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DISTRICT COURT - SRBA
 Fifth Judicial District
 County of Twin Falls-State of Idaho

JUN 23 2025

By _____

Clerk

Deputy Clerk

Counsel for the United States of America

**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 Ex. A

**United States' Reply Brief in Support of Its Challenge to
 Special Master's Report & Recommendation, As Amended**

On May 8, 2025, the United States of America, on behalf of the Department of the Interior - Bureau of Land Management ("United States"), filed a Notice of Challenge to the Special Master's Report and Recommendation, as Amended ("R&R"). The United States filed its opening brief on May 29, 2025 ("Opening Brief"), and Claimants Keith and Karen Hood ("the Hoods") filed a response brief on June 12, 2025 ("Response Brief"). The issues challenged all relate to the priority date for each of the Hoods' twenty-seven water right claims for stockwater use on federal land managed by the Bureau of Land Management ("BLM").¹ The

¹ BLM as used herein refers to the present-day agency, as well as its predecessor agencies, including, but not limited to, the Grazing Service and General Land Office.

issues have been copiously briefed in pre-trial briefing, post-trial briefing, in briefing related to the United States' motion to amend or alter the R&R, and, now, in briefing related to the United States' Notice of Challenge. All issues were also addressed at trial and therefore referenced in the trial transcript, which the United States submitted to this Court when it filed the Opening Brief. The United States therefore respectfully provides this short reply to address a few inaccurate assertions in the Hoods' Response Brief.

I. The Hoods were not a prevailing party before the Special Master.

The Hoods cite *In re: SRBA*, Subcase Nos. 55-10135, *et al.*, Mem. Dec. and Ord. on Challenge, at 4 (Aug. 3, 2005) ("*Joyce Challenge*"), for the principle that a party challenging a finding of fact has the burden of showing error and evidence will be reviewed in the most favorable light to the prevailing party. *See* Resp. Br. at 3. Contrary to their implication, the Hoods were not a prevailing party before the Special Master, whose R&R recommended a priority date 15 years later than the date claimed by the Hoods.

From the filing of their claims all the way through trial, the Hoods claimed a priority date of December 28, 1896, for all 27 of their claims. While the Hoods originally benefitted from the *prima facie* status of the IDWR Director's Reports supporting their claimed priority date, IDWR expressly disavowed the Director's Reports at trial. Trial Tr. 27:19–28:6 (Oct. 2–3, 2024). Craig Saxton testified on behalf of IDWR at trial that, if he could have issued a new opinion that day, he would recommend a priority date of October 15, 1900, for some of the Hoods' claims, and March 4, 1975, for the remainder of the claims. Trial Tr. 31:12–21. He further testified that, alternatively, all the claims would need to maintain the most junior priority date which, in his opinion that day, would be March 4, 1975. *Id.* 31:22–25. The Hoods' counsel stated at trial that "1900 makes sense to us," and in their post-trial briefing they, for the first time, asserted a priority date of October 15, 1900, for all twenty-seven of their claims. And, yet, the Special

Master recommended a priority date of April 1, 1911, nearly 11 years after the Hoods' amended date claimed. *See* R&R at 23. If anything, the United States was the prevailing party before the Special Master, because, based on the priority date recommended by the R&R, the Special Master found the Hoods did not meet their burden to demonstrate either of their claimed priority dates.

II. Proving cattle ownership is not sufficient to prove grazing on public lands.

The Hoods—and the R&R—at times conflate cattle ownership with the Hoods' burden to demonstrate that their predecessors grazed cattle on the specific public lands associated with their water right claims. For instance, the Hoods cite a finding by the Special Master that the Hoods' predecessors “did own livestock at the turn of the century and, by 1911, were capable of grazing the entirety of the grazing land associated with each of the claimed 27 stream reaches.” Resp. Br. at 10–11; *see also* R&R ¶ 81 (“[B]y the 1911 grazing season, Charles Edwards could have turned out approximately 29 head plus the additional cattle owned by David Edwards, thus utilizing the entirety of what is now known as the Horse Flat Allotment.”). The Response Brief also discusses the Special Master’s inference that fencing and a barn or a stable, corral, and fencing on a homestead property are “indicative of livestock ownership.” *Id.* at 11 (citing R&R ¶ 41–46, 58).

