

Todd Kim
Assistant Attorney General
Mark J. Widerschein
Katharine Laubach
Michelle Ramus
Natural Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
550 West Fort Street, MSC 033
Boise, Idaho 83724
Phone: (202) 532-5803 (Widerschein)
Counsel for the United States of America

RECEIVED

SEP 16 2024

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**

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

United States' Pre-Trial Brief

Pursuant to the Court's Second Amended Trial Scheduling Order, the United States of America, on behalf of the Bureau of Land Management (the "United States" or "BLM") hereby respectfully provides this pre-trial brief with incorporated proposed findings of fact and conclusions of law for the Court's review.

I. United States' Trial Position

Claimants Keith & Karen Hood (the "Hoods") have asserted a December 28, 1896 priority date for each of their 27 water right claims. At trial, the United States will show that the Hoods incorrectly assumed their modern-day BLM grazing allotment is identical to the areas their predecessors were authorized to graze—in fact, a much smaller area—and that the Hoods cannot prove the December 28, 1896 priority date they have asserted.

Instead, the Hoods are entitled to several successive priority dates as land was added to their predecessors' grazing authorizations: April 1, 1936 for 13 places of use on land where one

of their predecessors received a Taylor Grazing Act (“TGA”) license in October of 1935; April 1, 1943 for 2 places of use on land in a small area where the TGA license was expanded for the 1943 grazing season onward; and April 1, 1975 for 20 places of use outside of the 1936 and 1942 areas but within the modern-day Horse Flat Allotment.¹

In asserting their claims, the Hoods have painted with a broad brush: they would have the Court look at one document—which by its own terms would apply to only a handful of their claims—and decree a universal December 28, 1896 priority date for all 27 claims. However, in this case, the Court has access to an unusually extensive documentary record: the entire Homestead Entry Files for each patentee of the Hoods’ present-day base property (U.S. Ex. 16-21); comprehensive BLM grazing files for every Hood predecessor covering each year between 1935 and today (U.S. Ex. 10-13); and documentary evidence relating to land ownership and grazing by the Hoods’ predecessors (e.g., U.S. Ex. 4-9, 26).

A careful review of that documentary record shows that the Hoods’ predecessors—David G. Edwards and Charles R. Edwards—moved onto a portion of the base property in 1900 and 1903, respectively. In their early years there, they were small subsistence farmers—they cultivated under 20 acres, with no evidence of owning or raising livestock. After they became established, in 1915, they sought a permit to graze a small herd of 28 cattle on the nearby Weiser National Forest. At that time, a Forest Ranger reported that they were dependent on National Forest range and that there was no other public range—i.e., BLM-administered land—on which they relied. Over the following years, David G. Edwards passed away and Charles R. Edwards consolidated ownership of the six parcels comprising the present-day base property through a series of purchases concluding in December of 1934.

¹ The total sums to more than the original 27 claims because several of the Hoods’ claims cross boundaries and thus should be split to assign correct priority dates. Accordingly, the United States proposes splitting several claims in the format of 67-XXXXXA and 67-XXXXXB. *See infra* pg. 4, U.S. Table 1.

After the passage of the Taylor Grazing Act in 1934, Charles R. Edwards applied to graze on land managed by BLM. In his 1935 application, Charles R. Edwards made two major assertions. First, he asserted that he had used the “lands covered by this application” for 40 years, and second, he marked Sections 20, 21, 29, and 33 on a map (“1935 Map”) as “lands wished to graze on.” The Hoods allege that this prospective language was meant to show the lands he had been grazing for 40 years prior to the application. In response to his application, the BLM granted Charles R. Edwards a grazing license on specific, enumerated sections of Idaho Grazing District No. 1 (“1936 License”) which was different from what he requested. Charles sought and received a permit to graze an identical area every year until 1942, when a small portion of Section 9 was added (“1942 Permit”). Then, he sought and received identical licenses until 1962, when he sold the property and transferred his grazing rights to Melvin & Inez Dotson (“the Dotsons”). The Dotsons sought and received permits to graze an identical area to the 1942 Permit every year until 1975. In 1975, the Horse Flat Allotment came into existence.

