-1(a)(1) (2005)).

M. “**Grazing preference**” means a superior or priority position against others for the purpose of receiving a grazing permit. This priority is attached to base property owned or controlled by the permittee (43 CFR §4110.0-5 (2005)).

N. “**Range improvement**” means an authorized physical modification or treatment which is designed to: improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; or restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, headboxes, pipelines, troughs, structures, treatment projects, fences, wells, diversions, dams, ponds, and use of mechanical devices or modifications achieved through mechanical means (43 CFR §4100.0-5 (2005)).

O. “**Land conveyance document**” means a document of conveyance of real property or a real property interest, and includes but is not limited to general or special warranty deeds, patents, titles, assignments, contracts, but “land conveyance document” specifically does not include any Grazing Permit, Term Grazing Permit, Special Use Permit, other permit, or easement issued by the United States.

P. “**Legal title**” refers to any instrument in writing which conveys an interest in land from a grantor to the grantee, but “legal title” specifically does not include any Grazing

Permit, Term Grazing Permit, Special Use Permit, other permit, or easement issued by the United States.

Q. “**Objection**” or “**Objections**” means the Objections filed by BLM to the Director’s Report for the Claim(s) in the 27 subcase numbers attached in *Exhibit A*.

R. “**Protest**” means a written filing opposing an application, claim or appeal of a right, license, award or authority sought by an applicant in IDWR’s administrative arena or Allocations Bureau.

S. When requested to identify the proper “**elements**” of the claims consolidated herein, it means to identify the owner(s); place(s) of use by legal description, referencing all legal descriptions by section or quarter section of any section, township, and range, as applicable; type of right; purpose (use) of right; maximum amount of stock used; maximum amount of acres irrigated, if purpose (use) of right is irrigation; source; priority date; point(s) of diversion, by legal description, referencing all legal descriptions by section or quarter section of any section, township, and range, as applicable; flow rate; diversion rate; diversion cap; volumetric amount; period of diversion; means of diversion; volume; period of use; and irrigation type (*i.e.*, flood or sprinkler), if purpose (use) of right is irrigation.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that you do not possess legal title to the land described as the points of diversion asserted in the Claims. If your answer differs by individual claim, then please list the claims for which you admit, and for which you deny.

RESPONSE:

REQUEST FOR ADMISSION NO. 2: Admit that you do not possess legal title to the land described as the places of use asserted in the Claims. If your answer differs by individual claim, then please list the claims for which you admit, and for which you deny.

RESPONSE:

REQUEST FOR ADMISSION NO. 3: Admit that the United States owns the land asserted as the points of diversion in the Claims. If your answer differs by individual claim, then please list the claims for which you admit, and for which you deny.

RESPONSE:

REQUEST FOR ADMISSION NO. 4: Admit that the United States owns the land asserted as the places of use in the Claims. If your answer differs by individual claim, then please list the

claims for which you admit, and for which you deny.

RESPONSE:

REQUEST FOR ADMISSION NO. 5: Admit that you have no land conveyance document that specifically describes water rights which defines the points of diversion asserted in your Claims. If your answer differs by individual claim, then please list the claims for which you admit, and for which you deny.

RESPONSE:

REQUEST FOR ADMISSION NO. 6: Admit that you have no land conveyance document that specifically describes water rights which defines the places of use asserted in the Claims. If your answer differs by individual claim, then please list the claims for which you admit, and for which you deny.

RESPONSE:

REQUEST FOR ADMISSION NO. 7: Admit that you have no land conveyance document that specifically describes water rights which define the water sources asserted in your Claims. If your answer differs by individual claim, then please list the claims for which you admit, and for which you deny.

RESPONSE:

REQUEST FOR ADMISSION NO. 8: Admit that you have no conveyance document which conveys an interest in the surface estate or mineral estate for the lands described as points of diversion and/or places of use asserted in your Claims. If your answer differs by interest or claim, then please list the claims for which you admit, and for which you deny.

RESPONSE:

REQUEST FOR ADMISSION NO. 9: Admit that you have authorized access to graze livestock on the federally-owned land described as the places of use in your Claims pursuant only to a Grazing Permit(s) issued to you by the Bureau of Land Management. If your answer differs by individual claim, then please list the claims for which you admit, and for which you deny.

RESPONSE:

REQUEST FOR ADMISSION NO. 10: Admit that you have no legally cognizable interest in the land described as the points of diversion or places of use asserted in your Claims. If your answer differs by individual claim, then please list the claims for which you admit, and for which you deny.

RESPONSE:

REQUEST FOR ADMISSION NO. 11: Admit that the Taylor Grazing Act states that “grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provisions of this Act shall not create any right, title, interest, or estate in or to the lands.”

RESPONSE:

REQUEST FOR ADMISSION NO. 12: Admit that the legal land descriptions comprising the base property description recognized by BLM as a basis for your grazing permit is defined as follows. If your answer differs by legal land description, then please list the legal land descriptions for which you admit, and for which you deny.

T15N, R03W, S21:

(a) SWSW;

T15N, R03W, S28:

(b) NENE,

(c) NWNE,

(d) SWNE,

(e) SENE,

(f) NENW,

(g) NWNW,

(h) SWNW,

(i) SENW,

(j) NESW,

(k) NWSW,

(l) NESE, and

(m) NWSE; and

T15N, R03W, S29:

(n) NENE,

(o) SENE,

(p) NESE.

RESPONSE:

REQUEST FOR ADMISSION NO. 13: Admit that the base property description in Request

for Admission No. 12 was transferred from the United States's ownership to private ownership pursuant to the following Patents on the following dates. If your answer differs by Patent, then please list the Patents for which you admit, and for which you deny.

T15N, R03W, S21:

(a) SWSW (Patent #16246 issued 09/24/1908 to Nels C. Nielson);

T15N, R03W, S28:

- (b) NENE (Patent #462899 issued 03/15/1915 to Leroy T. Braden),
- (c) NWNW (Patent #759345 issued 06/25/1920 to Charles R. Edwards),
- (d) SWNE (Patent #222034 issued 08/24/1911 to Charles R. Edwards),
- (e) SENE (Patent #462899 issued 03/15/1915 to Leroy T. Braden),
- (f) NENE (Patent #16246 issued 09/24/1908 to Nels C. Nielson),
- (g) NWNW (Patent #16246 issued 09/24/1908 to Nels C. Nielson),
- (h) SWNW (Patent #356 issued 05/26/1908 to David G. Edwards),
- (i) SENW (Patent #222034 issued 08/24/1911 to Charles R. Edwards),
- (j) NESW (Patent #356 issued 05/26/1908 to David G. Edwards),
- (k) NWSW (Patent #356 issued 05/26/1908 to David G. Edwards),
- (l) NESE (Patent #462899 issued 03/15/1915 to Leroy T. Braden), and
- (m) NWSE (Patent #222034 issued 08/24/1911 to Charles R. Edwards); and

T15N, R03W, S29:

- (n) NENE (Patent #16246 issued 09/24/1908 to Nels C. Nielson),
- (o) SENE (Patent #60750 issued 11/09/1917 to Anna Edwards),
- (p) NESE (Patent #356 issued 05/26/1908 to David G. Edwards).

