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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 A

**HOODS' PRE-TRIAL BRIEF**

Claimants Keith R. Hood and Karen M. Hood (collectively "Claimants" or "Hoods"), by and through their counsel of record, Parsons Behle & Latimer, hereby submit this *Pre-Trial Brief* in compliance with the Court's *Second Amended Trial Scheduling Order* ("Scheduling Order"), which was issued on March 29, 2024.

**I. INTRODUCTION AND BACKGROUND**

The sole question before this Court at trial is determining the priority date of the 27 water right claims filed by Claimants Keith R. Hood and Karen M. Hood. *Memorandum Decision and Order on Cross Motions for Summary Judgment* at 1 ("*Summary Judgment Order*"), issued on September 6, 2024. Hoods are owners of certain real property located at 3101 Rush Creek Rd, Cambridge, ID 83610 ("Base Property"). The Base Property is associated with the stockwater rights at issue in this litigation, which are identified in Exhibit A (the "Water Rights"). The points of diversion for the Water Rights are located on a federal grazing allotment known as the Horse Flat Allotment (#95) and managed by the Four Rivers Field Office of the Bureau of Land

Management (“BLM”). The BLM holds decreed beneficial use water rights that overlap with the Water Rights claimed by Hoods.

On or about July 23, 2020, Hoods filed a Notice of Claim for the Water Rights with supporting documentation to the Idaho Department of Water Resources (“IDWR”). That same day, Hoods also filed a Motion for Determination of Deferred De Minimis Domestic or Stock Water Use. Relevant here, Hoods claimed a priority date of December 28, 1896, for all of the Water Rights. The claimed priority date derived from the beneficial use of Hoods’ predecessors—the Edwards family—namely, David G. Edwards and his son Charles R. Edwards. Hoods provided IDWR with documents reflecting the Edwards family’s continuous watering of stock on the present-day Horse Flat Allotment since 1896.

On or about September 17, 2021, IDWR issued two Director’s Reports regarding Hoods’ Water Rights (the “Director’s Reports”). Based on the documentation submitted by Hoods, IDWR recommended in the Director’s Reports all Hoods’ claims for the Water Rights, including the priority date of December 28, 1896.

On November 24, 2021, the United States of America (“United States” or “USA”), on behalf of the BLM, filed a Standard Form 1 Objection (“Objection”) to the Director’s Report, which was signed by BLM Water Rights Specialist Frederic W. Price. In its Objection, the BLM objected only to the recommended priority date for the Water Rights. The BLM alleged that “[t]he evidence submitted by the claimants does not support the 1896 date of priority recommended by IDWR.”

Following briefing and oral argument, this Court denied motions for summary judgment filed by both sides. *Summary Judgement Order* at 7.

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## II. ARGUMENT

The only issue in this matter is the priority date of Hoods' Water Rights. *Summary Judgment Order* at 1. Evidence at trial will show that IDWR's Director's Reports are entitled to the presumption of correctness, which this Court has ruled "remains intact." *Id.* at 7. By extension, evidence at trial (including the Director's Reports) will show that the claimed priority date is supported by copious documentary evidence reflecting the Edwards family's (Hoods' predecessors) continuous beneficial use of the Water Rights.

### ***A. The Evidence Will Show that the Water Rights Have a Priority Date of 1896***

The evidence at trial will show that the Hoods' predecessors, David G. Edwards and family, moved to Washington County, Idaho, in 1895 and subsequently engaged in the stockwater appropriation under the constitutional method, thereby setting the 1896 priority date for the Hoods' Water Rights.

"The constitutional method of appropriation generally requires an actual diversion in order to obtain a water right. Under the constitutional method, however, no diversion from a natural watercourse or diversion device is needed to establish a valid appropriative water right for stock watering." *Joyce Livestock Co. v. United States*, 144 Idaho 1, 7, 156 P.3d 502, 508 (2007) (citations and quotation marks omitted) (cleaned up). 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." *Id.*, 144 Idaho at 8, 156 P.3d at 509. "The rule in this state, both before and since the adoption of our constitution, is that he who is first in time is first in right. Thus, water rights obtained in a manner that is now called the constitutional method of appropriation are entitled to protection...." *Id.* (citations and quotation marks omitted).

