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DEPT. OF WATER RESOURCES

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

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

United States' Motion for Partial Summary Judgment

Pursuant to Rule 56 of the Idaho Rules of Civil Procedure and the Second Amended Trial Scheduling Order, the United States, on behalf of the Department of the Interior – Bureau of Land Management (the “United States” or “BLM”), respectfully moves for partial summary judgment regarding the prima facie status of the Idaho Department of Water Resources (“IDWR”) Director’s Reports. IDWR recommended a priority date of December 28, 1896, as claimed by Keith and Karen Hood (the “Hoods”). This recommended priority date is rebutted by sworn evidence that the predecessor through which the Hoods assert their priority date did not settle on the present-day base property until at least 1900. Further, none of the Hoods’ predecessors owned any portion of the base property until 1908, there is no documentary evidence that any of the Hoods’ predecessors even owned cattle until 1915, and the first Taylor Grazing Act (“TGA”) applicant for the relevant lands did not own all of the base property offered for the grazing permit until 1934. Accordingly, the Court should grant partial summary

judgment that the United States has rebutted the Director's Reports, confirming that the Hoods bear the burden of proving their priority date, which will narrow the scope of trial.

Memorandum in Support

I. Introduction

The Hoods assert twenty-seven water rights on federal land managed by the BLM. Each claim asserts a priority date of December 28, 1896, on the basis of a purported chain of title and use through predecessor owners of their base property in S21, 22, and 28 of T15N, R03W. Yet on December 28, 1896, the entire base property – as well as the entire present-day BLM allotment – was solely owned by the United States. The United States did not divest itself of federal ownership of the base property until it issued six patents between 1908 and 1920. IDWR recommends a priority date of December 28, 1896 for all the claims on the basis of an unsupported statement in a 1935 TGA grazing permit application asserting that the Edwards family grazed livestock as of that date. However, in a 1906 affidavit submitted in support of a homestead application for a portion of the base property, David G. Edwards stated under oath that he did not even move onto the property until 1900. While the United States contests whether the Hoods' predecessors watered any livestock on the BLM allotment before they were granted a TGA permit for 1936, that is a question of fact for trial. The Court should confirm that the Hoods bear the burden of proving their claimed priority date at trial.

II. Statement of Undisputed Material Facts

The following facts are undisputed and/or not reasonably subject to dispute. The facts are supported by the Declaration of Frederic Price ("Price Decl.") and supporting documentation attached therein.

1. The Hoods' base property is 640 acres in T15N, R3W, comprising the SWSW of Section 21; the NENE, NWNE, SWNE, SENE, NENW, NWNW, SWNW,

SENW, NESW, NWSW, NESE, and NWSE of Section 28; and the NENE, SENE, and NESE of Section 29. Price Decl. ¶ 4; Exhibit 1 (BLM_014).

2. The Hoods are currently BLM grazing permittees on the Horse Flat Allotment. Price Decl. ¶ 5-7; Exhibit 2.
3. The United States gained ownership of the land comprising the present-day allotment and base property pursuant to the Oregon Treaty with Great Britain on June 15, 1846. Price Decl. ¶ 8; *see also* 9 Stat. 869.
4. On December 28, 1896, the United States owned all the land comprising the present-day allotment and base property, and there were no pending applications for homestead entry on those lands. Price Decl. ¶ 9.
5. The United States first conveyed the base property into private ownership through a series of patents issued between 1908 and 1920, as described in SOF 6-11. Price Decl. ¶ 10; Exhibit 4.
6. The United States issued Patent 356 to David G. Edwards on May 26, 1908, which conveyed a portion of the base property from the United States into private ownership. Price Decl. ¶ 10; Exhibit 4 (BLM_018).
7. The United States issued Patent 16246 to Nels C. Nielson on September 24, 1908, which conveyed a portion of the base property from the United States into private ownership. Price Decl. ¶ 10; Exhibit 4 (BLM_019).
8. The United States issued Patent 222034 to Charles R. Edwards on August 24, 1911, which conveyed a portion of the base property from the United States into private ownership. Price Decl. ¶ 10; Exhibit 4 (BLM_017).