RESPONSE:

REQUEST FOR ADMISSION NO. 14: Admit that as of the claimed priority date of December 28, 1896, the United States owned the legal land descriptions described as the base property in Request for Admission No. 12. If your answer differs by legal land description, then please list the legal land descriptions for which you admit, and for which you deny.

RESPONSE:

REQUEST FOR ADMISSION NO. 15: Admit that, as of the claimed priority date of December 28, 1896, none of your predecessors in interest had any legally cognizable interest in the land described as base property in Request for Admission No. 12. If your answer differs by legal land description, then please list the legal land descriptions for which you admit, and for which you deny.

RESPONSE:

REQUEST FOR ADMISSION NO. 16: Admit that the Charles R. Edwards did not own the entirety of his claimed base property until on or about December 14, 1934 when Elmo Edwards

sold the 160 acres comprising the Nielson Patent #16246 to Charles R. Edwards.

RESPONSE:

REQUEST FOR ADMISSION NO. 17: Admit that the priority date of December 28, 1896 asserted in the Claims is without merit and is not supported by the evidence.

RESPONSE:

REQUEST FOR ADMISSION NO. 18: IDWR's Director's Report recommendation states that the priority date of December 28, 1896 for the Claims "is derived from the base property's Homestead Certificate #2762 and Land Patent #222034."

- (a) Admit that Patent #222034 was issued to Charles R. Edwards on August 24, 1911.
- (b) Admit that Patent #222034 was issued for land described as T15N, R03W, S28, SWNE, SENW, and NWSE.
- (c) Admit that Patent #222034 was partially based on Homestead Entry Application #6928 ("HE B-6928") filed by Charles R. Edwards with the General Land Office ("GLO") in Boise, Idaho on November 11, 1903 for land described as T15N, R03W, S28, NWSE.
- (d) Admit that Charles R. Edwards could not have had a legally cognizable interest in the land described in HE B-6928 prior to filing the homestead entry application on November 11, 1903.
- (e) Admit that Patent #222034 was partially based on Homestead Entry Application #8681 ("HE B-8681") filed by Charles R. Edwards with the GLO in Boise, Idaho on November 7, 1905 for land described as T15N, R03W, S28, SENW and SWNE.
- (f) Admit that Charles R. Edwards could have no legally cognizable interest to the land described in HE B-8681 prior to filing the homestead entry application on November 7, 1905.
- (g) Admit that Charles R. Edwards stated in the application for HE B-8681 "that he established his residence upon said tract on the 5th day of December 1903."
- (h) Admit that Charles R. Edwards stated in the Final Proof for HE B-6928 and B-8681 that he first established actual residence upon the land in November, 1904 when he completed the building of the house, and that he and his family were absent in summer of 1905, "working to earn a living and to make money to improve my land."
- (i) Admit that Charles R. Edwards stated in the Final Proof for HE B-6928 and B-8681 that his only claim of valuable improvements regarding livestock was a reference to a "hog house" and a "chicken house".
- (j) Admit that Charles R. Edwards did not identify any range livestock in the Final Proof for HE B-6928 and B-8681 when asked to describe fencing and "state the number and kind of stock grazed each year and by whom."
- (k) Admit that Charles R. Edwards stated in a January 3, 1911 letter to the GLO "[t]hat more than seven years have elapsed since the making of said entry; but that at the time of the expiration of the said seven years, he was unable to make his said final

- proof for the reason that he had no money with which to pay the expenses thereof.”
- (l) Admit that you have no documentary evidence that Charles R. Edwards raised rangeland livestock prior to filing Homestead Application #6928 in 1903 and #8681 in 1905.
 - (m) Admit that you have no documentary evidence that Charles R. Edwards raised rangeland livestock prior to issuance of Patent #222034 on August 24, 1911.
 - (n) Admit that you have no documentary evidence that Charles R. Edwards raised rangeland livestock prior to filing a Grazing Permit Application with BLM in 1935.

RESPONSE:

REQUEST FOR ADMISSION NO. 19: IDWR’s Director’s Report recommendation states that the priority date of December 28, 1896 for the Claims “is derived from the base property’s Homestead Certificate #2762 and Land Patent #222034.”

- (a) Admit that Patent #356 (also known as Final Certificate #2762) was issued to David G. Edwards on May 26, 1908.
- (b) Admit that Patent #356 was issued for land described as T15N, R03W, S28, SENW, NESW, and NWSW, and S29, NESE.
- (c) Admit that Patent #356 was based on Homestead Entry Application #4486 (“HE B-4486”) filed by David G. Edwards with the GLO in Boise, Idaho on November 8, 1899.
- (d) Admit that David G. Edwards could not have had a legally cognizable interest in the land described in HE B-4486 prior to filing the application for Homestead Entry #4486.
- (e) Admit that Patent #356 was issued pursuant to the authority of the Act of May 20, 1862 (aka Homestead Act, H.R. 125, 12 Stat. 392, as amended).
- (f) The Homestead Act of 1862 required that the entryman “is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States.” Admit that David G. Edwards was not born in the United States and did not sign a Declaration of Intention to become a citizen of the United States of America until March 15, 1900.
- (g) Admit that David G. Edwards could not have had a legally cognizable interest in the land described in HE B-4486 prior to complying with the requirements of the Act of May 20, 1862 by signing the Declaration of Intention on March 15, 1900.
- (h) Pursuant to a GLO Letter by Edward E. Garrett dated December 21, 1906, admit that David G. Edwards “lived principally with his son on an adjoining tract” until “about the first of November, 1905, he built a new house on the land and moved his wife thereon and has since resided with his wife on the land.”
- (i) Admit that on November 22, 1906, David G. Edwards filed an Affidavit Required of Claimant that states that he “made settlement upon said land on or about October 15, 1900.”
- (j) Admit that David G. Edwards could not have had a legally cognizable interest in the land described in HE B-4486 or establish any kind of use of the land prior to settling upon said land on or about October 15, 1900.