However, neither of these findings demonstrate that the Hoods' predecessors acquired water rights. *Joyce Livestock Co. v. United States*, 144 Idaho 1, 156 P.3d 502 (2007) (“*Joyce*”) and *LU Ranching Co. v. United States*, 144 Idaho 89, 156 P.3d 590 (2007) (“*LU Ranching*”) require the Hoods to demonstrate—and the Court to find—that their predecessors “grazed livestock where they would have access to the water sources at issue.” *Joyce*, 144 Idaho at 16. The Special Master’s finding that the Hoods' predecessors owned enough livestock that they

“could have” been grazing the areas that the Hoods claimed, R&R ¶ 81 (emphasis added), is not a finding that the livestock *did in fact* graze there, which is the finding that *Joyce* and *LU Ranching* require. As the Special Master’s use of the term “could have” suggests, the Hoods failed to demonstrate their predecessors actually grazed their livestock in the specific areas at issue.

III. All the issues identified in the Notice of Challenge were raised at trial.

In Challenge Issue Number 5, the United States contends that the Special Master erred in determining that the Hoods’ predecessors established and then maintained certain categories of claims between 1936 and 1975 despite not receiving Taylor Grazing Act authorization to graze the land and not actually grazing the land. Opening Br. at 12–13. The Hoods assert that the United States’ challenge is “untimely” because it raised it for the first time in post-trial briefing. *See* Resp. Br. at 17–18. This is not true. Prior to trial, in its pre-trial brief, the United States raised the issue of claims on land not authorized for use until 1975. *See, e.g.*, Proposed Findings of Fact Nos. 7277; Proposed Conclusions of Law Nos. 12–16. Accordingly, there was clear notice to the Hoods that the United States intended to argue that they could not establish beneficial use for certain claims any earlier than 1975. The Hoods were also on notice from outset of this case because the United States’ objections indicated there were potential periods of non-use at issue in the case. *See, e.g.*, 67-15263 objection. Although the United States filed a partial motion for summary judgment prior to trial, Idaho Rule 56 does not require a Motion for Summary Judgment to include all trial issues; instead, it allows a party to move regarding “each claim or defense, or the part of each claim or defense.” I.R.C.P. 56(a). Thus, the United States had no obligation to raise the issue in its motion to preserve it for trial.

The United States' post-trial contentions about periods of non-use were fully encompassed within the United States' trial position that there had been no use of water by the Hoods' predecessors on any of lands at issue for the Category 4 and 5 claims prior to April 1, 1975. *See* United States' Pre-Trial Br. at 4, 13. In fact, the Hoods only alleged for the first time at trial that their predecessors had used this land by way of trailing cattle. As the Special Master acknowledges in the R&R, the Hoods *did* have an opportunity to develop the trial record on this issue, and indeed, questioned a witness about it. *See* R&R at 7 (quoting Trial Tr. 86:3–87:11); *see also* Trial Tr. 306:10–11, 347:10–16, 399:13–21; U.S. Ex. 25; U.S. Ex 27 at BLM_2259. The United States' expert testified at trial that the Hoods' predecessors would have needed a trailing permit to trail as the Hoods alleged and they were never granted one, while other users in the area were. Tr. 314:5–15. However, the first opportunity for the United States to make legal arguments specific to the Hoods' allegations about historical use of this land was the post-trial brief, which it did. *See* United States Post-Trial Br. at 21–27.

