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Attorneys for Applicants in Intervention Joyce Livestock Co.; LU Ranching Co.; Pickett Ranch & Sheep Co.; and Idaho Farm Bureau Federation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff

v.

STATE OF IDAHO; STATE OF IDAHO DEPARTMENT OF WATER RESOURCES, an agency of the State of Idaho, and GARY SPACKMAN, in his official capacity as Director of the Idaho Department of Water Resources

Defendants,

IDAHO HOUSE OF REPRESENTATIVES; MIKE MOYLE, in his official capacity as Majority Leader of the House; IDAHO SENATE; and CHUCK WINDER, in his official capacity as President Pro Tempore of the Senate,

Applicants in Intervention, and

JOYCE LIVESTOCK CO.; LU RANCHING CO.; PICKETT RANCH & SHEEP CO; and IDAHO FARM BUREAU FEDERATION,

Applicants in Intervention.

Case No. 1:22-cv-00236-DCN

JOYCE LIVESTOCK CO., LU RANCHING CO., PICKETT RANCH & SHEEP CO., AND IDAHO FARM BUREAU FEDERATION'S MOTION TO INTERVENE AS DEFENDANTS

Joyce Livestock Co., LU Ranching Co., Pickett Ranch & Sheep Co., and Idaho Farm Bureau (collectively "Ranchers") hereby move for leave to intervene in this litigation as a matter of right as Defendants-Intervenors pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure. Alternatively, Ranchers move to intervene permissively pursuant to Rule 24(b)(1)(B). This motion is accompanied by a memorandum of support of the motion, together with the Ranchers' proposed answer, and the supporting declarations of Paul Nettleton, Tim Lowry, Don F. Pickett, and Russ Hendricks, all filed contemporaneously with this motion.

Prior to filing this motion, counsel for Ranchers contacted counsel for the original parties to this action and counsel for the proposed legislative intervenors. Counsel for the State of Idaho defendants stated that they take no position on Ranchers' motion. Counsel for the Idaho legislative applicants in intervention stated that they do not oppose Ranchers' motion. Counsel for the United States stated that that it reserves its position on Ranchers' motion pending its review of this filing.

WHEREFORE, Ranchers respectfully pray this Court for an Order granting this Motion to Intervene as defendants in this matter.

Executed this 30th day of August 2022.

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Attorney for Defendant-Intervenors Joyce Livestock Co.; LU Ranching Co.; Pickett Ranch & Sheep Co.; and Idaho Farm Bureau Federation

CERTIFICATE OF SERVICE

I hereby certify that, on August 29, 2022, I filed the foregoing document with the Clerk of the Court using this Court's CM/ECF system, which will send a notification to all counsel of record pursuant to Fed. R. Civ. P. 5 and D. Idaho L.R. 5.1(k).

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Plaintiff

v.

STATE OF IDAHO; STATE OF IDAHO DEPARTMENT OF WATER RESOURCES, an agency of the State of Idaho, and GARY SPACKMAN, in his official capacity as Director of the Idaho Department of Water Resources

Defendants,

IDAHO HOUSE OF REPRESENTATIVES; MIKE MOYLE, in his official capacity as Majority Leader of the House; IDAHO SENATE; and CHUCK WINDER, in his official capacity as President Pro Tempore of the Senate,

Applicants in Intervention, and

JOYCE LIVESTOCK CO.; LU RANCHING CO.; PICKETT RANCH & SHEEP CO; and IDAHO FARM BUREAU FEDERATION,

Applicants in Intervention.

Case No. 1:22-cv-00236-DCN

DEFENDANT-INTERVENORS JOYCE LIVESTOCK CO., LU RANCHING CO., PICKETT RANCH & SHEEP CO., AND IDAHO FARM BUREAU FEDERATION'S MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Introduction

Joyce Livestock Company, LU Ranching Company, Pickett Ranch and Sheep Company, and the Idaho Farm Bureau Federation (collectively "Ranchers") seek to intervene as defendants in the above-captioned case and defend the lawfulness of Idaho's procedural stockwater statutes against the federal government. Ranchers have a direct interest in the outcome of this litigation. Their intervention will not delay this proceeding; they are prepared to meet all deadlines set by this Court. And respectfully, neither the existing defendants nor the legislative applicants in intervention can adequately represent the interests of Ranchers, the very individuals whose substantive rights are at issue in this case, and whose ability to vindicate those rights will turn on this case's disposition.