- (k) On November 22, 1906, David G. Edwards filed a Homestead Proof-Testimony of Claimant and stated that between 1900 and 1906 he had cultivated 13 acres of land, built a house, outhouse, chicken house, stable, and fenced about 30 acres of the land. Admit that in response to the question requesting that he "describe fencing, state number and kind of stock grazed and by whom owned," Edwards did not list any valuable improvement in the form of range livestock.
- (l) Admit that a letter by R. E. Wilson dated November 23, 1906 states that David "was working his sons place adjoining this land, which had a comfortable house on it and the family practically lived there up until one year ago, at which time he ceased to have anything to do with his sons place and moved onto his own homestead and lived there."
- (m) Admit that HE B-4486 was not "allowed" by the GLO until June 28, 1907, as noted on the November 18, 1907 GLO form recommending issuance of a patent.
- (n) Admit that David G. Edwards could not have had a legally cognizable interest in the land described in HE B-4486 prior to the GLO allowing the application on June 28, 1907.
- (o) Admit that you have no documentary evidence that David G. Edwards raised rangeland livestock prior to issuance of Patent #356 on May 26, 1908.
- (p) Admit that Charles R. Edwards did not acquire the David G. Edwards parcel (Patent #356) until on or about September 26, 1928 when the David G. Edwards probate was finalized.
- (q) Admit that Charles R. Edwards could have no legally cognizable interest to the land described in Patent #356 prior to acquiring the property in 1928.
- (r) Admit that you have no documentary evidence that Charles R. Edwards was using the David G. Edwards parcel (Patent #356) to graze livestock prior to acquiring the property in 1928.

RESPONSE:

REQUEST FOR ADMISSION NO. 20: The legal land descriptions for the base property described above under Request for Admission No. 12 left the United States' ownership pursuant to six different Patents. With regard to Patent #16246, please admit the following facts:

- (a) Admit that Patent #16246 was issued to Nels C. Nielson on September 24, 1908.
- (b) Admit that Patent #16246 was issued for land described as T15N, R03W, S21, SWSW; S28, NENW, NWNW; and S29, NENE.
- (c) Admit that Patent #16246 was based on Homestead Entry Application #5889 (HE 5889, B-0163) filed by Nels C. Nielson with the GLO in Boise, Idaho on June 25, 1902.
- (d) Admit that Nels C. Nielson could not have had a legally cognizable interest in the land described in HE 5889 prior to filing the application for Homestead Entry #5889 on June 25, 1902.
- (e) Patent #16246 was issued pursuant to the authority of the Act of May 20, 1862 (also known as the "Homestead Act of 1862", H.R. 125, 12 Stat. 392, as amended). Admit that the Homestead Act of 1862 required that the entryman "is a citizen of the

United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States.”

- (f) Admit that Nels C. Nielson was a citizen of Denmark and did not sign a Declaration of Intention to become a citizen of the United States of America until June 20, 1902.
- (g) Admit that Nels C. Nielson could not have had a legally cognizable interest in the land described in HE 5889 prior to complying with the requirements of the Act of May 20, 1862 by signing the Declaration of Intention on June 20, 1902.
- (h) On September 6, 1907, Nels C. Nielson filed a Homestead Proof-Testimony of Claimant and stated that between 1902 and 1907 he had cultivated 45 acres of land, built a house, cellar, stable, well, 25 fruit trees, and fenced about 60 acres of land. Admit that in response to the question requesting that he “describe fencing, state number and kind of stock grazed and by whom owned,” Nielson did not list any valuable improvement in the form of range livestock.
- (i) Admit that you have no documentary evidence that Nels C. Nielson raised rangeland livestock prior to filing HE 5889.
- (j) Admit that you have no documentary evidence that Nels C. Nielson raised rangeland livestock prior to issuance of Patent #16246 on September 24, 1908.
- (k) Admit that, on or about March 2, 1911, Nels C. Nielson sold 160 acres of land described in Patent #16246 to H.T. Cutler.
- (l) Admit that there is no documentary evidence that H.T. Cutler was using the land described in the Nielson Patent #16246 to graze livestock prior to acquiring the property in 1911.
- (m) Admit that you have no documentary evidence that H.T. Cutler raised rangeland livestock after acquiring the land described in the Nielson Patent #16246.
- (n) Admit that on or about February 27, 1919, Flavilla Cutler sold 160 acres of land described in Patent #16246 to J.F. and W.F. Medaris (the “Medaris Brothers”).
- (o) Admit that you have no documentary evidence that the Medaris Brothers were using the land described in the Nielson Patent #16246 to graze livestock prior to acquiring the property in 1919.
- (p) Admit that you have no documentary evidence that the Medaris Brothers raised rangeland livestock after acquiring Cutler’s land.
- (q) Admit that on or about April 12, 1926, the Washington County, Idaho Tax Collector gained title to the Medaris Brothers’ land via a tax lien.
- (r) Admit that you have no documentary evidence that Washington County was using the land described in the Nielson Patent #16246 to graze livestock prior to acquiring the property in 1926.
- (s) Admit that you have no documentary evidence that Washington County raised rangeland livestock after acquiring the Medaris Brothers’ land.
- (t) Admit that on or about July 22, 1927, Washington County sold 160 acres of land described in Patent #16246 to Elmo Edwards.
- (u) Admit that you have no documentary evidence that Elmo Edwards was using the land described in the Nielson Patent #16246 to graze livestock prior to acquiring the property in 1927.
- (v) Admit that you have no documentary evidence that Elmo Edwards raised rangeland livestock after acquiring the property from Washington County.

- (w) Admit that on or about December 14, 1934, Elmo Edwards sold 160 acres of land described in Patent #16246 to Charles R. Edwards.
- (x) Admit that Charles R. Edwards could not have had a legally cognizable interest to the land described in Patent #16246 prior to acquiring the property in 1934.
- (y) Admit that you have no documentary evidence that Charles R. Edwards was using the Elmo Edwards parcel (Patent #16246) to graze livestock prior to acquiring the property in 1934.