9. The United States issued Patent 462899 to Leroy T. Braden on March 15, 1915, which conveyed a portion of the base property from the United States into private ownership. Price Decl. ¶ 10; Exhibit 4 (BLM_020).
10. The United States issued Patent 607050 to Anna Edwards on November 9, 1917, which conveyed a portion of the base property from the United States into private ownership. Price Decl. ¶ 10; Exhibit 4 (BLM_021).
11. The United States issued Patent 759345 to Charles R. Edwards on June 25, 1920, which conveyed a portion of the base property from the United States into private ownership. Price Decl. ¶ 10; Exhibit 4 (BLM_022).
12. The land transferred to private ownership by the six patents described in SOF Nos. 6-11 comprises the present-day Hood base property. Price Decl. ¶ 10.
13. Neither David G. nor Charles R. Edwards settled on any portion of the base property until on or about October 15, 1900. Price Decl. ¶ 11; Exhibit 5 (BLM_029; BLM_043).
14. In 1905, Charles R. Edwards stated that he did not establish his residence on the base property until on or about December 5, 1903. Price Decl. ¶ 11; Exhibit 5 (BLM_029).
15. David G. Edwards “practically lived” with Charles R. Edwards until 1906. Price Decl. ¶ 11; Exhibit 5 (BLM_046).
16. Neither David G. nor Charles R. Edwards owned any portion of the base property until 1908. Price Decl. ¶ 10.

17. In 1915, the Forest Service reported that Charles R. Edwards owned 25 cattle and 13 horses. Price Decl. ¶ 16; Exhibit 8 (Hood_5).¹
18. In 1919, Charles R. Edwards reported that he owned 28 cattle and 5 horses. Price Decl. ¶ 16; Exhibit 8 (Hood_2).
19. Charles R. Edwards acquired the Anna Edwards parcel on or about December 14, 1918. Price Decl. ¶ 12.
20. Charles R. Edwards acquired the Leroy T. Braden parcel on or about April 14, 1919. Price Decl. ¶ 12.
21. Charles R. Edwards acquired the David G. Edwards parcel on or about September 26, 1928. Price Decl. ¶ 12.
22. Charles R. Edwards acquired the Nels C. Nielson parcel on or about December 14, 1934. Price Decl. ¶ 12.
23. Ownership of the base property was unified by Charles R. Edwards on or about December 14, 1934. Price Decl. ¶ 13.
24. Charles R. Edwards first applied for a TGA permit on July 29, 1935. Price Decl. ¶ 14; Exhibit 6 (BLM_672-675; BLM_626).
25. Charles R. Edwards was first granted a TGA permit to graze on BLM land on October 5, 1935, beginning with the 1936 grazing season. Price Decl. ¶ 15; Exhibit 7 (BLM_615-617).

¹ The United States does not concede the accuracy of the documents produced by the Hoods in discovery. However, they are utilized here assuming *arguendo* that they are accurate.

III. Standard of Review

1. Summary Judgement

Under I.R.C.P. 56, a party may move for summary judgment on any claim or defense, or any part of a claim or defense. I.R.C.P. 56(a). “Summary judgment is appropriate ‘if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Summerfield v. St. Luke's McCall, Ltd.*, 169 Idaho 221, 228 (2021) (quoting I.R.C.P. 56(a)). “The moving party carries the burden of proving the absence of a genuine issue of material fact.” *Banner Life Ins. Co. v. Mark Wallace Dixson Irrevocable Tr.*, 147 Idaho 117, 123 (2009). The absence of genuine dispute can be shown by citing to materials in the record, including, *e.g.*, documents and declarations. I.R.C.P. 56(c).

2. Director's Reports

While an IDWR Director's Report is entitled to prima facie validity, *see* I.C. 42-1411(5), this presumption is rebuttable. *See McCray v. Rosenkrance*, 135 Idaho 509, 514 (2001), citing *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736 (1997). This analysis is conducted pursuant to I.R.E. 301 and is a so-called ‘bursting bubble’ presumption: “[w]hen rebutted, the presumption disappears and the party with the benefit of the presumption retains the burden of persuasion on the issue.” *Hagerman Water Right Owners, Inc.*, 130 Idaho at 745. To rebut a Director's Report, an objecting party must provide “substantial evidence”; which “is defined ‘as such relevant evidence as a reasonable mind might accept to support a conclusion; it is more than a scintilla, but less than a preponderance.’” *Clear Springs Foods, Inc. v. Clear Lakes Trout Co.*, 136 Idaho 761, 764 (2002), quoting *Evans v. Hara's, Inc.*, 123 Idaho 473, 478 (1993).