The Hoods’ claims can be split into five categories: (1) claims on land within the 1935 Map and the 1936 License; (2) claims on land not within the 1935 Map but within the 1936 License; (3) claims on land added in Section 9 in 1942; (4) claims on land within the 1935 Map but not within the 1936 License or 1942 Permit; and (5) claims on land not within the 1935 Map, 1936 License, or 1942 Permit onward. While some categories result in the same priority date, each is supported by a different set of documents and requires a different analysis for the Court to determine the proper priority date. *See* U.S. Exhibit 30 (map showing the land in each claim).

/

/

/

U.S. TABLE 1

Category	Claims	Priority Date
1: Within 1935 Map & Within 1936 License	67-15269 67-15270 67-15273A (Sec. 21) 67-15277A (Sec. 21) 67-15278A (SESE, Sec. 20) 67-15284 67-15285A (Sec. 21) 67-15287 67-15288	April 1, 1936
2: Within 1936 License & Outside 1935 Map	67-15275 67-15276 67-15277B (Sec. 22) 67-15289A (SESE, Sec. 9)	April 1, 1936
3: Within 1942 Permit	67-15267 67-15289B (SWSE, Sec. 9)	April 1, 1943
4: Within 1935 Map but Outside 1936 License & 1942 Permit	67-15272 67-15273B (Sec. 20) 67-15274A (Sec. 20) 67-15278B (NESW, NWSE, SWSE, Sec. 20) 67-15283A (Sec. 29) 67-15285B (NWNW, Sec. 21) 67-15286	April 1, 1975
5: Outside 1935 Map, 1936 License, & 1942 Permit	67-15263 67-15264 67-15265 67-15266 67-15268 67-15271 67-15273C (Sec. 17) 67-15274B (Sec. 17) 67-15279 67-15280 67-15281 67-15282 67-15283B (Sec. 30)	April 1, 1975

See U.S. Ex. 30.

/

/

/

At trial, the United States will show that categories (1) and (2) are entitled to a priority date of April 1, 1936—the first date that Charles R. Edwards was authorized to graze on any BLM land. Category (3) is entitled to a priority date of April 1, 1943—the first date that Charles R. Edwards was authorized on a new portion of Section 9. Finally, categories (4) and (5) are entitled to a priority date of April 1, 1975—the first date of reference to the Horse Flat Allotment in the Hoods’ predecessors’ grazing history.

II. Proposed Findings of Fact

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. Decl. of Fredric W. Price ¶ 4 (June 12, 2024) (“First Price Decl.”).
2. The Hoods are currently BLM grazing permittees on the Horse Flat Allotment. First Price Decl. ¶¶ 5-7.
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. First 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. First 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 Nos. 6-11. U.S. Exs. 4-9.
6. The United States issued Patent 2762 to David G. Edwards on May 26, 1908,

- which conveyed a portion of the base property from the United States into private ownership. U.S. Ex. 8 (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. U.S. Ex. 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. U.S. Ex. 7 (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. U.S. Ex. 6 (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. U.S. Ex. 9 (BLM_021).
 11. The United States issued Patent 759345 to Charles R. Edwards (as assignee for Franklin B. Hardy) on June 25, 1920, which conveyed a portion of the base property from the United States into private ownership. U.S. Ex. 5 (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. First Price Decl. ¶ 10.
 13. David G. Edwards did not settle on any portion of the base property until on or about October 15, 1900. U.S. Ex. 16 (BLM_253).
 14. Charles R. Edwards did not establish his own residence on the base property until on or about December 5, 1903. U.S. Ex. 21 (BLM_199).
 15. In his final proof, Charles R. Edwards reported that he first established “actual

residence” upon the land in November of 1904, when he completed a house. U.S. Ex. 21 (BLM_187; BLM_190).