Prior to filing the motion to intervene, counsel for Ranchers conferred with counsel for the original parties to this action and counsel for the proposed legislative intervenors. Counsel for the State of Idaho defendants take no position on Ranchers' motion. Counsel for the Idaho legislative applicants in intervention do not oppose Ranchers' motion. Counsel for the United States stated that they reserve their position on Ranchers' motion, pending their review of this filing.

Factual and Legal Background

State law generally defines the grant and limitation of water rights. For almost half a century, it has been settled that each state's own law governs the rights to state waters used for livestock on United States Forest lands within that state. *See United States v. New Mexico*, 438 U.S. 696, 716 (1978) (affirming a holding that "any stockwatering rights [on national forest lands] must be allocated under state law to individual stockwaterers"). Congress saw no "need for the Forest Service to allocate water for stockwatering purposes, a task to which state law was well suited." *Id.* at 717.

In the state of Idaho, there is no dispute that all water is held in trust by the State for the benefit of the people of Idaho. I.C. § 42-101. Under Idaho law, constitutional appropriation of stockwater rights requires application of the water to a beneficial use. *Joyce Livestock Co. v. United States*, 156 P.3d 502 (Idaho 2007) ("*Joyce*") ("The constitutional method of appropriation requires that the appropriator actually apply the water to beneficial use.") Even if successfully acquired, such water rights are forfeited if not put to beneficial use for five years. I.C. § 42-222(2). In such a case, the water right reverts to the state and is again subject to appropriation. *Id.*[1]

The United States objects to Idaho's laws as a policy matter, and has sought for decades to own water rights to which it is not entitled. In the litigation that led to the *Joyce* decision, for example, the United States took the position that it should be able to appropriate water rights, and avoid forfeiting them, even where neither the United States nor its agent had put those rights to beneficial use by watering livestock. *See Joyce*, 156 P.3d at 518-19. Specifically, the United States claimed that it, not ranchers, should reap the water rights accruing from ranching permittees putting water to beneficial use. In the Snake River Basin Adjudication and related matters, the United States exploited the complexity of the law and adjudicatory processes, its vastly superior financial and legal resources, and its influence over livestock grazing permits, to obtain default decrees to stockwater rights that it had never lawfully appropriated through beneficial use. The United States has also pressured grazing permittees to enter agreements to act as its agents with the goal of appropriating those permittees' stockwater rights to itself.

Having failed to thwart the substantive requirements of Idaho's water law, the United States now seeks to prevent enforcement of that law by asking this Court to outlaw the process for

[1] Idaho Code provides for various exceptions to this general forfeiture rule, but none are relevant to this case. *See* I.C. § 42-223.

administering it. *See* Dkt. 11. When Idaho's legislature created a process to efficiently identify decreed stockwater rights that the United States has forfeited by lack of beneficial use – a problem created in the first instance because the United States does not put the water to the required beneficial use – the United States sued to halt the process and avoid scrutiny of how and by whom the water is used. Indeed, the evidence in this case will show that the Idaho water at issue is used by Idaho's ranchers, such as proposed intervenors here, who are or who represent federal grazing permittees–not by the United States itself.

The case at bar thus directly implicates two sets of fundamental but distinct rights: (1) the right of the state of Idaho to make law governing the administration and adjudication of rights to the water it governs, and (2) the rights of Idaho ranchers, who seek to defend the water rights they own pursuant to Idaho's law, to limit the United States' interference with ranching operations through the inappropriate assertion of junior or competing rights, and to acquire rights to water improperly claimed by the federal government.. The State of Idaho is properly a defendant in this case, as it has a duty to defend the first set of rights. But the Ranchers are essential defendants in this case, too, as they seek to protect the second set of rights.