RESPONSE:

REQUEST FOR ADMISSION NO. 21: The legal land descriptions for the base property described above under Request for Admission No. 12 left the United States' ownership pursuant to six different Patents. With regard to Patent #462899, please admit the following facts:

- (a) Admit that Patent #462899 was issued to Leroy T. Braden on March 15, 1915.
- (b) Admit that Patent #462899 was issued for the following legal land descriptions: NWSE, Sec. 27, and NENE, SENE, NESE, Sec. 28, T15N, R03W.
- (c) Admit that Patent #462899 was based on Homestead Entry Application 9666 ("HE B-9666") filed by Leroy T. Braden with the GLO in Boise, Idaho on August 19, 1910.
- (d) Admit that HE B-9666 was "allowed" by GLO on December 28, 1910.
- (e) Admit that Leroy T. Braden could not have had a legally cognizable interest in the land described in HE B-9666 prior to GLO "allowing" the homestead entry application on December 28, 1910.
- (f) Admit that Leroy T. Braden stated in the Final Proof for HE B-9666 that he first established his residence on August 20, 1910.
- (g) Admit that Leroy T. Braden, in the Final Proof for HE B-9666 was required to "state number and kind of stock grazed each year and by whom owned" and that no range livestock were identified in response to the question.
- (h) Admit that Leroy T. Braden, in the Final Proof for HE B-9666 under questions 7 and 8, listed valuable improvements in the form of acres cultivated by year, types of crops grown by acre, amount of crops harvested by bushel or ton, and amount of acres fenced, but listed no valuable improvements in the form of rangeland livestock.
- (i) Admit that you have no documentary evidence that Leroy T. Braden raised rangeland livestock prior to filing HE B-9666.
- (j) Admit that you have no documentary evidence that Leroy T. Braden raised rangeland livestock prior to issuance of Patent #462899 on March 15, 1915.
- (k) Admit that on or about April 14, 1919, Leroy T. Braden sold 120 acres of the 160 acres of land described in Patent #462899 to Charles R. Edwards.
- (l) Admit that Charles R. Edwards could not have had a legally cognizable interest in the land described in Patent #462899 prior to acquiring the property in 1919.
- (m) Admit that you have no documentary evidence that Charles R. Edwards was using the Leroy T. Braden parcel (Patent #462899) to graze livestock prior to acquiring the property in 1919.

RESPONSE:

REQUEST FOR ADMISSION NO. 22: The legal land descriptions for the base property described above under Request for Admission No. 13 left the United States' ownership pursuant to six different Patents. With regard to Patent #607050, please admit the following facts:

- (a) Admit that Patent #607050 was issued to Anna Edwards on November 9, 1917.
- (b) Admit that Patent #607050 was issued for land described as T15N, R03W, S29, SENE.
- (c) Admit that Patent #607050 was based on Isolated Tract Application #18841 (B-18841) filed by David G. Edwards on March 23, 1916 with the GLO in Boise pursuant to the Act of March 28, 1912.
- (d) Admit that David G. Edwards could not have had a legally cognizable interest in the land described in Patent #607050 prior to filing Isolated Tract Application #18841.
- (e) Admit that the Act of March 28, 1912 allowed the Commissioner of the General Land Office to sell any isolated tract not exceeding one quarter-section to a person who owns lands adjoining such tract.
- (f) Admit that Anna Edwards paid \$2.25 per acre for the land described in Patent #607050.
- (g) Admit that you have no documentary evidence that David G. Edwards or Anna Edwards raised rangeland livestock on the land described in Patent #607050 prior to the filing of Isolated Tract Application #18841.
- (h) Admit that on or about December 14, 1918, Anna Edwards sold 40 acres of land described in Patent #607050 to Charles R. Edwards.
- (i) Admit that Charles R. Edwards could not have had a legally cognizable interest in the land described in Patent #607050 prior to acquiring the property in 1918.
- (j) Admit that you have no documentary evidence that Charles R. Edwards was using the Anna Edwards parcel (Patent #607050) to graze livestock prior to acquiring the property in 1918.

RESPONSE:

REQUEST FOR ADMISSION NO. 23: The legal land descriptions for the base property described above under Request for Admission No. 12 left the United States' ownership pursuant to six different Patents. With regard to Patent #759345, please admit the following facts:

- (a) Admit that Charles R. Edwards, assignee of Franklin B. Hardy, was issued Patent #759345 on June 25, 1920.
- (b) Admit that Patent #759345 was issued for land described as T15N, R03W, S28, NWNE.
- (c) Admit that Patent #759345 was based on Desert Land Entry Application #12894 (HE B-12894) filed by Franklin B. Hardy with the GLO in Boise on June 18, 1912.
- (d) Admit that Franklin B. Hardy could not have had a legally cognizable interest in the land described in Patent #759345 prior to filing the application for desert land entry.
- (e) Admit that Franklin B. Hardy filed a sworn statement with the GLO on September 25, 1916 requesting a two year extension to submit final proof, and stated the following:

“... that this affiant is a poor man and was without means at the time of making said entry and unable to make large expenditures for the reclamation of said land which is proving to be very costly and this affiant has wife and famil[y] to support and he has been unable to do more than make the improvements and expenditures required by annual proofs which same have been wholly inadequate to completely reclaim said land within the time allowed by law. That on account of his financial condition and the necessity of his earning a living for himself and his family by other work he has been prevented from devoting sufficient time to the construction of necessary ditches which he would have been able to make if he could have spared the time.”

- (f) Admit that on March 25, 1918, an Indenture was signed between Franklin B. Hardy and Charles R. Edwards conveying Hardy's interest in the desert land entry, “together with all of the water, water rights and ditches used, connected with or appurtenant to the said lands.”
- (g) Admit that the 1918 Indenture did not include any personal property in the form of rangeland livestock.
- (h) Admit that you have no documentary evidence that Franklin B. Hardy raised rangeland livestock prior to filing the Desert Land Entry Application #12894.
- (i) Admit that you have no documentary evidence that Franklin B. Hardy raised rangeland livestock during the proof period of Desert Land Entry Application #12894.
- (j) Admit that Charles R. Edwards could not have had a legally cognizable interest in the land described in Patent #759345 prior to the Indenture signed on March 25, 1918.
- (k) Admit that there is no documentary evidence that Charles R. Edwards was using the Franklin B. Hardy parcel (Patent #759345) to graze livestock prior to acquiring an interest in the property in 1918.

RESPONSE:

REQUEST FOR ADMISSION NO. 24: Admit that you have no documentary evidence that any personal property in the form of rangeland livestock was conveyed in association with the buying and selling of legal land descriptions asserted as base property described in Request for Admission No. 12 among Hood's predecessors-in-interest as described in Request for Admissions No. 18-23.

RESPONSE:

REQUEST FOR ADMISSION NO. 25: Admit that the Charles R. Edwards base property as described in Request for Admission No. 13 was acquired by Melvin & Inez Dotson on or about November 5, 1962 pursuant to a warranty deed (Instrument #87392).

RESPONSE:

REQUEST FOR ADMISSION NO. 26: Admit that on or about April 9, 1993, Melvin Dotson signed a Livestock Grazing Lease Agreement with Charles Edwards to lease Dotson's base property to Edwards for the period of February 28, 1993 to February 28, 2003.

RESPONSE:

REQUEST FOR ADMISSION NO. 27: Admit that Charles Edwards filed an application for grazing permit based on the base property lease with Dotson and BLM issued the grazing permit to Edwards.