16. Charles R. Edwards and his family was absent from his portion of the base property in the summer of 1905 “working to earn a living and to make money to improve my land.” U.S. Ex. 21 (BLM_187).
17. When asked to identify “number and kind of stock grazed each year,” no stock was identified, and he indicated that he had grown from cultivating two acres to twenty-two acres. U.S. Ex. 21 (BLM_188).
18. None of the witness affidavits submitted identify ownership of any livestock by Charles R. Edwards. U.S. Ex. 21 (BLM_192; BLM_195).
19. David G. Edwards “practically lived” with Charles R. Edwards until 1906. U.S. Ex. 16 (BLM_256).
20. As of 1906, David G. Edwards had “cultivated about 10 or 15 acres of [] land.” U.S. Ex. 16 (BLM_256).
21. When his witness, Nels C. Nielson was asked to describe the use of the land and if used for stock, he referred only to David G. Edwards having “raised crops on the land for three seasons” and that he owned chicken coops. U.S. Ex. 16 (BLM_258).
22. Neither David G. nor Charles R. Edwards owned any portion of the base property until 1908. First Price Decl. ¶ 10; U.S. Ex. 7-8.
23. In 1915, the Forest Service reported that Charles R. Edwards owned 25 cattle and 13 horses. U.S. Ex. 26 (BLM_2305).
24. In 1915, a Forest Ranger reported that Charles R. Edward was “dependent on Forest range,” and that range elsewhere was not “available for his stock.” U.S.

- Ex. 26 (BLM_2305).
25. In 1919, Charles R. Edwards reported that he owned 28 cattle and 5 horses. U.S. Ex. 26 (BLM_2302).
26. Charles R. Edwards acquired the Anna Edwards parcel on or about December 14, 1918. First Price Decl. ¶ 12.
27. Charles R. Edwards acquired the Leroy T. Braden parcel on or about April 14, 1919. First Price Decl. ¶ 12.
28. Charles R. Edwards acquired the David G. Edwards parcel on or about September 26, 1928. First Price Decl. ¶ 12.
29. The Taylor Grazing Act, P.L. 73-482, became effective on June 28, 1934. *See* P.L. 73-482
30. The Taylor Grazing Act authorized the Secretary of the Interior to “establish grazing districts.” P.L. 73-482.
31. Pursuant to the Taylor Grazing Act, Idaho Grazing District No. 1 was established on April 8, 1935. *See* 6 Fed. Reg. 5657 (Nov. 7, 1941) (noting “[t]his order shall be subject to the order of April 8, 1935, of the Secretary of the Interior, establishing Idaho Grazing District No. 1”).
32. Charles R. Edwards acquired the Nels C. Nielson parcel on or about December 14, 1934. First Price Decl. ¶ 12.
33. Ownership of the base property was unified by Charles R. Edwards on or about December 14, 1934. First Price Decl. ¶ 13.
34. Charles R. Edwards first applied for a TGA permit to graze portions of Idaho Grazing District No. 1 on July 27, 1935. U.S. Ex. 10 (BLM_626, BLM_672-675).
35. Charles R. Edwards attached the 1935 Map to his July 27, 1935 application,

indicating “Lands Owned” and “Lands wished to graze on.” U.S. Ex. 10 (BLM_626).

36. In the 1935 Map, the “Lands wish to graze on” are Sections 20, 21, 29, and 33, Township 15N, Range 3W. U.S. Ex. 10 (BLM_626).

37. Charles R. Edwards’ application to graze was approved on October 5, 1935, beginning with the 1936 grazing season by issuance of a license. U.S. Ex. 10 (BLM_615-617).

38. Based on the October 5, 1935 license, Charles R. Edwards was granted permission to graze portions of Sections 9, 15, 20, 21, 22, 28, 29, and 33 of Idaho Grazing District No. 1. Specifically, a joint allotment was established for SESE, S09; NWNW, SENW, NESW, S1/2SW and NWSE, S15; SESE, S20; E1/2, S1/2NW, N1/2SW, and SESW, S21; NW1/4, S22; NWNE, NESW, W1/2SE, SESE, S29; all within T15N, R03W, BM; and an individual allotment for SESE, S28; and NENE, S33 within T15N, R03W, BM. U.S. Ex. 10 (BLM_615-616).

39. On October 1, 1936, a notice was sent to Charles R. Edwards & Son that the Grazing District Advisory Board had recommended a grazing area within Sections 9, 15, 20, 21, 22, 28, 29, and 33. U.S. Ex. 10 (BLM_611).