Federal Rule of Civil Procedure 24(a) provides for intervention as of right by a party who "claims an interest relating to the property or transaction that is the subject of the action," and whose ability to protect his interest may be impaired or impeded by the disposition of the case, unless that interest is adequately represented by existing parties. *Cooper v. Newsom*, 13 F.4th 857, 864 (9th Cir. 2021). Pursuant to Fed. R. Civ. P. 24(a), Ranchers have moved to intervene as of right in the above-captioned case as Intervenor-Defendants.

"An applicant for intervention as of right must satisfy four criteria under Rule 24(a)(2)." *United States v. Idaho*, No. 1:22-cv-00329-BLW, 2022 WL 3346255, *3 (D. Idaho, Aug. 13, 2022). They are:

(1) the application for intervention must be timely;
(2) the applicant must have a 'significantly protectable' interest relating to the property or transaction that is the subject of the action;
(3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest; and
(4) the applicant's interest must not be adequately represented by the existing parties in the lawsuit.

Animal Legal Def. Fund v. Otter, 300 F.R.D. 461, 464 (D. Idaho 2014) (citing *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 817 (9th Cir. 2001)); *see also Oakland Bulk & Oversized Terminal, LLC v. City of Oakland*, 960 F.3d 603, 620 (9th Cir. 2020) (citing Fed. R. Civ. P. 24(a)(2)). "In evaluating whether these requirements are met, courts are guided primarily by practical and equitable considerations." *Callahan v. Brookdale Senior Living Cmty., Inc.*, --- F.4th ---, 2022 WL 3016027, at *5 (9th Cir. June 29, 2022) (internal quotation marks and citation omitted). While applicants bear the burden of establishing the elements, courts construe Rule 24(a) broadly in favor of proposed intervenors. *Id.*

Separately, Federal Rule of Civil Procedure 24(b) provides for permissive intervention by a party who has a claim or defense that shares with the main action a common question of law or fact, and whose intervention will not unduly delay or prejudice the adjudication of the original parties' rights. *See Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1111 (9th Cir. 2002) (noting "if there is a common question of law or fact, the requirement of [Rule 24(b)] has been satisfied and it is then discretionary with the court whether to allow intervention"), *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011). Thus, to the extent that the Court denies Ranchers intervention under Fed. R. Civ. P. 24(a), in the alternative, Ranchers move for permissive intervention pursuant to Fed. R. Civ. P. 24(b).

Applicants in Intervention

I. Idaho Farm Bureau Federation

Idaho Farm Bureau Federation ("IFBF") is a free, independent, non-governmental, voluntary organization of nearly 80,000 Idaho families dedicated to strengthening agriculture and protecting the rights, values, and property of its member families and neighbors. Hendricks Dec. ¶ 3. IFBF addresses local, county, state, national, and international issues. It is non-partisan. Hendricks Dec. ¶ 6. IFBF was organized in 1939 as an independent farm organization. Hendricks Dec. ¶ 5. It was chartered under the laws of the state of Idaho in May of 1939, and maintains status as a 501(c)(5) non-profit corporation. Hendricks Dec. ¶ 5.

The numerous members of the agricultural community represented by IFBF include co-movants Joyce Livestock Co., LU Ranching Co., and Pickett Ranch & Sheep Co., each further described below. Hundreds of IFBF's members are permittees on federal grazing allotments within Idaho, some of which are listed as being at issue in this suit. Hendricks Dec. ¶ 4. In recent decades, IFBF has observed various efforts to appropriate Idaho ranchers' stock watering rights on BLM and USFS grazing allotments. Hendricks Dec. ¶ 7. These efforts include the United States' actions in the Snake River Basin Adjudication, in litigation against Idaho ranchers, and in pressuring ranchers to sign agreements purporting to make them agents of the federal government. Hendricks Dec. ¶¶ 7-10. The matter before this Court represents the United States' most recent effort the thwart ranchers' property rights under Idaho law. Hendricks Dec. ¶ 12. A victory for the United States in this matter would render ranchers' water rights more difficult to vindicate and would aid the United States in maintaining decrees of stockwater rights long after it has forfeited those rights under state law by lack of beneficial use. Hendricks Dec. ¶¶ 13-14.