RESPONSE:

REQUEST FOR ADMISSION NO. 28: Admit that on or about August 22, 2002, Melvin Dotson signed a Base Property Lease with Charles Edwards to lease Dotson's base property to Edwards for the period of February 28, 2003 to February 28, 2013.

RESPONSE:

REQUEST FOR ADMISSION NO. 29: Admit that on or about March 10, 2009, the Melvin & Inez Dotson Estate signed a Base Property Lease with Charles Edwards to lease Dotson's base property to Edwards for the period of March 1, 2009 to February 28, 2019.

RESPONSE:

REQUEST FOR ADMISSION NO. 30: Admit that Melvin Dotson did not hold a grazing permit during any of the periods of time that his base property was leased to Charles Edwards.

RESPONSE:

REQUEST FOR ADMISSION NO. 31: Admit that the Charles R. Edwards base property as described in Request for Admission No. 13 was acquired from Melvin Dotson's estate by Keith & Karen Hood on or about August 28, 2012 pursuant to a warranty deed (Instrument #220875).

RESPONSE:

REQUEST FOR ADMISSION NO. 32: Admit that Keith & Karen Hood filed an application for a grazing permit with the Bureau of Land Management on or about November 30, 2012 based on ownership of the base property described in Request for Admission No. 12.

RESPONSE:

REQUEST FOR ADMISSION NO. 33: Admit that the Bureau of Land Management issued a grazing permit for the Horse Flat Grazing Allotment to Keith & Karen Hood for the time period of March 14, 2013 to February 28, 2023.

RESPONSE:

REQUEST FOR ADMISSION NO. 34: Admit that Keith & Karen Hood did not turn out any livestock onto the Horse Flat Grazing Allotment in 2013.

RESPONSE:

REQUEST FOR ADMISSION NO. 35: Admit that Karen Hood filed a letter with BLM dated April 9, 2014 requesting non-use in 2014 because they had not yet purchased cattle.

RESPONSE:

REQUEST FOR ADMISSION NO. 36: Admit that Keith & Karen Hood did not turn out any livestock onto the Horse Flat Grazing Allotment in 2014.

RESPONSE:

REQUEST FOR ADMISSION NO. 37: Admit that on or about April 9, 2015, Keith & Karen Hood entered into a Pasture Grazing Lease Agreement with Ford Ranch for a two-year period commencing on April 1, 2015 and ending on December 31, 2016.

RESPONSE:

REQUEST FOR ADMISSION NO. 38: Admit that Keith & Karen Hood did not turn out any livestock onto the Horse Flat Grazing Allotment in 2015 or 2016.

RESPONSE:

REQUEST FOR ADMISSION NO 39: Admit that the first date that Keith & Karen Hood turned their own livestock out onto the Horse Flat Grazing Allotment was on or about April 17, 2017.

RESPONSE:

REQUEST FOR ADMISSION NO. 40: Admit that any water rights acquired by Melvin Dotson for use on federal land were lost due to non-use for the period between 1993 through 2016.

RESPONSE:

REQUEST FOR ADMISSION NO. 41: Admit that the priority date for the Claims could be no earlier than April 17, 2017.

RESPONSE:

INTERROGATORIES

INTERROGATORY NO. 1: Please identify each person who provided information for, or participated in, the preparation of the responses to these discovery requests, including but not limited to consultants, and identify the specific discovery requests or parts thereof, for which each such person provided information.

RESPONSE:

INTERROGATORY NO. 2: Please identify each person who has personal knowledge of the facts that form the basis for your Claims to water.

RESPONSE:

INTERROGATORY NO. 3: Please identify each person whom you may rely on as a witness, expect to call as a witness, or will provide testimony of any kind during the course of this proceeding.

RESPONSE:

INTERROGATORY NO. 4: For each person identified in response to Interrogatory No. 3 above that you may call as a witness at trial, please state the subject matter on which the individual is expected to testify.

RESPONSE:

INTERROGATORY NO. 5: For each person identified in response to Interrogatory No. 3 above that you may call as a witness at trial of this case, please state a thorough and explicit summary of the expected testimony of each individual.

RESPONSE:

INTERROGATORY NO. 6: For each person identified in response to Interrogatory No. 3 that you expect to call as an expert witness in this proceeding, please describe all facts known and opinions held by such experts in connection with this proceeding, including the following information required by Idaho R. Civ. P. 26(b)(4)(A)(i): A complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

RESPONSE:

INTERROGATORY NO. 7: Please identify all documents, writings, drawings, data, compilations or other material that you intend to introduce as an exhibit or intend to ask any witness to examine during a trial of this case.

RESPONSE:

INTERROGATORY NO. 8: Please identify all documents, writings, drawings, data, compilations or other materials that you reviewed in preparing your responses to these discovery requests.

RESPONSE:

INTERROGATORY NO. 9: For each Request for Admissions Nos. 1-41 for which your response is anything other than an unqualified admission:

- a) Please state the basis for your response including all facts that support, in any way, your denial, partial denial, or qualified response to the request; and
- b) Please identify each person who has information that supports, in any way, your denial, partial denial, or qualified response to the request.

RESPONSE:

INTERROGATORY NO. 10: Please state what you believe to be the correct elements of Claim No. 67-15263, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 11: Please state what you believe to be the correct elements of Claim No. 67-15264, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 12: Please state what you believe to be the correct elements of Claim No. 67-15265, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 13: Please state what you believe to be the correct elements of Claim No. 67-15266, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 14: Please state what you believe to be the correct elements of Claim No. 67-15267, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 15: Please state what you believe to be the correct elements of Claim No. 67-15268, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 16: Please state what you believe to be the correct elements of Claim No. 67-15269, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 17: Please state what you believe to be the correct elements of Claim No. 67-15270, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 18: Please state what you believe to be the correct elements of Claim No. 67-15271, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 19: Please state what you believe to be the correct elements of Claim No. 67-15272, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 20: Please state what you believe to be the correct elements of Claim No. 67-15273, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 21: Please state what you believe to be the correct elements of Claim No. 67-15274, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 22: Please state what you believe to be the correct elements of Claim No. 67-15275, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 23: Please state what you believe to be the correct elements of Claim No. 67-15276, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 24: Please state what you believe to be the correct elements of Claim No. 67-15277, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 25: Please state what you believe to be the correct elements of Claim No. 67-15278, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 26: Please state what you believe to be the correct elements of Claim No. 67-15279, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 27: Please state what you believe to be the correct elements of Claim No. 67-15280, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 28: Please state what you believe to be the correct elements of Claim No. 67-15281, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 29: Please state what you believe to be the correct elements of