40. On December 19, 1936, Charles R. Edwards and Son applied for a permit “as noted in 1936 license.” U.S. Ex. 10 (BLM_609).

41. On July 9, 1937, a license was granted to Charles R. Edwards & Son on “[j]oint allotment as noted in 1936 license.” U.S. Ex. 10 (BLM_608).

42. On April 12, 1938, a license was issued “on same joint allotment as noted in 1936 license.” U.S. Ex. 10 (BLM_607).

43. On December 10, 1938, Charles R. Edwards applied for a 1939 allotment on “same

- joint allotment as 1936.” U.S. Ex. 10 (BLM_604).
44. A license was issued for 1939 “on joint allotment as noted in 1936 license.” U.S. Ex. 10 (BLM_598).
45. Charles R. Edwards was granted a 1940 license on “joint allotment as noted in 1936 license.” U.S. Ex. 10 (BLM_593).
46. Charles R. Edwards and Son was granted a 1941 license on “same as noted in 1936 license.” U.S. Ex. 10 (BLM_589).
47. Charles R. Edward and Sons was granted a 1942 license on “federal range on joint allotment as noted in 1936 license.” U.S. Ex. 10 (BLM_586).
48. Later in 1942, Charles R. Edwards was granted a ten-year permit from July 1, 1942 through June 30, 1952, starting in the 1943 season, covering lands in the 1936 License, and adding the NESW, NWSW, SWSW, SESW, NWSE, SWSE of Section 9 (“1942 Permit”). U.S. Ex. 10 (BLM_619-620).
49. Between 1942 and 1952, annual grazing in the same sections was approved without a change. U.S. Ex. 10 (BLM_583 (1943, as “noted in 10 yr permit”); BLM_575 (1944, “as noted in ten year permit”); BLM_574 (1945, “as noted in ten year permit”); BLM_567 (1946, “as noted in ten year permit”); BLM_566 (1947, “as noted in ten year permit”); BLM_565 (1948, “as noted in ten year permit”); BLM_564 (1949, “as noted in ten year permit”); BLM_563 (1950, “as noted in ten year permit”); BLM_562 (1951, “in accordance with the terms of your ten year permit”); BLM_559 (1952, “in accordance with the terms of your ten year permit”)).
50. For 1953, the ten-year permit expired, but grazing was applied for on “joint allotment per expired 10-year permit,” U.S. Ex. 10 (BLM_560), and approved

- “in accordance with the terms of your ten year permit,” *id.* (BLM_559).
51. For 1954 through 1962, Charles R. Edwards continued to apply for and receive permits for the same area as the 1942 Permit. U.S. Ex. 10 (BLM_554; BLM_551; BLM_547; BLM_544; BLM_541; BLM_538; BLM_535; BLM_532; BLM_529).
52. In 1962, Charles R. Edwards sold his base property to Melvin Dotson. U.S. Ex. 11 (BLM_1817).
53. In 1963, 1964, and 1965, Melvin Dotson was authorized on “Joint & Ind. Allotment.” U.S. Ex. 11 (BLM_1890; BLM_1893; BLM_1896).
54. In 1965, as part of a ten year permit inspection for Melvin Dotson, BLM mapped “fed. Range used” as including portions of Sections 9, 15, 20, 21, 28, 29, and 33, identical to the areas in the 1942 Permit with Edwards, Warfield, and Ford. The SWSW of Section 28 and NWNW of Sections 33 are marked as “Individual Allotment.” U.S. Ex. 11 (BLM_1897-1898).
55. In November 1965, Melvin Dotson was granted a ten-year permit to graze the “Dotson, Edwards, Warfield, and Ford joint allotment” from March 1, 1966, through February 28, 1976. U.S. Ex. 11 (BLM_1900).
56. Between 1966 and 1975, Melvin Dotson was reauthorized on the same allotment. U.S. Ex. 11 (BLM_1905; BLM_1908; BLM_1911; BLM_1914; BLM_1917; BLM_1921; BLM_1924; BLM_1927; BLM_1932).
57. In 1975, Melvin Dotson was first authorized on an allotment referred to as Horse Flat, beginning on April 1, 1975. U.S. Ex. 11 (BLM_1933).
58. U.S. Ex. 22 accurately reproduces the boundaries of the modern-day Horse Flat allotment.

