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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Keith and Karen Hood

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, et al. (Hood)
See Exhibit 1

**HOODS' REPLY IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

Claimants Keith R. Hood and Karen M. Hood (collectively "Claimants" or "Hoods"), by and through their counsel of record, Parsons Behle & Latimer, and pursuant to Idaho Rule of Civil Procedure 56 and SRBA Administrative Order #1, hereby submit this Reply memorandum in support of their Motion for Summary Judgment ("Hoods' Motion") as follows:

I. ADDITIONAL ARGUMENT

The only issue in this matter is the priority date of Hoods' stockwater rights. Undisputed documentary evidence shows that Hoods' predecessors had a continued presence in Washington County, Idaho, since 1895. On November 30, 1895, David G. Edwards was a signatory witness

to a notarized land-purchase agreement in Washington County.¹ On March 12, 1896, David sold his Wisconsin home and had the warranty deed notarized in Washington County.²

Documentary evidence further confirms that Hoods' predecessors were grazing the land since 1895. For example, in a 1935 grazing permit application, Charles R. Edwards averred that he had been grazing in what is now the Payette National Forest "for the past 40 years" (i.e., since 1895).³ And Charles' obituary notes that he came to Washington County in 1895 and engaged in stock raising his entire life.⁴

The USA dismisses or ignores this evidence of continued grazing. The USA insists, in conclusory fashion, that the grazing permit application is ambiguous and should, therefore, not be considered. The USA then focuses its attention on divining inferences from supposed absences. For example, the USA notes the date of land patents and grazing records—insisting, in effect, that the date of the land patents and grazing records demonstrates that Hoods' predecessors could not have possibly resided in Washington County or grazed the lands before the 1900s. Yet, this inference from absence only works if there is, in fact, an absence of records regarding pre-1900 grazing. But as discussed *supra*, there is an abundance of records wherein Hoods' predecessors consistently aver that they had watered stock since 1895.

Furthermore, the USA's focus on the land patent dates is wholly irrelevant to the USA's objection, which is solely directed at Hoods' claimed priority date. The location of a base property, when it was acquired, and whether it matches the present base property, has no bearing on the determination of the priority date. In *Joyce Livestock Co. v. U.S.*, the Idaho Supreme

¹ See Declaration of Keith R. Hood in Opposition to the USA's Motion for Summary Judgment, Exhibit B.

² See *id.*, Exhibit C.

³ See Keith R. Hood's Declaration in Support of Hoods' Motion for Summary Judgment, Exhibit C.

⁴ See Declaration of Keith R. Hood in Opposition to the USA's Motion for Summary Judgment, Exhibit A.

Court held that obtaining a stock water right under the constitutional method merely requires the user to “water[] their livestock in the springs, creeks, and rivers on the range they used for forage.” 144 Idaho 1, 8, 156 P.3d 502, 509 (2007). Hoods have presented substantial evidence that their predecessors engaged in such watering and that it occurred in the present-day Payette National Forest since 1895. The base property associated with that right simply has no bearing on the priority date.

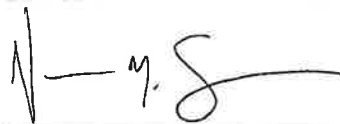
At its core, the USA’s protest stems from its disagreement with the findings of the Director’s Reports. Yet, the USA cannot identify how the Reports were plainly incorrect. Rather, the USA simply expresses dissatisfaction with the Director’s purported failure to disregard the evidence showing continued grazing since 1895. This is not enough to rebut or even call into question the presumed correctness of the Director’s Report—and, by extension, the evidence supporting Hoods’ claimed priority date. Without more, the USA’s objection fails, and the Court may properly find that Hoods’ claimed priority date is correct. In short, on the singular question before the court – the priority date of the stockwater rights, there is no genuine issue of material fact and summary judgment should be granted to Hoods.

II. CONCLUSION

Based upon the foregoing, Hoods respectfully requests the Court grant their Motion for Summary Judgment.

DATED this 15th day of August, 2024.

PARSONS BEHLE & LATIMER

A handwritten signature in black ink, appearing to read "N-M. S.", written over a horizontal line.

Norman M. Semanko; Garrett M. Kitamura
Attorneys for Keith and Karen Hood

EXHIBIT 1

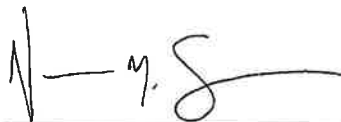
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of August, 2024, I served a true and correct copy of the foregoing document by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

United States of America U. S. Department of Justice Environmental & National Resources Div. 550 W. Fort Street, MSC 033 Boise, ID 83724	☒ U.S. Mail ☐ Facsimile: ☐ Hand Delivery ☐ Overnight Delivery ☐ Email / iCourt:
Director of IDWR P. O. Box 83720 Boise, ID 83720-0098	☒ U.S. Mail ☐ Facsimile: ☐ Hand Delivery ☐ Overnight Delivery ☐ Email / iCourt:



Norman M. Semanko