Pursuant to 42-1411(5), “[e]ach claimant of a water right acquired under state law has the ultimate burden of persuasion for each element of a water right.” Accordingly, if the prima facie

validity of the Director's Report is rebutted, the Hoods will have the burden at trial to prove their priority date.

IV. Argument

1. The prima facie status of the Director's Reports is rebutted by the record.

IDWR issued two Director's Reports for the twenty-seven Hood claims.² Both Director's Reports recommended a priority date of December 28, 1896. This recommended priority date is unsupported by the record, and the Hoods should not be entitled to a presumption that the priority date is December 28, 1896 at trial.

Because BLM objected only to the Hoods' priority date, the only section of the Director's Report relevant to this proceeding is the discussion of the priority date. IDWR states that the claimed priority of December 28, 1896 is proper because the date "is derived from the base property's Homestead Certificate #2762 and Land Patent #222034." *Director's Report* at 4. It goes on to correctly note that on May 26, 1908, the United States granted David G. Edwards a portion of the current-day base property, and that in July of 1935, Charles R. Edwards applied for a grazing permit. *Id.* However, because the homestead documents cited do not reach back to 1896 on their own terms, the only possible basis for 1896 is one statement in Mr. Edwards' TGA application, submitted in 1935, in which IDWR states that Mr. Edwards "has previously used the lands for grazing for the past 40 years indicating that stock had been on the property since the claimed priority date." *Id.*

As the Idaho Supreme Court has explained, "the prima facie status contained in section 42-1411 'constitute[s] a rebuttable evidentiary presumption.'" *McCray v. Rosenkrance*, 135

² The first Director's Report covered claims 67-15263 through 67-15270 and 67-15272 through 67-15278. The second Director's Report covered claims 67-15271 and 67-15279 through 67-15289. Both recommended a priority date of December 28, 1896 for all claims. Because they are identical in the relevant part, this motion refers to the Director's Reports collectively.

Idaho 509, 514 (2001). Facts stated in a Director's Report "are presumed to be correct until such time as a water claimant produces sufficient evidence to rebut that presumption." *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 746 (1997). Put more generally, "[a] Rule 301 presumption relieves the party in whose favor the presumption operates from having to adduce further evidence of the presumed fact until the opponent introduces substantial evidence of the nonexistence of the fact." *Id.* at 745, quoting *Bongiovi v. Jamison*, 110 Idaho 734, 738-739 (1986).

It is undisputed that the only owner of both the base property and the present-day Horse Flat Allotment on December 28, 1896 was the United States, and that no applications for homestead entry were pending on that date. SOF No. 4. While IDWR cites to 1908 land transfer documents to the Hoods' predecessors, the acquisition of land in 1908 – in documents that in no way refer to livestock or water use – certainly does not illustrate use of water in 1896. Instead, the recommended priority date necessarily rests solely on the statement in Mr. Edwards' TGA application submitted in 1935. *See* Exhibit 6. But relying on this statement in is inappropriate for three reasons. First, and most critically, sworn evidence from 1906 – much more contemporaneous in time with the settlement history in question – illustrates that David G. Edwards did not settle on the present-day base property until 1900 and Charles R. Edwards did not until 1903, years after the date he claimed to be watering livestock. SOF Nos. 13-14. Second, IDWR interprets an ambiguous form in a manner that does not match other answers on the form. Finally, IDWR inappropriately conflates ownership of base property near federal land with evidence of use of that federal land.

Mr. Edwards' statement is belied by sworn evidence from 1906, much closer in time with the settlement history in question. On November 22, 1906, David G. Edwards filed a sworn affidavit with the General Land Office (a predecessor agency to the BLM) stating that he "made

settlement upon said land on or about October 15, 1900.” SOF No. 13; Exhibit 5 (BLM_043).

While the United States certainly does not concede that Mr. Edwards owned or watered livestock at that time, Mr. Edwards himself swore that he did not live on the land as of 1896. IDWR’s recommendation relies on Mr. Edwards’ later-in-time statement, submitted nearly thirty years later, instead of an earlier sworn statement on which David G. Edwards’ ability to acquire the land depended. This evidence that Edwards did not begin *living on* the land, let alone grazing and watering livestock on the federal range, is more than a “reasonable mind might accept to support a conclusion” that the claimed and recommended 1896 date is incorrect. This is underlined by evidence that Charles R. Edward didn’t move onto the land until 1903, and David G Edwards did not live permanently on the land until years later, SOF 14-15, and that there is no evidence that either owned cattle until at least 1915. SOF Nos. 17-18.