59. U.S. Ex. 23 accurately reproduces the boundaries of the 1935 Map and 1936 License.
60. U.S. Ex. 24 accurately reproduces the boundaries of the 1936 License.
61. U.S. Ex. 25 accurately reproduces the boundaries of the 1942 Permit.
62. U.S. Ex. 30 accurately reproduces the location of the Hoods' claims and the boundaries of the modern-day Horse Flat Allotment, 1935 Map, 1936 License, and 1942 Permit.
63. The places of use for claims 67-15269, 67-15270, 67-15273A (Sec. 21), 67-15277A (Sec. 21), 67-15278A (SESE, Sec. 20), 67-15284, 67-15285A (Sec. 21), 67-15287, and 67-15288 are fully within the lands identified on Charles R. Edwards' July 27, 1935, TGA application as "lands wished to graze on" and the 1936 License. U.S. Ex. 30.
64. The first date Charles R. Edwards was authorized to graze those lands was April 1, 1936. U.S. Ex. 10 (BLM_615-617).
65. The priority date for Claims 67-15269, 67-15270, 67-15273A (Sec. 21), 67-15277A (Sec. 21), 67-15278A (SESE, Sec. 20), 67-15284, 67-15285A (Sec. 21), 67-15287, and 67-15288 is April 1, 1936. U.S. Ex. 10 (BLM_615-617).
66. The places of use for claims 67-15275, 67-15276, 67-15277B (Sec. 22), and 67-15289A (SESE, Sec. 9) are fully within the 1936 License but not within the 1935 Map. U.S. Ex. 30.
67. The first date Charles R. Edwards was authorized to graze those lands was April 1, 1936. U.S. Ex. 10 (BLM_615-617).
68. The priority date for Claims 65-15275, 65-15276, 67-15277B (Sec. 20), and 67-15289A (SESE, Sec. 9) is April 1, 1936. U.S. Ex. 10 (BLM_615-616)

69. The places of use for claims 67-15267 and 67-15289B (SWSE, Sec. 9) are within the 1942 Permit but not within the 1935 Map or the 1936 License. U.S. Ex. 30.
70. The first date Charles R. Edwards was authorized to graze those lands was April 1, 1943. U.S. Ex. 10 (BLM_619-620).
71. The priority date for Claims 67-15267 and 67-15289B (SWSE, Sec. 9) is April 1, 1943. U.S. Ex. 10 (BLM_619-620).
72. The places of use for claims 67-15272, 67-15273B (Sec. 20), 67-15274A (Sec. 20), 67-15278B (NESW, NWSE, SWSE, Sec. 20), 67-15283A (Sec. 29), 67-15285B (NWNW, Sec. 21), and 67-15286 are inside the 1935 Map but not the 1936 License or 1942 Permit. U.S. Ex. 30.
73. Charles R. Edwards was not authorized to utilize those lands until their inclusion in the Horse Flat Allotment. U.S. Ex. 30.
74. The priority date for Claims 67-15272, 67-15273B (Sec. 20), 67-15274A (Sec. 20), 67-15278B (NESW, NWSE, SWSE, Sec. 20), 67-15283A (Sec. 29), 67-15285B (NWNW, Sec. 21), and 67-15286 is April 1, 1975. U.S. Ex. 11 (BLM_1933).
75. The places of use for claims 67-15263, 67-15264, 67-15265, 67-15266, 67-15268, 67-15271, 67-15273C (Sec. 17), 67-15274B (Sec. 17), 67-15279, 67-15280, 67-15281, 67-15282, and 67-15283B (Sec. 30) are in none of the 1935 Map, 1936 License, or 1942 Permit. U.S. Ex. 30.
76. Charles R. Edwards was not authorized to utilize those lands until their inclusion in the Horse Flat Allotment. U.S. Ex. 11 (BLM_1933).
77. The priority date for Claims 67-15263, 67-15264, 67-15265, 67-15266, 67-15268, 67-15271, 67-15273C (Sec. 17), 67-15274B (Sec. 17), 67-15279, 67-

15280, 67-15281, 67-15282, and 67-15283B (Sec. 30) is April 1, 1975. U.S. Ex. 11 (BLM_1933).