As will be shown at trial, substantial evidence supports the 1896 priority date for all of the Hoods' Water Rights. For example, David Edwards' obituary expressly notes that he "came to the Salubria Valley in 1895 where he was engaged in farming and stock raising his entire lifetime." Evidence will show that David Edwards' claims of continuous stockwater use are supported by the statements of his son, Charles R. Edwards, who repeatedly averred in communications with federal officials that his family had been grazing the present-day Horse Flat Allotment since approximately 1896: In a grazing permit application dated July 29, 1935, Charles provided a plat identifying his place of grazing as the Horse Flat Allotment in the present-day Payette National Forest and expressly stated that he had used these lands for the past 40 years, i.e., since 1895. In a December 28, 1955, letter to the BLM, Charles stated that he and his family had used "Taylor land ... continuously for sixty years on exactly the same lands and ha[d] never missed a year of use ..." (As will be shown at trial, "Taylor lands," as used in Charles Edwards' 1955 letter, referred to the grazing lands on the present-day Horse Flat Allotment on which the Edwards family created (by beneficial use) the Hoods' Water Rights.)

***B. The Director's Reports Correctly Identified 1896 as the Priority Date for the Hoods' Water Rights and the Reports are Entitled to a Presumption of Correctness***

Evidence at trial will further show that the Director's Reports, which correctly identified the Water Rights' priority dates as 1896, are entitled to their presumption of correctness.

When determining the priority date of water rights involving stockwater use on federal land, the IDWR Director:

shall accept the date of the first grazing permit issued on the federal grazing allotment, pursuant to federal grazing authorizations, including but not limited to the Taylor Grazing Act, as prima facie evidence of the date of priority, unless the claimant produces evidence of earlier stockwater use on the federal land, which shall then establish the date of priority.

I.C. § 42-1411(2)(d) (cleaned up). The facts stated in Director's Reports "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). "A Rule 301 presumption [under the Idaho Rules of Evidence] 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, 738-39 (1986)). This Court has ruled that the presumption of validity "remains intact." *Summary Judgment Order* at 7.

The United States, for its part, insists that the Director's Reports are flawed and that the record will rebut the prima facie validity of the Director's Reports, despite being unable to do so on summary judgment. As will be shown at trial, the Hoods presented voluminous documentary evidence to IDWR showing that the Hoods' predecessors continuously grazed and watered livestock in the Horse Flat Allotment since at least 1896. The United States will be unable to produce substantial evidence to rebut the correctness of the Director's Reports – just as they failed to do so on summary judgment. Even assuming, *arguendo*, the presumed correctness of the Reports could be rebutted, the evidentiary value of the Reports, combined with testimony and the aforementioned documentary evidence that will be presented at trial, will demonstrate that 1896 is the correct priority date for the Water Rights.

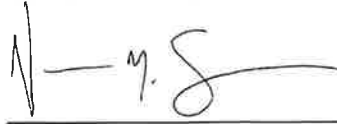
### **III. CONCLUSION**

The Court should approve the Hoods' claimed – and recommended – priority date of December 28, 1896, for the Water Rights. The IDWR Director's Reports, combined with the evidence that will be presented at trial, will demonstrate that this is the correct priority date.

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DATED this 13<sup>th</sup> day of September, 2024.

PARSONS BEHLE & LATIMER

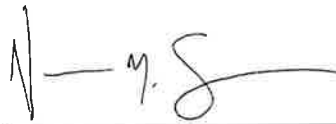


Norman M. Semanko; Garrett M. Kitamura  
Attorneys for Keith and Karen Hood

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13<sup>th</sup> day of September, 2024, a true and correct copy of the foregoing document was filed with the Clerk of the Court by facsimile to (208) 736-2121, and I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

|                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| United States of America<br>U. S. Department of Justice<br>Environmental & National Resources Div.<br>550 W. Fort Street, MSC 033<br>Boise, ID 83724 | <input type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Facsimile:<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Delivery<br><input checked="" type="checkbox"/> Email: <a href="mailto:mark.widerschein@usdoj.gov">mark.widerschein@usdoj.gov</a> ;<br><a href="mailto:katharine.laubach@usdoj.gov">katharine.laubach@usdoj.gov</a> ;<br><a href="mailto:michelle.ramus@usdoj.gov">michelle.ramus@usdoj.gov</a> |
| Director of IDWR<br>P. O. Box 83720<br>Boise, ID 83720-0098                                                                                          | <input type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Facsimile:<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Delivery<br><input checked="" type="checkbox"/> Email: <a href="mailto:file@idwr.idaho.gov">file@idwr.idaho.gov</a>                                                                                                                                                                             |



Norman M. Semanko

## **EXHIBIT A**

### **Subcase Nos.**

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