Claim No. 67-15282, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 30: Please state what you believe to be the correct elements of Claim No. 67-15283, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 31: Please state what you believe to be the correct elements of Claim No. 67-15284, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 32: Please state what you believe to be the correct elements of Claim No. 67-15285, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 33: Please state what you believe to be the correct elements of Claim No. 67-15286, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 34: Please state what you believe to be the correct elements of Claim No. 67-15287, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 35: Please state what you believe to be the correct elements of Claim No. 67-15288, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

INTERROGATORY NO. 36: Please state what you believe to be the correct elements of Claim No. 67-15289, including but not limited to the priority date, and state the factual basis for the priority date.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Please produce all documents identified in response to, or reviewed, referred to, or relied upon in preparing your responses to, the foregoing Requests for Admission and Interrogatories.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: Please produce all documents you relied upon, or which formed the basis for, any denial (in whole or in part) of the foregoing Requests for Admission.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: Please produce all documents you may rely upon at trial or any hearing in this matter, in support of dispositive motions, or in opposition to dispositive motions, or at any other stage of this proceeding.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: Please produce all documents you may rely upon at trial or any hearing in this matter, in support of dispositive motions, or in opposition to dispositive motions, or at any other stage of this proceeding.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5: Please produce all documents that you purport give you an interest in the surface estate for the legal land descriptions asserted as the point of diversion and/or places of use described in your Claims.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6: Please produce all land conveyance documents, records, instruments and deeds which demonstrate any ownership interest in the land asserted as a point of diversion and/or places of use in your Claims.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7: Please produce all conveyance documents, records, instruments and deeds which demonstrate ownership of each and every legal land description comprising the base property identified in Request for Admission No. 12 from the present day back to your claimed priority date identified in your answers to Interrogatories Nos. 10-36.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8: Please produce all conveyance documents, records, instruments and deeds which conveyed ownership of personal property in the form of livestock from your predecessors to their successors from present day back to the original Patentees of base property described in Request for Admission No. 12.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9: Please produce a copy of all documents not produced in response to the foregoing Requests for Production that you assert supports your Claims.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: Please produce any and all documents, including but not limited to reports, summaries, or surveys, including drafts of any of the foregoing, that each expert witness you may call at trial reviewed or is expected to review in forming the grounds for his or her anticipated testimony.

RESPONSE:

REQUEST FOR PRODUCTION No. 11: Please produce all documents, writings, drawings, data, compilations or other materials you intend to introduce as exhibits or intend to ask any witness to examine during a trial of this case.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: Please produce all documents that you provided to any third party, consultant, or expert related to any water use issue related to this water right adjudication, regardless of whether you intend to call that person as a witness at any trial or hearing in this case.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13: Please produce all documents provided to you by any third party, consultant, or expert related to any water use issue related to this water right adjudication, regardless of whether you intend to call that person as a witness at any trial or hearing in this case.

RESPONSE:

DATED this 29th day of September, 2023.

Respectfully submitted,

A handwritten signature in black ink, reading "Mark J. Widerschein". The signature is written in a cursive style with a large initial "M".

Mark J. Widerschein
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division

Attorney for the United States of America

CERTIFICATE OF SERVICE

I certify that on this ____ day of _____, 2023, I served a true and correct copy of the foregoing **UNITED STATES' FIRST SET OF REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION TO KEITH R. AND KAREN M. HOOD; SUBCASE NO. 67-15263 et. al., together with Exhibit A** as indicated below:

via U.S. Mail:

Keith R. & Karen M. Hood
P.O. Box 100
Cambridge, Idaho 83610-0100

Person serving documents

EXHIBIT A

Subcase Nos:

67-15263
67-15264
67-15265
67-15266
67-15267
67-15268
67-15269
67-15270
67-15271
67-15272
67-15273
67-15274
67-15275
67-15276
67-15277
67-15278
67-15279
67-15280
67-15281
67-15282
67-15283
67-15284
67-15285
67-15286
67-15287
67-15288
67-15289

EXHIBIT 2

Keith & Karen Hood
P.O. Box 100
Cambridge, Idaho 83610

November 15, 2023

United States Department of Justice
Environmental & Natural Resources Division
550 West Fort Stree, MSC 033
Boise, Idaho 83724

and

Mark J. Widerschein
United States Department of Justice
Environmental & Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

Thank you for your extension in completing these questions. Below are the responses in order. We did not repeat the questions, just wrote our answers. I have mailed them to the addresses above via USPS as directed this date 11-15-2023.

Sincerely,
Keith & Karen Hood



RE: SRBA Case No. 39576
Subcase 67-15263 et al

Responses to U.S. Dept of Justice
Requests & Interrogatories

Request for Admission No. 1 – 4:

These requests are outside the scope of protest that grazing activities that occurred on unclaimed property under the control of the United States prior to our predecessors receiving patents were not conveyed to the predecessors and that the settlers would have acquired their own water rights (on federal or private? No clarification is made in this protest). The protest also included that CR Edwards filed for the BLM grazing right instead of his father who had passed 18 years prior to the creation of the Taylor Grazing Act. And that CR Edwards would not have grazed his cattle over other patentees' lands until he owned them. So obviously Mr. Price is admitting here that CR Edwards did own cattle during this time. Claimants were not required to list the number of cattle on their homestead final proofs because the affidavit asked that if the land was to be used for grazing only to state the number. There was nothing on these affidavits that asked if the claimant had livestock and how many. Chicken & hog houses were listed as were stables and barns but there was no direction asking them to list how many of each animal they had. The protest also states that when multiple water rights are claimed under one claim that the priority assigned is the most junior (1920 was the date selected in the protest). The stock water claims being sought are for the Horse

Flat Allotment to be diverted by our cattle by the means of drinking it. Not to be diverted and beneficially used for the cattle on our deeded land. The other matter in the protest was that there was a base property lease agreement between Dotsons & Charles Edwards (nephew of Dotsons). It was not a sale or transfer of the base property. It was a lease. Dotsons still owned and controlled and paid taxes on the 640 acres. During that time Dotson cattle were still grazed under the lease until they were sold to Charles in 2010. And finally stating that we purchased the base property from Dotson (not Edwards) in 2010 and filed for grazing preference in 2013. And didn't run cattle under the permit 2013-2014. The 2012 grazing season was over when we transferred the grazing preference from Dotson Estate to us. Under the terms & conditions of our grazing rights we are allowed management decisions for non-use, conservation or personal decisions. See CR Edwards original grazing application, the letter that we based our original claim on and other documents that were shared during the conference meetings.

Request for Admission No. 5 – 7:

Using the definition of 'land conveyance document' provided by the U.S. Dept of Justice excludes grazing permit, term grazing permit, special use permit, other permit or easement issued by the U.S. which dismisses the fact that it is considered real property & a real property interest recognized by several states and the Internal Revenue Service as taxable. The grazing permits also are used as collateral for collateral for loans and mortgages. These requests are outside the scope of the protest.

Request for Admission No. 8:

Conveyance document is the grazing preference permit which conveys interest in surface estate (grass, water, dirt, small trees, rocks...) whereas the federal government holds claim to marketable minerals and timber. Outside scope of protest. See 1-4

Request for Admission No. 9-10:

Outside scope of protest see above 1-4

Request for Admission No. 11:

Outside scope of protest. And the request fails to cite the sentence before the one for the request "*Provided further*, That nothing in this subchapter shall be construed or administered in any way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacture, or other purposes which has heretofore vested or accrued under existing law validly affecting the public lands or which may be hereafter initiated or acquired and maintained in accordance with such law.

Request for Admission No. 12-13:

Outside scope of protest see above 1-4

Request for Admission No. 14-15:

Outside scope of protest. Common practice at the time of the priority date requested was that settlers ran livestock over unfenced, unoccupied and unclaimed lands and no permits were needed from the federal govt.

Request for Admission No. 16:

Outside scope of protest see above 1-4

Request for Admission No. 17:

CR Edwards original BLM grazing application and July 27, 1935 and letter on record in application for stock water. Referenced in our rebuttal to the protest.

Request for Admission No. 18:

(a)-(f) Appears to be outside scope of protest. See 1-4

(g) CR Edwards was 21 yrs, 2 mo & 8 days old when he filed his first land entry November 11, 1903.

(h) Outside scope of protest. See 1-4. CR Edwards got married October 9, 1904 & moved into their own home in November. And again did not use his entire quote of the matter "In the summer I was absent, not to exceed 3 months working to earn a living and make money to improve my land. My family was with me during this absence. We have resided continuously ever since and before this mentioned absence." Homestead receivers office – footnote at bottom of page reads that absence from the property for more than 6 months out of the year was considered abandonment & forfeiture in the chain.

(i) Outside scope of protest. See 1-4

(j) Outside scope of protest. CR Edwards was able to read & follow the directions on the Final Proof for Question 7 regarding cultivation & acreage which included the partial sentence quoted in this interrogatory. The full sentence reads: "*If used for grazing purposes only, state the number and kind of stock.....*"

(k) Outside scope of protest. See 1-4

(l-m) CR Edwards first grazing app & letter dated on file with stock water application. Received a Class 1 permit. Registered brand filed at Wa. Co. courthouse in 1905.

(n) same as above + forest service permits for CR Edwards & David G Edwards/David G Edwards Estate. Class A forest permits.

Request for Admission No. 19:

(a)-(c) Outside scope of protest. Priority date was also based upon CR Edwards original grazing application in 1935, his letter on file with stock water application and that he held a Class 1 grazing preference.

(d) Outside scope of protest. See 1-4 His eldest son (Eddie) and brothers-in-law already lived in Salubria/Cambridge. It was documented in newspaper articles in Wisconsin. The Jewell brothers (Mary Edwards' brothers) were original settlers in the valley. E.S. Jewell was a senator when Idaho was still a territory and started a stage line.

(f) Outside scope of protest. See 1-4 He was a minor child when his father was naturalized and per federal law that would have transferred over to him. GLO received a document of his father's naturalization in the Homestead file which you are in possession of.

(g) Outside scope of protest. CR Edwards original grazing application & letter on file with stock water claim and class 1 grazing permit. David G Edwards did not have the physical documentation of his father's naturalization and per the first page of the HOMESTEAD PROOF – TESTIMONY OF CLAIMANT, question 2 regarding citizenship there is a footnote attached that states that proof of naturalization is required from the claimant in the final proof. Please see response above for (f).

(h)-(j) Outside scope of protest. See 1-4. CR Edwards original grazing application & letter on file with stock water claim.

(k) Outside scope of protest. See 1-4. Refer to answer for 18(j) – he answered as directed. And ‘range’ livestock are not a physical improvement.

(l) See David G Edwards hand-written testimony and his final proof. See Garrett letter to Wade 12/21/1906 and Brighton letter dated 3/25/1907 & Garrett letter 12/10/1906

(m) Outside scope of protest. See above (l)

(n)-(o) CR Edwards graze permit & letter. 1905 registered brand. He still lived there and had control of the land & livestock.

(p) Outside scope of protest. The land & livestock were willed to CR Edwards and he did not loose control over that land and livestock during or after probate was finalized. Idaho Supreme Court dismissed the case in 1919 – The Idaho Recorder Mar 14, 1919. Nor did he loose the forest service permits.

(q)-(r) CR Edwards original graze permit, letter & FS permits for himself, his father & the estate

Request for Admission No.20:

(a)-(u) Irrelevant to protest. Nielsen fenced about 60 acres out of 160 acres of land. Why? Because CR’s cattle were grazing unfenced lands. Question 9 of Final Proof asks what is the character of the land in which Claimants and Witnesses stated agriculture, farming and grazing.

(v-y) Grazing preferences for CR Edwards/CR Edwards & Son for FS Class A permits

Request for Admission No. 21:

(a)-(m) Outside scope of protest and irrelevant. Again, the claimant was asked “***If used for grazing purposes only***, state the number and kind of stock.....” they answered correctly. CR Edwards original grazing application, letter on file with stock water application and FS Class A license

Request for Admission No. 22:

(a)-(j) Irrelevant & outside scope of protest. Tract is next to David G Edwards homestead. He applied but died before completing. Anna Edwards is his daughter-in-law. David G & CR both had Class A forest permits beginning in 1914. Class A is like Class 1 BLM permit in that they had grazed the public domain at least 5 yrs prior to application. 1905 registered brand for David G & CR.

(e) It appears that this implies that the tract exceeded one quarter section (160 acres) without following the Act of March 12, 1912? It was 40 acres, mountainous & too rough for cultivation which was legal to sell and was posted in the local paper 30 days prior.

Request of Admission No. 23:

(a)-(c) Outside scope of protest and irrelevant.

(d) As with the other settlers listed above, this request is outside the scope of protest and is out of context. They all had a “legally cognizable interest” in the land. They all had a vested interest in the actual and beneficial use of the property, even though they had not made the initial entry or final proof. Nels Nielson stated on his final proof that he was on the land 2 months prior to his filing. They were all protected by the Preemption Act of 1841.

(e) Outside scope of protest & irrelevant. The request omits the entire petition for extension which explained why he needed the extension, which was approved and granted to him.

(f) Vague and confusing as to what you are asking.