Second, the specific question asked of Mr. Edwards was “have you previously used the lands covered by this application for grazing permit” and “if so, how many years and what is the usual period of use each year.” *See* Exhibit 6 (BLM_674). This language is ambiguous and does not necessarily establish that he was even referring to the specific BLM land encompassing the sources which the Hoods now claim. “Used” is undefined, and there is no basis on its face for IDWR to assume that it meant watering of livestock. Further, the document asks questions about both his private land and other federal range Edwards used; “the lands covered by this application for grazing permit” could just as easily refer to Edwards’ own base property or to the separate federal land managed by the U.S.D.A. Forest Service on which he at that time held a permit to use. *See, e.g.*, BLM_672. Indeed, Edwards himself used prospective language

regarding the BLM land – describing it as “lands *wished to graze on*” (emphasis added), compared to “lands owned”.³ BLM_626.

Finally, IDWR appears to indicate that merely having stock on a base property is sufficient to support a water right on federal land. IDWR states that “that he has previously used the lands for grazing for the past 40 years indicating that stock had been on the property since the claimed priority date.” *Director’s Report* at 4. This is not so. As this Court has explained, the presence of stock on a base property is insufficient to prove a water right on public land from that private land. Instead, a party still must provide “evidence of a water right on public land specifically associated with” a given piece of private property. Mem. Dec. on Remand and Order of Amended Partial Decrees, Subcases 55-10288B, et al. (Jul. 3, 2008).⁴

In sum, IDWR’s Director’s Reports are fatally flawed. Documentary evidence of the whereabouts of the Hoods’ predecessors illustrates that they did move onto the base property until 1900, own any portion of it until 1908, or own cattle until 1915. The first reliable documentary evidence of actual grazing on the BLM range does not come until the TGA permit itself was approved. The United States does not ask the Court to decree a priority date at this stage, as BLM has other arguments to make at trial affecting priority - merely to find that there is substantial evidence that the claimed and recommended date of December 28, 1896 is unreliable. The Court can and should determine now that proving priority is the Hoods’ burden, and they cannot simply rely on a presumption based on IDWR’s improper analysis.

³ The “lands wished to graze on” do not even come close to encompassing all sources which the Hoods now claim. Compare BLM_626 with Exhibit 3 (map of allotment and claimed sources). In 1935, Charles Edwards identified only Sections 20, 21, 29, and 33. The Hoods claim sources in Sections 5, 8, 9, 15, 17, 19, 20, 21, 22, 29, and 30.

⁴ The recommended priority date further does not align with the asserted documentary record. Mr. Edwards reported undefined use for 40 years in 1935. If true, this would support a priority date of 1895, not 1896. That IDWR recommended a date entirely untethered from the documentary evidence on which it purportedly relied underlines that the Director’s Report’s conclusions are unreliable.

V. Conclusion

For the reasons stated above, the Court should grant partial summary judgment regarding the prima facie validity of the Director's Report. There are no genuine disputes of material fact regarding the settlement chronology of the Hoods' predecessors, and accordingly this question is ripe for summary judgment.

Dated: July 12, 2024

Respectfully submitted,

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Bureau of Land Management

CERTIFICATE OF SERVICE

I certify that on July 12, 2024, I served true and correct copies of the foregoing document and the declaration & exhibits described therein as follows:

via Hand Delivery:

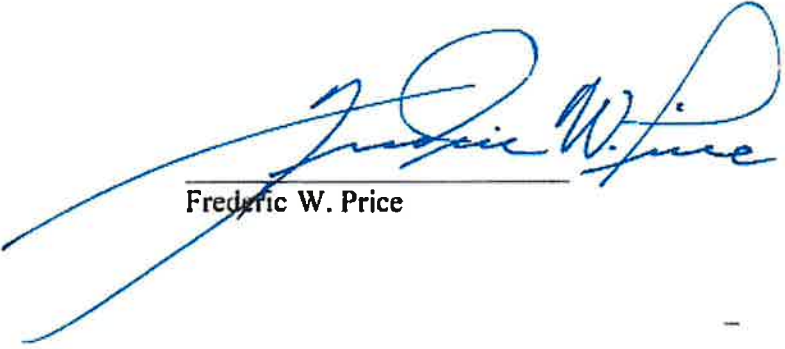
Clerk of the District Court
Snake River Basin Adjudication
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Frederic W. Price

Exhibit A

Subcase Nos:

67-15263
67-15264
67-15265
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