The other issues in the Notice of Challenge were also sufficiently raised at trial. *See, e.g.*, Trial Tr. 27:19:32:5, 38:13–55:3, 112:14–115:16, 250:6–251:5, 269:13–21, 393:10–21 (relating to Challenge Issue No. 1); Trial Tr. 272:3–16, 280:17–25, 281:1–2; U.S. Exs. 16–21 (relating to Challenge Issue No. 2); Trial Tr. 86:3–87:11, 306:10–11, 347:10–16, 399:13–21; U.S. Ex. 25; U.S. Ex 27 at BLM_2259 (relating to Challenge Issue No. 3); Trial Tr. 134:19–148:4, 134:19–25, 393:13–21 2259 (relating to Challenge Issue Nos. 6 and 7).

IV. The United States identified clearly erroneous findings of fact.

The United States specified findings of fact 74, 75, 79, 82, and 83 as clear error relating to the priority dates for the Hoods' claims. These clear errors are not a "mere disagreement with the Special Master's [factual] finding[s]," as the Hoods suggest. Resp. Br. at 5. The clear error

is a result of the Special Master's failure to conduct a particularized analysis of where the Hoods' predecessors historically grazed their livestock, as required by *Joyce* and *LU Ranching*. See Opening Br. at 3–11 (discussing Challenge Issue Numbers 2 and 3); see also, e.g., *Joyce*, 144 Idaho at 16 (stating that a stockwatering right on federal land “must be based upon [the appropriator’s] application of the water to a beneficial use by grazing livestock where they would have access to the water sources at issue”).

To ensure an accurate record, the United States also identifies as clear error findings of fact 21, 24, 28, 30, 33, 35, 36, 37, 39, 47.5, 48, 57.5, 61, 65.5, and 73, as well as the unnumbered finding of fact between finding of fact numbers 20 and 21. These specific findings of fact underpin the “ultimate” findings cited as error above: 74, 75, 79, 82, and 83. The clear error made in the identified findings of fact also led the Special Master to erroneously conclude that the Hoods had met their burden of proving when, where, and in what amounts their predecessors watered livestock on federal land for each claim at least as far back as April 1, 1911. See generally Opening Br.

The United States further asserts that at least some of the identified findings of fact were either conclusions of law or were induced by an erroneous view of the law. If a “finding was induced by an erroneous view of the law,” it may be rejected, and if it is “designated as one of fact, but is in reality a conclusion of law, it is freely reviewable” by this Court. *Joyce* Challenge at 5–6. This Court, after “independently review[ing] the evidence” as required, *id.* at 5, should delete the erroneous findings of fact or replace them with correct findings based on the record.

V. The United States identified erroneous conclusions of law.

The United States identified several legal errors in the R&R, specifically, conclusions of law 4.5, 9, 9.5, and 10. These assignments of error were not a “mere expression of policy

disagreement,” as the Hoods suggest. Resp. Br. at 19. For all the reasons stated in the United States’ Opening Brief, these conclusions of law should be vacated and corrected. *See* Opening Br. at 3–11 (discussing Challenge Issue Numbers 2 and 3); *id.* at 11–12 (discussing Challenge Issue Number 4); *id.* at 12–13 (discussing Challenge Issue Number 5); *id.* at 13–21 (discussing Challenge Issues Number 6 and 7).

VI. Conclusion

For the reasons set forth above and in the United States’ Opening Brief, this Court should reject the R&R’s erroneous findings of fact 21, 24, 28, 30, 33, 35, 36, 37, 39, 47.5, 48, 57.5, 61, 65.5, 73, 74, 75, 79, 82, and 83, as well as the unnumbered finding of fact between finding of fact numbers 20 and 21, and conclusions of law 4.5, 9, 9.5, and 10, and instead adopt the proposed findings of fact and conclusions of law set forth in the United States’ post-trial brief. This Court should also enter findings that the Hoods are entitled to a priority date of June 28, 1931, for the Category 1 and 2 claims; a priority date of April 1, 1943, for the Category 3 claims; and a priority date of April 1, 1975, for the Category 4 and 5 claims.

Dated: June 23, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 23rd, 2025, I served true and correct copies of the foregoing document as follows:

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Ex. A

Subcase Nos:

67-15263
67-15264
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