II. Joyce Livestock Co.

Joyce Livestock Company is a member of IFBF and a federal grazing permittee that holds stockwater rights on federally-owned land. Nettleton Dec. ¶¶ 4, 5. The 150-year-old, fifth-generation family ranch was named party to the landmark 2007 Idaho Supreme Court decision that vindicated ranchers' stockwater rights under existing state law, despite the federal government's (generally successful) efforts to obtain default or "negotiated" decrees as part of the Snake River Basin Adjudication. *See Joyce Livestock Co. v. United States*, 156 P.3d 502 (Idaho 2007). *See also* Dkt. 11 at 10-11.

Ranchers Paul Nettleton of Joyce Livestock Co. and Tim Lowry of LU Ranching Co. (described further below) have been honored by the agricultural community for fighting back against BLM's challenge to their stockwater rights, a fight which lasted ten years and incurred more than a million dollars in legal fees, for which the courts denied reimbursement. Nettleton Dec. ¶¶ 10-12; Lowry Dec. ¶¶ 9-10. According to then Ada County Farm Bureau President Don Sonke, "[Joyce and LU Ranching Companies'] legal battle secured water rights on the range for generations," and "those water rights saved ranching in Idaho as we know it. . . . they've sacrificed a lot." Nettleton Dec. ¶ 12.

III. LU Ranching Co.

LU Ranching Co. is a family ranching corporation incorporated in 1976 as a successor to the prior generation's ranch. Lowry Dec. ¶ 2. LU Ranching is a cow and calf operation, and runs about 400 mother cows. Lowry Dec. ¶ 2. Their operation depends on grazing their livestock on public lands; the ranch holds BLM grazing permits for the spring, summer, and early fall seasons. Lowry Dec. ¶ 4.

During the Snake River Basin Adjudication, LU Ranching filed for stockwater rights on their private land and on the grazing allotments where they engaged in beneficial use. Lowry Dec. ¶ 5. The United States objected to their filings, and they, like Joyce Livestock, were sucked into a decade of expensive litigation. Lowry Dec. ¶¶ 6-7. LU Ranching's case was a companion case to *Joyce Livestock Co.*, decided the same day under the same reasoning. *See LU Ranching Co. v. United States*, 156 P.3d 590 (Idaho 2007) (Mem. Op.). Due to erroneous advice from a state agency employee prior to obtaining legal representation, however, LU Ranching had failed to file timely objections to the United States' filings; the United States was thus able to obtain default decrees concerning junior (later appropriated) stockwater rights which it has since forfeited by lack of beneficial use. *See* Lowry Dec. ¶¶ 13-15.

IV. Pickett Ranch & Sheep Co.

Pickett Ranch & Sheep Co. is a family operation dating back to 1881. Pickett Dec. ¶¶ 1-2. The ranch is currently operated by Douglas, David, and Don Pickett, the fourth generation of Picketts and their sons are the fifth generation of full-time Pickett ranchers. Pickett Dec. ¶ 3. Some of their employees have worked with the family for half a century. Pickett Dec. ¶ 7.

The Picketts' ranch was party to what Plaintiff terms the "FSG settlement." *See* Dkt. 11 at ⁋ 35; Dkt. 11-3 at 12, 17; Pickett Dec. ¶ 11. As a result of that settlement, Pickett Ranch & Sheep Co. holds stockwater right decrees on its grazing allotments, but it was required to waive its objections to various United States' stockwater claims and default decrees. Pickett Dec. ¶¶ 12-13. Don Pickett believes that the limitations imposed on the ranch's exercise of its rights by the settlement renders those rights effectively worthless, because the settlement assigns rights to the federal government that allow it to effectively dictate the Picketts' use of their own water rights. Pickett Dec. ¶¶ 13-15. If Idaho prevails in this litigation and water rights not put to beneficial use

by the United States are forfeit, the FSG settlement and Pickett Ranch & Sheep Co. as a party to it may be directly impacted.

Argument

I. Ranchers Are Entitled to Intervene as of Right.

Ranchers are entitled to intervene in this action as of right under Fed. R. Civ. P. 24(a) because their application is timely, they have a significantly protectable interest relating to this action, their ability to protect their interest may be impaired by the disposition of this action, and because, respectfully, their interests are not adequately represented by the existing parties and/or other applicants in intervention.

