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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

HOOD'S RESPONSE IN OPPOSITION
TO USA'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

Keith and Karen Hood ("Hood"), by and through their counsel of record, Parsons Behle & Latimer, hereby submits their response in opposition to the Motion for Partial Summary Judgment filed on July 12, 2024 ("USA's Motion") by the United States of America on behalf of the Department of the Interior, Bureau of Land Management ("USA," the "United States," or "BLM").

The grounds for this response are set forth below and are further supported by the Declaration of Keith R. Hood ("Hood Decl.") filed concurrently herewith. This response also incorporates by reference the memorandum, declarations, and exhibits filed concurrently with the Hoods' Motion for Summary Judgment on July 12, 2024 ("Hood MSJ").

For the reasons that follow, the Court should deny the USA's Motion to rebut the Idaho Department of Water Resources ("IDWR") Director's Reports.

I. STATEMENT OF FACTS (“SOF”)

The Hoods incorporate by reference the Statement of Facts set forth in their previously filed Motion for Summary Judgment. For purposes of responding to the USA’s Motion, the Hoods set forth the following additional facts:

1. In 1895, David G. Edwards and his family moved from Wisconsin to the Salubria Valley in Idaho. Hood Decl., ¶ 4, Ex. A.

2. The Salubria Valley is located in Washington County, Idaho, near the City of Cambridge, Idaho. *See Google Maps directions to Salubria Valley, Idaho*, GOOGLE, <https://www.google.com/maps/place/Salubria+Valley,+Idaho+83610/data=!4m2!3m1!1s0x54a5c00f493508a5:0x6026cb9dbf4aa421!5m1!1e4?sa=X&ved=1t:242&ictx=111>.

3. Relevant here, David G. Edwards was the father of Charles R. Edwards and Edward E. Edwards. David’s wife was Mary E. Edwards (née Jewell). Hood Decl., ¶¶ 4, 7, Exs. A, D.

4. A November 30, 1895 land-purchase agreement between Herbert and Marnie Jewell and Edward E. Edwards for property in Washington County, Idaho, identifies David G. Edwards as a witness to the agreement. The agreement was notarized in Washington County, Idaho, by notary public R.E. Wilson. Hood Decl., ¶ 5, Ex. B.

5. By a warranty deed dated March 12, 1896, David G. Edwards and Mary E. Edwards sold their Wisconsin property. The warranty deed was notarized in Washington County, Idaho, by notary public R.E. Wilson and recorded March 27, 1896. Hood Decl., ¶ 6, Ex. C.

6. On or about December 16, 1961, Charles R. Edwards died. His obituary, published in the Idaho Statesman on December 17, 1961, identified Charles as a resident of

Cambridge, Idaho, and noted that Charles “came to the Salubria Valley in 1895 where he was engaged in farming and stock raising his entire lifetime.” Hood Decl., ¶ 4, Ex. A.

II. LEGAL STANDARD

A court may only grant summary judgment “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.” IDAHO R. CIV. P. 56(a). “The burden of proving the absence of a genuine issue of material fact rests at all times on the moving party.” *Holdaway v. Broulim's Supermarket*, 158 Idaho 606, 610, 349 P.3d 1197, 1201 (2015) (quoting *Bromley v. Garey*, 132 Idaho 807, 810–11, 979 P.2d 1165, 1168–69 (1999)). “All disputed facts must be liberally construed in favor of the nonmoving party, and all reasonable inferences from the record must be drawn in favor of the nonmoving party.” *Farm Bureau Mut. Ins. Co. of Idaho v. Cook*, 163 Idaho 455, 458, 414 P.3d 1194, 1197 (2018).

III. ARGUMENT

The USA’s Motion wholly fails to rebut the prima facie status of the Director’s Reports. The available facts support rather than undermine the presumed correctness of the Director’s Reports. Even assuming, *arguendo*, that there is *some* doubt as to the correctness of the Director’s Reports, such doubt does not rise to the level of rebutting the Director’s Reports. On the contrary, such doubt only demonstrates that a dispute of material fact exists, making summary judgment improper.

The relevant facts strongly support the notion that the Edwards family settled in Idaho and began stock watering in the late 1800s. These facts further support the reasonableness of the findings in the Director’s Reports. The United States lacks any rebuttal to these documented facts and cannot bear its burden to rebut the presumed correctness of the Director’s Reports.

The facts show that the Hoods' predecessor, David G. Edwards, moved to Washington County, Idaho, in 1895. *See* SOF, ¶ 1. Upon his arrival, David and his children began farming and raising livestock. *Id.* Indeed, David's obituary expressly notes that he "came to the Salubria Valley in 1895 where he was engaged in farming and stock raising his entire lifetime." *Id.* These claims are supported by the statements of David's son, Charles R. Edwards, who repeatedly averred in communications with federal officials that his family had been grazing the land since approximately 1895: 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. *See* Hood Declaration in Support of Hoods' Motion for Summary Judgment, Ex. C. In a December 28, 1955 letter to the BLM, Charles stated that he and his family had used Taylor Land "continuously for sixty years [i.e., since 1895] on **exactly the same lands** and ha[d] never missed a year of use until recent years..." *See id.*, Ex. B.

The United States, for its part, alleges that Charles Edwards' statements in the 1935 grazing permit application are ambiguous. The U.S. nitpicks phrases and "undefined" words in the application. But such criticism is of no moment. First, on summary judgment, where facts are viewed in the light most favorable to the nonmoving party (here, the Hoods), the United States cannot overcome the presumed correctness of the Director's Reports by conjuring the specter of ambiguity. Second, this forced ambiguity requires one to ignore the plain meaning of words as used in the context of a grazing permit. Finally, such ambiguity—even if it exists—does not plainly undermine the presumed correctness of the Director's Reports. Rather, at most, it merely demonstrates that there is a dispute of material fact, which forecloses summary judgment.

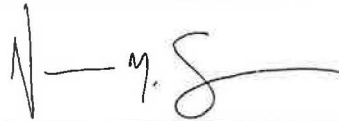
The United States has failed to present compelling, much less the requisitely sufficient evidence to rebut the presumed correctness of the Director's Reports. The United States' preferred reading of the documents at issue and the United States' futile attempt to raise the cloud of ambiguity are simply insufficient to meet the requirements of summary judgment. Accordingly, the USA's Motion should be denied.

IV. CONCLUSION

Based upon the foregoing, Hood respectfully requests that the Court deny the United States' Motion for Partial Summary Judgment.

DATED this 1st day of August, 2024.

PARSONS BEHLE & LATIMER

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

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

EXHIBIT 1

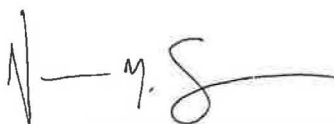
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of August, 2024, I sent the foregoing document by FedEx to the Court, and served a true and correct copy of 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