(g)-(i) Outside scope of protest & irrelevant. The Desert Entry Act was all about cultivation & reclamation of the land. On the last page of the "yearly proof" there are instructions title "READ CAREFULLY BEFORE PREPARING THE AFFIDAVITS". Dwellings were not essential in reclamation of the land and would not be accounted. But interestingly enough on some of the affidavits there are statements regarding the fencing – "The fence constructed on this land is necessary to protect the crops from marauding livestock", "The fence constructed on this land is necessary to protect crops to be grown from outside stock", and "The said fencing was necessary to protect crops to be grown from range stock".

(j) Same as (d) above.

(k) See (g)-(i) above reference about fencing out marauding livestock, outside stock & range stock to protect crops.

Request for Admission No. 24:

Vaguely worded and confusing. We are not attorneys.

Request for Admission No. 25:

We agree that the warranty deed between Harriet Edwards (widow of CR Edwards) and Melvin & Inez Dotson is a recorded document in Washington County, Idaho, titled Instrument #87392 dated November 5, 1962 for the 640 acres of land used as a 'base property' that included all forest reserve grazing reserve rights.

Request for Admission No. 26-30:

BLM controls the entire case files and documentation and have failed to provide all files and documents per verbal and FOIA requests and we have yet to received the files and documents. So we cannot answer these questions.

Charles Edwards (Dotson's nephew) did not purchase the base property nor was it transferred to him. The 640 acre 'base property' still remained in the control of Melvin & Inez Dotson. And Charles was running Dotson cattle for them.

Request for Admission No 31:

Recorded in Washington County, Idaho.

Request for Admission No. 32:

Transfer of grazing preference through the purchase of the 'base property' from the Dotson Estate.

Request for Admission No. 33:

A matter of record in the grazing file.

Request of Admission No. 34-36:

A matter of record and allowable per the terms & conditions of our permit. See 43 CFR 4130.4(e)

Request of Admission No. 37-38:

A matter of record and Ford cattle were allowed under our grazing permit hence the higher surcharge.

Request of Admission No. 39:
Matter of record.

Request of Admission No. 40:
Dotson cattle were on the allotment until the sale of the cattle in 2010 to Charles Edwards.

Request of Admission No. 41:
No, Priority date December 28, 1896 is still our claim.

Interrogatories:

1 – ourselves

2 – CR Edwards' original application & letter on file with application of de minimis stock water rights and historical documents/articles.

3 – ourselves

4 –5 Not sure

6 Not sure

7- 8 Most documents have been supplied during the conference meetings. But reserve the right to submit new information beyond what has already been supplied.

9 We don't have the time to repeat those responses. We are a working cattle ranch and livestock operation. We also have outside employment to support our family and operation.

10-22 CR Edwards' original application and letter as a matter of record with the application.

EXHIBIT 3



U.S. Department of Justice
Environment and Natural Resources Division
Natural Resources Section

Natural Resources Section
P.O. Box 7611
Washington, DC 20044

Telephone (202) 532-5803
Facsimile (202) 305-0506

December 15, 2023

Keith & Karen Hood
P.O. Box 100
Cambridge, Idaho 83610-0100
VIA EMAIL

Re: *Snake River Basin Adjudication Subcase Nos.: 67-15263 et. al.*

Hello:

I hope this letter finds you well. I am writing regarding your responses to the United States' First Set Of Requests For Admission, Interrogatories, and Requests For Production To Keith R. And Karen M. Hood, dated September 29, 2023 ("First Requests"). This letter serves as the United States' conferral regarding your responses to the First Requests. See Idaho Rule of Civil Procedure ("I.R.C.P.") 37(a)(1).

Pursuant to I.R.C.P. Rule 36(a)(1), a party may serve "a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to: (A) facts, the application of law to fact, or opinions about either; and (B) the genuineness of any described documents." (emphasis added). Under Rule 26(b)(1), a party may "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." (emphasis added). The United States' objection(s) to the claims at issue include an objection to priority date. Please note that the Idaho Supreme Court has held that Idaho courts "will apply the same standards and rules whether or not a party is represented by an attorney and that pro se litigants must follow the same rules, including the rules of procedure." *Dorr v. Idaho Dep't of Lab.*, 171 Idaho 306, 520 P.3d 1266, 1269 (2022).

Rather than responding to the United States' requests for admission with specific admissions or denials, you assert numerous times in your responses that the United States' requests are "outside the scope of protest" or other similar formulations. You assert this, for example, in your answers to Request for Admission Nos. 1-4, 5-7, 8, 9-10, 11, 12-13, 14-15, 16, 18(a)-(f); (h)-(k); 19(a)-(k); (m); (p); 20(a)-(u); 21(a)-(m); 22(a)-(j); 23(a)-(e); and (g)-(i). It is unclear what "protest" you are referring to. However, if you are referring to the United States' objections to your water right claims, the United States' objections are to your claimed 1896 priority date. As we understand your position, you claim that date on the basis of chain of title with your predecessors. Accordingly, any step within the chain by which you are asserting an 1896 priority date is necessarily within the scope of this case.

By rule, "[i]f a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny

only a part of a matter, the answer must specify the part admitted and qualify or deny the rest.” I.R.C.P. 36(a)(5). Under the I.R.C.P., “[t]he grounds for objecting to a request must be stated.” I.R.C.P. 36(a)(6). Please clarify whether your assertion that certain of the First Requests are outside the scope of this case constitutes an objection. To the extent that you can answer the Requests for Admission, please provide amended responses which comply with Rule 36.

Regarding interrogatories, you have declined to provide responses to a number of the United States’ Interrogatories, including Nos. 9 and 23-36. Similarly, your combined response to Nos. 10-22 does not appear to be responsive to the request. Please note that pursuant to Rule 33 of the I.R.C.P., “[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.” I.R.C.P. 33(b)(3). Interrogatories are written testimony, not optional requests. Please provide full responses to the United States’ interrogatories.

Regarding our requests for production, you have not responded to any of the United States’ requests for production, Nos. 1-13. Please clarify why you have not responded, and whether you have any responsive documents to our requests.

We would prefer to resolve this matter amicably so that this matter can proceed on track towards our scheduled trial in June of 2024. If we need to raise this matter with the Court, it will only delay the resolution of the objections. Please respond no later than **December 22** clarifying (1) whether your responses indicating the First Requests are ‘out of scope’ constitutes an objection and (2) whether you intend to provide amended responses to the First Requests.

Best,

A handwritten signature in black ink that reads "Mark Widerschein". The signature is fluid and cursive, with the first name "Mark" and last name "Widerschein" clearly distinguishable.

Mark J. Widerschein
Katharine Laubach
Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Counsel for the United States