A. Ranchers' Motion to Intervene Is Timely.

Whether a motion to intervene is timely under Fed. R. Civ. Pro. 24(a) depends on three factors: (1) the stage of the proceeding; (2) prejudice to other parties; and (3) the length of a reason for any delay. *See W. Watersheds Project v. Ashe*, Case No. 4:11-CV-00462-EJL, 2012 WL 12899085 at *2 (D. Idaho Mar. 1, 2012); *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016).

With respect to the first factor, this case is at its earliest stage. Plaintiffs' First Amended Complaint was filed on July 15, 2022. Dkt. 11. The state of Idaho defendants' Answer was filed on July 29, 2022. Dkt. 13. Counsel for Ranchers informed counsel for the original parties and Idaho legislative applicants in intervention of Ranchers' intent to intervene on August 5, 2022, and received their positions on August 8 (legislative applicants in intervention), August 10 (state of Idaho defendants), and August 12 (United States). The case was reassigned on August 19, 2022. As of the date of this filing, no briefing or discovery has occurred or even been scheduled. The existing parties are due to file a proposed litigation plan on August 30, 2022, and are already aware

of Ranchers' position regarding discovery and briefing schedules. (Ranchers suggest that their briefing be due one to two weeks after state of Idaho defendants' briefing to avoid duplication, but are amenable to simultaneous briefing if the Court prefers. Ranchers are also amenable to expediting the case by minimizing discovery.)

While Ranchers' preparation and filing of this motion was delayed briefly in August by their primary counsel's contraction of the flu and of COVID-19 in quick succession, this filing nevertheless precedes any action in the case that would cause prejudice to the existing (or proposed) parties.[2] "[P]rejudice to existing parties is the most important consideration in deciding whether a motion for intervention is untimely." *Smith v. Los Angeles Unified School District*, 8930 F.3d 843, 857 (9th Cir. 2016) (cleaned up). Where, as here, intervention is sought so early as to wholly preclude the possibility of such prejudice, it is timely.[3]

B. Ranchers Have Significant Protectable Interests in this Action, and Those Interests May Be Impaired by the Outcome of This Litigation.

When evaluating the second and third prongs of an intervention inquiry – (2) whether a proposed intervenor as of right demonstrates a significant protectable interest under Rule 24(a), and (3) whether that interest may be impaired by the outcome – "the Court must follow 'practical and equitable considerations and construe the Rule broadly in favor of proposed intervenors.'" *Western Watersheds Project v. U.S. Fish and Wildlife Svc.*, 2011 WL 2690430 at *3, quoting

[2] *Cf. United States v. State of Oregon*, 745 F.2d 550, 552 (9th Cir. 1984) (holding district court abused discretion by denying intervention as of right fifteen years after the commencement of action and five years after settlement based on the "stage of the proceeding" where "the possibility of new and expanded negotiations" that motivated intervention had emerged relatively recently).

[3] Only prejudice "which flows from a prospective intervenor's failure to intervene after he knew, or reasonably should have known, that his interests were not being adequately represented" is relevant to the timeliness inquiry; the Court is not permitted to consider "prejudice" in the sense of intervention's rendering the potential substantive resolution of a case more difficult. *Smith*, 830 F.3d at 857. A finding of prejudice based on a factor other than delay is abuse of discretion. *Id.* at 857-58.

Wilderness Society v. U.S. Forest Service, 630 F.3d 1173, 1179 (9th Cir. 2011). "A prospective intervenor has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation." *Id.*

Here, Ranchers—who indisputably hold (or, in the case of IFBF, whose members hold) permits to graze their livestock on federal land and associated stockwater rights—have a protectable interest in preserving and vindicating their rights. *See Western Watersheds Project v. U.S. Fish and Wildlife Svc.*, 2011 WL 2690430 at *3 (holding ranchers' interest in grazing cattle on land sufficient to intervene as of right where they "may have to undertake mitigation measures or cease certain activities" as a result of case's disposition).

