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DEPARTMENT OF
WATER RESOURCES

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

**United States' Notice of Challenge to Special Master's
Report and Recommendation, Findings of Fact, and Conclusions of Law**

Pursuant to Snake River Basin Adjudication Administrative Order 1 § 13(c), the United States of America, on behalf of the Department of the Interior – Bureau of Land Management (“the United States” or “BLM”), hereby respectfully submits this *Notice of Challenge* to the Special Master’s Report and Recommendation, Findings of Fact, and Conclusions of Law (Jan. 8, 2025), as amended (Apr. 24, 2025) (“R&R”).

I. Procedural History

Claimants Keith & Karen Hood (the “Hoods”) asserted twenty-seven water right claims on federal land managed by BLM. While the Hoods originally benefitted from the prima facie status of the IDWR Director’s Reports associated with the claims, IDWR subsequently disavowed its own Director’s Reports during trial, putting the burden of proof on the Hoods for all twenty-

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seven claims. Trial was held on October 2 and 3, 2024, and on January 8, 2025, the Special Master issued his R&R recommending that all twenty-seven claims should be decreed with a priority date of April 1, 1911. On February 28, 2025, the United States filed a motion to alter or amend the R&R, and a hearing on the motion was held April 1, 2025. On April 24, 2025, the Special Master issued an order amending the R&R. The cause for the United States' challenge of the R&R, as amended, is laid out below in the statement of issues on challenge.

II. Statement of Issues on Challenge

In the R&R, the Special Master recommended a priority date not sought at trial by either party. In doing so, the Special Master erred in applying the principles for determining priority dates for stockwater claims on federal land laid out in this Court's precedent, as well as in *Joyce Livestock Co. v. United States*, 144 Idaho 1, 156 P.3d 502 (2007) and *LU Ranching Co. v. United States*, 144 Idaho 89, 156 P.3d 590 (2007). The R&R recommended earlier priority dates than are supported by the evidence at trial. The United States asserts that the Special Master specifically erred in:

- a. Determining that the priority date for each claim was April 1, 1911 rather than the dates between 1931 and 1975 which are supported by the Hoods' predecessors' grazing files.
- b. Determining that Claimants met their burden of proving when, where, and in what amounts their predecessors watered livestock on federal land for each claim.
- c. Determining that Claimants can show an unbroken chain of use for each claimed source back to April 1, 1911.
- d. Determining that the Hoods' predecessors utilized Stock Driveway No. 20 before the expansion of the Horse Flat Allotment.

- e. Determining that the Hoods' predecessors established and then maintained several claims (referred to as Category 4 & 5 claims in the United States' briefing) between 1936 and 1975 despite not receiving Taylor Grazing Act authorization to graze the land and not actually grazing the land.
- f. Determining that a *de minimis* water user can later expand their water use up to 13,000 gpd and relate it back to an initial appropriation of less water.
- g. Analyzing SRBA Basin-Wide Issue 12 and IDWR Adjudication Memorandum No. 12 in determining priority dates where an appropriator's herd size increase over time.

III. Transcripts Requested

No transcripts are requested. The parties jointly engaged a court reporter for trial and each have copies of the trial transcript. A copy of the transcript was provided to the Special Master when the parties filed their post-trial briefs and can be lodged with the Court if required.

Dated: May 8, 2025

Respectfully submitted,

Adam R.F. Gustafson, Acting Assistant Attorney General
Environment & Natural Resources Division

/s/ Mark J. Widerschein

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ATTORNEY FOR UNITED STATES OF AMERICA,
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CERTIFICATE OF SERVICE

I certify that on May 8, 2025, I served true and correct copies of the foregoing document as follows:

via FAX:

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Snake River Basin Adjudication
253 Third Avenue North
Twin Falls, ID 83303-2707

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

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Wade Gibson

Ex. A

Subcase Nos:

67-15263
67-15264
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