III. Proposed Conclusions of Law

1. The United States has rebutted the prima facie status of the IDWR Director's Reports by presenting substantial evidence by which a reasonable mind could find that the priority date recommended is in question. *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 746 (1997).
2. As the Claimants, the Hoods bear the ultimate burden of persuasion for each element of their water rights. I.C. § 42-1411(5).
3. Water rights for stockwatering established under the constitutional method require the diversion of water and application to a beneficial use. *Joyce Livestock Co. v. United States*, 144 Idaho 1, 8 (2007).
4. A claimant is not entitled to the water located on their land simply by virtue of land ownership. Ord. Accepting in Part and Denying in Part Special Master's Report and Recommendation, Subcase No. 36-15452, at 10 (Oct. 17, 1997).
5. To prove beneficial use by a predecessor-in-interest, a claimant must establish the existence and scope of the right and then connect the chain of title and appurtenant water rights from the original appropriator to the claimant. Mem. Dec. on Remand and Order of Amended Partial Decrees, Subcases 55-10288B, *et al.* at 5 (Jul. 3, 2008).
6. "General averments that grazing existed historically by the public at large in a general area are insufficient to establish the existence and transfer of water rights." *Id.*, quoting Mem. Dec. and Ord. on Challenge, Ord. of Partial Decrees, Subcases 55-10288B, *et al.* at 27 (Jan. 3, 2005).

7. “[F]or stockwater use on federal land, the 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(d).
8. The evidence presented by the Hoods is insufficient to show that a water right was initiated on any specific source before the passage of the Taylor Grazing Act and the granting of the 1936 License authorizing Charles R. Edwards to graze on BLM land.
9. For claimed places of use on land that falls within the 1936 License, the Hoods’ predecessor became authorized to graze on federal land on April 1, 1936, and, accordingly, established a water right on sources in that area by beneficial use on that date.
10. For claimed places of use on land that falls outside the 1936 License, a water right was not established in 1936, because there is no evidence of application to beneficial use.
11. For claimed places of use on land that falls within the 1942 Permit, the Hoods’ predecessor became authorized to graze on federal land on April 1, 1943, and accordingly, established a water right on sources in that area by beneficial use on that date.
12. A water right cannot be initiated by trespass upon private property. *Lemmon v. Hardy*, 95 Idaho 778, 780 (1974).

13. For the same reason, a water right cannot be maintained by trespass on private property.
14. To establish and maintain a water right claim on surveyed federal land, a Claimant must be authorized by the BLM to access that federal land.
15. After the relevant BLM land was included in Idaho Grazing District No. 1 and subject to regulation under the Taylor Grazing Act, access to the BLM land without authorization would constitute trespass.
16. The Hoods' predecessors did not establish a water right on the federal land outside of the 1936 License and 1942 Permit until the land was included in their authorized allotment in 1975.
17. The Hoods' claims should be decreed as described in Findings of Fact Nos. 65, 68, 71, 74, and 77.

Dated: September 13, 2024

Respectfully submitted,

TODD KIM, Assistant Attorney General
Environment & Natural Resources Division



MARK J. WIDERSCHIN
KATHARINE LAUBACH
MICHELLE RAMUS

Trial Attorneys

mark.widerschein@usdoj.gov | (202) 532-5803

United States Department of Justice
Environment & Natural Resources Division

Natural Resources Section

P.O. Box 7611

Washington, D.C. 20044-7611

ATTORNEY FOR UNITED STATES OF AMERICA,
Bureau of Land Management

CERTIFICATE OF SERVICE

I certify that on September 13, 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

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

Norman M. Semanko
Garrett M. Kitamura
PARSONS BEHLE & LATIMER
800 W. Main Street, Suite 1300
Boise, Idaho 83702

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

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



Matthew H Smith

Ex. 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