This case exists only because grazing permittees' interest in their stockwater rights conflicts with existing and potential competing claims by the United States to the same water. *See, e.g.,* Dkt. 11 at ⁋⁋ 81-83. The outcome of this case, by determining the legality of Idaho's statutes governing the United States' stockwater rights, will make Ranchers' rights either easier or more difficult to preserve and/or vindicate. This case will determine how, when, and whether competing claims made or decrees held by the United States are evaluated and potentially identified as having been forfeited. The United States seems to agree. *See id.* at ⁋ 81 (accusing Idaho of seeking "to render [stockwater rights] appurtenant to grazing permittees' private property"). *See also Western Watersheds Project v. U.S. Fish and Wildlife Svc.*, 2011 WL 2690430 at *3 (holding ranchers' grazing interest threatened sufficiently to justify intervention as of right by potential for *procedural acceleration* of a species listing determination due to disposition of case, independently of whether the ultimate outcome of that process might be favorable).

Wherever an intervenor "would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." Fed. R.

Civ. P. 24 advisory committee's notes (quoted by *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001)). Ranchers easily meet this liberal standard here, establishing their satisfaction of the second and third prongs of the Rule 24(a) test.

C. The Ranchers' Interests Cannot be Adequately Represented by Existing Parties.

Ranchers' interests, however, are not adequately represented by the existing (or proposed) defendants. It is true that, as applicants, Ranchers bear the burden of demonstrating such lack of adequate representation. But that burden "is minimal, and the applicant need only show that representation of its interests by existing parties *may be* inadequate." *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (cleaned up) (emphasis added). What matters is "the 'subject of the action,' not just the particular issues before the court at the time of the motion." *Id.* (quoting *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983)).

"The interests of government and the private sector may diverge." *Berg*, 268 F.3d at 823. For instance, intervention as of right is warranted where, as here, even though Idaho's government and Ranchers share "the same ultimate objective in the preservation of" government action, the government's "range of considerations . . . is broader than the profit-motives animating" private parties. *Id.* at 823. Likewise, representation is inadequate where, as here, private parties and the government have different roles to play under the contested government action they seek to defend. *Id*. In such a case, any presumption of adequacy with regard to representation "is rebutted . . . because Applicants and Defendants do not have sufficiently congruent interests." *Id.* Ranchers thus satisfy the "minimal" burden of raising the possibility that the existing—all public—parties' representation of their private interests "may be" inadequate. *Smith*, 830 F.3d 843, 864 (9th Cir. 2016).

///

II. In the Alternative, the Court Should Grant Ranchers Permissive Intervention.

Alternatively, Ranchers request permissive intervention under Rule 24(b)(1)(B), by which "the court may permit anyone to intervene who… has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). Permissive intervention may be granted when:

> (1) there is an independent ground for jurisdiction;
> (2) the motion is timely; and
> (3) the movant's claim or defense and the main action … have a question of law or fact in common.

Amanatullah v. United States Life Ins. Co. of the City of New York, No. 4:15-CV-00056-EJL, 2017 WL 2906045, at *1 (D. Idaho June 29, 2017), quoting *Venegas v. Skaggs*, 867 F.2d 527, 529 (9th Cir. 1989). The court must also consider any undue delay or prejudice to the adjudication of the rights of the original parties, and whether the movant's interests are adequately represented. *Id.*

Ranchers meet the requirements for permissive intervention. This court has federal question jurisdiction under 28 U.S.C. § 1331. Ranchers' motion is timely, and presents no risk of delay or prejudice. As demonstrated by Ranchers' Proposed Answer, filed with their Motion to Intervene, Ranchers' defenses present questions of law and fact in common with the main action. Finally, the existing parties cannot adequately represent Ranchers' interests.

Conclusion

For the reasons given above, this Court should grant Ranchers' Motion to Intervene as Defendants in this matter as of right under Rule 24(a)(2). In the alternative, this Court should grant Ranchers permissive intervention under Rule 24(b).

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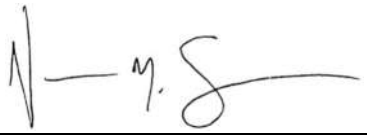
Respectfully submitted this 30th day of August 2022.



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CERTIFICATE OF SERVICE

I hereby certify that, on August 30, 2022, I filed the foregoing document with the Clerk of the Court using this Court's CM/ECF system, which will send a notification to all counsel of record pursuant to Fed. R. Civ. P. 5 and D. Idaho L.R. 5.1(k).

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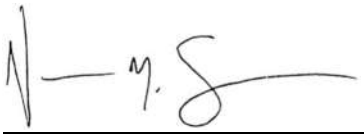

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff

v.

STATE OF IDAHO, STATE OF IDAHO DEPARTMENT OF WATER RESOURCES, an agency of the State of Idaho, and GARY SPACKMAN, in his official capacity as Director of the Idaho Department of Water Resources

Defendants,

IDAHO HOUSE OF REPRESENTATIVES; MIKE MOYLE, in his official capacity as Majority Leader of the House; IDAHO SENATE; and CHUCK WINDER, in his official capacity as President Pro Tempore of the Senate,

Applicants in Intervention, and

JOYCE LIVESTOCK CO.; LU RANCHING CO.; PICKETT RANCH & SHEEP CO; and IDAHO FARM BUREAU FEDERATION

Applicants in Intervention.

Case No. 1:22-cv-00236-DCN

RANCHERS' [PROPOSED] ANSWER TO FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Defendant-Intervenors Joyce Livestock Co., LU Ranching Co., Pickett Ranch & Sheep Co., and Idaho Farm Bureau Federation (collectively "Ranchers") answer the allegations of the First Amended Complaint for Declaratory and Injunctive Relief as follows, with the numbered paragraphs below corresponding to the numbered paragraphs in the Amended Complaint. All allegations, including those made in section headings or subheadings, whether express or implied, not specifically admitted, denied, or qualified herein are expressly denied.

RESPONSES TO "INTRODUCTION" ALLEGATIONS

1. Ranchers admit that the Plaintiff owns millions of acres land, held in trust for the people of the United States, including within the boundaries of the State of Idaho, and that the Plaintiff makes some ever-decreasing portion of these acres available for grazing permit or lease holders. Ranchers also admit that the Plaintiff claims to hold decreed water rights for "stockwater" use on federal lands within Idaho. Ranchers deny that such water rights are needed "to enable" any "federal grazing program." Ranchers are without knowledge or information sufficient to form a belief as to the truth of the allegation that water from Plaintiff's stockwater rights "is generally available for use by any livestock owner who holds a permit" or whether, instead, any water so utilized is actually from other sources/rights and therefore deny the allegation. Ranchers deny the remaining allegations in Paragraph 1.

2. The allegations in Paragraph 2 purport to characterize Idaho Code §§ 42-113, 4224 and 42-501 through -507, statutes which speak for themselves. The allegations also offer legal conclusions; therefore, the allegations do not require a response. Ranchers deny that statutes enacted in the last five years threaten "to forfeit" federally owned stockwater rights, as water rights in Idaho have always been restricted to beneficial use. Ranchers further deny that the Plaintiff's loss of stockwater rights would undermine a congressionally authorized federal grazing program;

to the contrary, by denying water rights to Idaho citizens and other livestock owners, Plaintiffs deny those persons the opportunity to obtain base property to which grazing rights would attach, thus Plaintiff's ownership of water rights is contrary to the administration of any federal grazing program. To the extent that a further response is required, the allegations are denied.

3. Ranchers are without knowledge or information sufficient to form a belief as to the truth of the allegations of fact in Paragraph 3 and therefore deny the same. The second sentence of Paragraph 3 purports to characterize Idaho Code § 42-224, a statute which speaks for itself. The allegations also offer legal conclusions;; therefore, these allegations do not require a response. To the extent a response is required, the allegations are denied.

4. Paragraph 4 states conclusions of law or argument to which no response is required. Ranchers deny, however, that subjecting Plaintiff's stockwater rights to the general beneficial use requirements of Idaho law or that providing for efficient implementation of Idaho law violates any federal law. To the extent that a further response is required, Ranchers deny the allegations in Paragraph 4.

5. Paragraph 5 characterizes Plaintiff's Amended Complaint such that no response is required. To the extent that a response is required, the allegations are denied.

RESPONSE TO "JURISDICTION" ALLEGATIONS

6. Ranchers admit that the Plaintiff purports to bring this action under the Constitution of the United States "and in part under other laws." Plaintiff, however, inadequately describes these authorities, or how each of the cited statutory provisions conclusively establishes this Court's jurisdiction. Moreover, the allegations are characterizations of law, or legal conclusions not requiring an answer. To the extent that a response is required, the remaining allegations are denied.

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RESPONSES TO "VENUE" ALLEGATIONS

7. Ranchers admit that, if jurisdiction is established, venue is proper in this Court. All other allegations are characterizations of law or legal conclusions not requiring an answer. To the extent a response is required, the remaining allegations are denied.

RESPONSES TO "PARTIES" ALLEGATIONS

8. Ranchers admit that the Plaintiff is suing on its own behalf and on behalf of the United States Bureau of Land Management ("BLM") and the United States Forest Service ("USFS"). Ranchers deny the remaining allegations in Paragraph 8.

9. Ranchers admit that the BLM is a federal agency within the Department of the Interior, and charged by Congress with managing certain public lands, including millions of acres in Idaho, and that the BLM is congressionally authorized to permit and oversee livestock grazing on public lands. Ranchers deny any remaining allegations in Paragraph 9.

10. Ranchers admit that the USFS is a federal agency within the Department of Agriculture and charged by Congress with managing the National Forest System, including millions of acres of National Forest System lands within Idaho, and that the USFS is congressionally authorized to permit and oversee livestock grazing on these lands. Ranchers deny any remaining allegations in Paragraph 10.

11. Ranchers admit Paragraph 11.

12. Ranchers deny that Idaho Department of Water Resources ("IDWR") is an agency of the State of Idaho. IDWR is an executive department. Ranchers admit that IDWR is responsible for administering Idaho water rights pursuant to State law. Idaho Code § 42-1701(1).

13. Ranchers admit Paragraph 13.

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RESPONSES TO "GENERAL ALLEGATIONS"

14. Ranchers admit that Plaintiff has accurately quoted a portion of Clause 2 of Section 3 of Article IV of the United States Constitution. To the extent that a further response is required, the allegations are denied.

15. Ranchers admit that Plaintiff has accurately quoted portions of Clause 2 of Article VI of the of the United States Constitution. To the extent that a further response is required, the allegations are denied.

16. Ranchers admit that Plaintiff has accurately quoted portions of Clause 1 of Section 10 of Article I of the of the United States Constitution. To the extent a further response is required, the allegations are denied.

17. The allegations in Paragraph 17 purport to characterize the *Block v. N. Dakota*, 461 U.S. 273 (1983), decision. That decision speaks for itself and the allegations therefore do not require a response. To the extent a response is required, the allegations are denied.

18. The allegations in Paragraph 18 purport to characterize certain parts of 43 U.S.C. § 666 (commonly known as the "McCarran Amendment"), *United States v. Idaho ex rel. Dir., Idaho Dep't of Water Res.*, 508 U.S. 1 (1993), and *Miller v. Jennings*, 243 F.2d 157 (5th Cir. 1957), by making and asserting legal conclusions and including selective quotations; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

19. Ranchers admit that Plaintiff has accurately quoted a portion of Section 12 of Article XI of the Idaho Constitution, and correctly quotes a portion of a sentence from the decision in *Frisbie v. Sunshine Mining Co.*, 93 Idaho 169, 457 P.2d 408 (1969). These authorities speak for

themselves, and the allegations therefore do not require a response. To the extent a further response is required, the allegations are denied.

20. Ranchers admit that the Taylor Grazing Act of 1934 allows for the creation and management of grazing districts, including the issuance of permits. Ranchers deny any conclusions of law in Paragraph 20 which are inconsistent with the Taylor Grazing Act.

21. Ranchers admit that allotments are a basic unit within the BLM grazing program, and that permits or leases are sometimes made available for allotments, and are generally renewable for ten-year terms, that allotments vary in size, may have singular or multiple permittees, and that BLM manages its land for purposes other than grazing. Ranchers deny any remaining allegations in Paragraph 21.

22. