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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**

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

United States' Reply in Support of Motion for Partial Summary Judgment

The United States, on behalf of the Department of the Interior – Bureau of Land Management (“United States” or “BLM”) has moved for an order confirming that it has overcome the *prima facie* status of the Directors’ Reports. In the sworn statements of the Hoods’ predecessors and supporting land and livestock ownership documents the United States has provided, the United States has shown substantial evidence, which meets the applicable more than a scintilla, less than a preponderance standard. The Court should grant the United States’ Motion for Partial Summary Judgment (“U.S. Motion”) and deny the Hoods’ contemporaneous motion.

I. Statements of Fact

- a. Responses to the Hoods’ Statement of Facts:

1. Contested. The obituary submitted in support of this contention has no identified author, is dated at least sixty-six years after the events it purports to describe occurred, and is inadmissible hearsay.
2. Contested to the extent that the Salubria Valley is undefined and its meaning in 1895 may have changed between 1895 and a modern-day Google Map search. The United States avers that the location Google Maps identifies as “Salubria Valley” is approximately four miles from the Hoods’ Base Property.
3. Uncontested.
4. Uncontested.
5. Contested. The scan attached by the Hoods as Exhibit C is a poor copy and unreadable. However, the United States avers that the readable text indicates that it was originally an Iowa County, Wisconsin document.
6. Uncontested.¹

b. The United States’ Additional Statements of Fact

The following additional statements of fact respond to new and incorrect contentions of fact made in the Hoods’ Response:

26. Edward Edwards is not one of the Hoods’ predecessors-in-interest in the Hood’s Base Property or claimed water rights. *See* Second Declaration of Fredric W. Price ¶ 2 (“Second Price Decl.”).
27. Edward Edwards was never granted a patent for any portion of the Base Property. *See* Second Price Decl. ¶ 2.

¹ The United States does not concede the accuracy of the obituary’s description; only that the obituary is accurately quoted. *See* Response No. 1.

28. Charles R. Edwards' grazing permit application filed on July 29, 1935, did not reference the Horse Flat Allotment. *See* First Price Decl. Exhibit 6 (BLM_672-675).
29. The Horse Flat Allotment did not exist on July 29, 1935. *See* Second Price Decl. ¶ 5(b).
30. Charles R. Edwards applied for and was granted a license to graze specific sections of the Idaho Grazing District No. 1. *See* First Price Decl. Exhibit 6 (BLM_672); Exhibit 7 (BLM_615); Second Price Decl. ¶ 3(b).
31. The plat that Charles R. Edwards submitted in connection with his application on July 29, 1935 included no land in the Payette National Forest. *See* Second Price Decl. ¶ 3(a).
32. The plat that Charles R. Edwards submitted on July 29, 1935 identified two categories of land: "lands owned" and "lands wished to graze on." *See* First Price Decl. Exhibit 6 (BLM_626).
33. The plat that Charles R. Edwards submitted on July 29, 1935, marked land in five sections: 20, 21, 28, 29, and 33; T15N, R3W. *See* First Price Decl. Exhibit 6 (BLM_626). The sections marked "lands wished to graze on" are 20, 21, 29, and 33. *Id.*
34. The present-day Horse Flat Allotment encompasses portions of sixteen sections. *See* Second Price Decl. ¶ 3(C); Exhibit 10.
35. Fourteen of the Hoods' twenty-seven claims are not within the sections identified by Charles R. Edwards as "lands wished to graze on" in the

plat submitted on July 29, 1935. *See* U.S. Motion, n.3; *see also* Second Price Decl. ¶ 3(C); Exhibit 10.

36. Four of the Hoods' twenty-seven claims are only partially within the sections identified by Charles R. Edwards as "lands wished to graze on" in the plat submitted on July 29, 1935. *See* U.S. Motion, n.3; *see also* Second Price Decl. ¶ 3(C); Exhibit 10.

II. Argument

The Hoods argue that the United States is not entitled to summary judgment because it has "failed to present compelling" evidence to rebut the Director's Report. Cls.' Resp. at 5. However, the Hoods misstate both the facts and the relevant legal standard. The Court should grant the U.S.'s Motion.

The Hoods seemingly assert that the standard for overcoming the *prima facie* status of a Director's Report is to conclusively disprove it. *See, e.g.*, Cls.' Resp. at 3 (asserting that raising "some doubt" is insufficient). This is not the proper standard. As the United States has explained, the bar for rebutting a Director's Report is low: an objector 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 Spring Foods Inc. v. Clear Lakes Trout Co.*, 136 Idaho 761, 764 (2002) (quoting *Evans v. Hara's, Inc.*, 123 Idaho 473, 478 (1993) (emphasis added)). This is not a sliding-scale where some level of deference may survive. Instead, it is a 'bubble-bursting' standard—if a reasonable mind might accept that the Director's Report is incorrect, the presumption immediately and completely disappears. *See State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 745 (1997).

The Hoods do not even engage with this standard in their briefing. *See generally* Cls.'s Resp. However, there is clearly substantial evidence that a reasonable mind could accept as

showing 1896 is incorrect, including the sworn testimony from Charles R. Edwards and David G. Edwards that they did not move onto the base property until 1900 and 1903 (respectively), the lack of evidence that they owned any cattle until at least 1915, and the specific language used in Charles R. Edwards' Taylor Grazing Act ("TGA") permit application. *See generally* U.S. Mot. 7-10. Further, the Hoods themselves have already testified that they have no direct evidence of livestock ownership or water use by their predecessors-in-interest. *See* Declaration of Mark Widerschein, Exhibit 11, at 20:16-20; 21:19-23; 22:8-10 (no evidence for David G. Edwards); 31:13-18 (no evidence for Nels Neilson); 31:19-24 (no evidence for Leroy Braden); 32:20-25, 33:1 (no evidence for Flavilia and H.T Cutler); 33:2-8 (no evidence for J.F. and W.F Medaris); 34:14-24 (no evidence beyond the 1935 application and 1955 letter).

The Hoods raise two broad counter-arguments, each of which is unavailing. First, the Hoods assert grazing activity based not on the TGA application, but on purported land ownership by Edward Edwards—a member of the Edwards family who critically is *not* a predecessor in interest in the base property—and on the presence of other members of the Edwards family in the area. *See* SOF Nos. 26-27. This assertion is based primarily upon a sale document that purportedly establishes Edward Edwards' presence in the Salubria, Idaho area, and a generic statement about livestock in an obituary of Charles R. Edwards dated sixty-six years after the claimed priority date by an unknown author.² This falls well below the *Joyce/LU Ranching* standard for proving a water right from base property on associated federal range. The Court must carefully "examine where the individual predecessors grazed their livestock when determining whether they had acquired any water rights." *Joyce Livestock Co. v. United States*, 144 Idaho 1, 16 (2007). As this court explained on remand, "general averments that grazing

² The statements in the obituary amount to multiple levels of hearsay, and the United States reserves the right to contest the obituary's admissibility and probative value at trial. *See* I.R.E. 802.

existed historically by the public at large in a general area are insufficient . . . in proving any beneficial use right by a predecessor-in-interest, a claimant must still establish the existence and scope of the right and then connect the chain of title.” Mem. Dec. on Remand and Order of Amended Partial Decrees, Subcases 55-10288B, *et al.* (Jul. 3, 2008).

The Hoods ask the Court to presume that presence in the area by member of the Edwards family guarantees that the Hoods’ predecessors-in-interest were watering livestock on all of their claimed sources, without any evidence of the existence of livestock, let alone exactly where they grazed. Indeed, there is substantial countervailing evidence, produced by the Hoods, that the Edwards family did not use the BLM range and instead relied solely on their own property supplemented by National Forest System land. In an application for a permit to use the Weiser National Forest – the first evidence of livestock ownership by the Edwards family – Charles R. Edwards was asked “is applicant dependent on Forest range, or is range elsewhere available for his stock.” *See* First Price Decl., Exhibit 8 (Hood_5). Edwards answered “dependent on Forest Range,” confirming that other federal range—i.e., BLM land—was not available or in use. *Id.*

An obituary by an unknown author sixty-six years after the claimed priority date and stating only that Charles R. Edwards grazed in his lifetime does not rise to the level of proving any specific water right. Nor does a sale document that may or may not illustrate Edward Edwards’ land ownership in the area establish grazing activity by the Hoods’ predecessors on the specific BLM land, given that Edward Edwards is outside the Hoods’ chain of title. That leaves the TGA application as the only available evidence, and as the United States has explained, Charles R. Edwards’ statements in that application do not align with earlier sworn testimony closer in time to the purported priority date. *See* U.S. Mot. 7-10.

Second, the Hoods invoke the TGA application plat and ask the Court to assume that Charles R. Edwards was asserting prior use on the entire modern-day Horse Flat Allotment in his

TGA permit application and was granted a permit for the same. As the United States noted in its Motion, this is simply not true. *See* U.S. Mot. at 10, n.3. As an initial matter, the Horse Flat Allotment did not exist in 1935. *See* Second Price Decl. ¶ 5(b). Instead, Idaho was split into large grazing districts at that time, not particular grazing allotments. Though Charles R. Edwards sought and was granted a permit for Idaho Grazing District No. 1, the lands covered by that permit are not co-extensive with—and, in fact, are quite different from—the lands included in the present-day Horse Flat Allotment. *See* First Price Decl. Exhibit 6 (BLM_672); 7 (BLM_617); Second Price Decl. ¶ 5.

Nor does the plat that Charles R. Edwards submitted in connection with that application support the Director's Report. Initially, the Hoods incorrectly and inexplicably assert that this plat showed the Horse Flat Allotment. In actuality, the plat shows two categories of land: "lands owned" and "lands wished to graze on." *See* SOF 32; Price Decl. Exhibit 6 (BLM_626). From this, the Hoods assert that the lands notated as "lands wished to graze on" are the lands that Charles R. Edwards alleged he had used for forty years. Cls.'s Resp. at 4. The Hoods are mistaken. First, the Hoods are incorrect that "lands wished to graze on"—described prospectively, not retrospectively—indicates prior use, much less forty years of prior use. *See* U.S. Mot. at 9-10. Plainly, the identification of lands on which a permit applicant desires to graze in the future is not an affirmative statement of past use of those lands. Second, even assuming *arguendo* that the Hoods are somehow correct that this plat shows the lands that Charles R. Edwards asserted he used for forty years, the Hoods could only show prior use in four sections: 20, 21, 29, and 33. SOF 33. Yet the majority of the Hoods' claims—fourteen of the twenty-seven total claims—are fully outside the lands shown on Charles R. Edwards' application plat, and four more are partially outside the application plat. *See* Second Price Decl. Exhibit 1; SOF 36-37. IDWR did not identify this flaw in the Hoods' claims in its Director's Reports, apparently

assuming that the Horse Flat Allotment as it exists today has been unchanged since at least 1935. Accordingly, even if the Hoods could prove that their predecessor-in-interest used water on the federal lands in sections 20, 21, 29, and 33 in 1896, that evidence would be irrelevant for more than half of their claims, which explicitly were not included in the July 1935 TGA Application's scope. Thus, as to a majority of the Hoods' claims, the plat that Charles R. Edwards submitted undermines the claim of historical use, rather than supporting it, and further illustrates that IDWR's Director's Reports should not be entitled to prima facie validity at trial.

Finally, the Hoods concede that the evidence the United States has identified may at minimum provide a dispute of material fact as to the priority date. Cls.' Resp. at 4. But the United States has not sought summary judgment as to a specific priority date such that it must prove that date beyond doubt. Instead, the United States seeks summary judgment that a reasonable mind could find that IDWR's recommended priority date is incorrect. Accordingly, a concession that there is a dispute of material fact as to the proper priority date amounts to a concession that the Court should grant the United States' motion; if the priority date is disputed, then the Director's Reports necessarily are as well, and would be entitled to no prima facie validity.

III. Conclusion

For the reasons stated above, the Court should grant the United States' motion, deny the Hoods' contemporaneous motion, and proceed to a trial at which the Hoods properly bear the burden of proving their claims.

Dated: August 16, 2024

Respectfully submitted,

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Bureau of Land Management

CERTIFICATE OF SERVICE

I certify that on August 16, 2024, I served true and correct copies of the foregoing document as follows:

via Hand-Delivery:

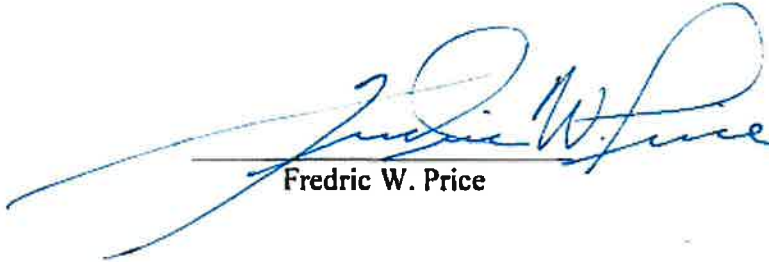
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
Twin Falls, ID 83303-2707

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Fredric W. Price

Exhibit A

Subcase Nos:

67-15263
67-15264
67-15265
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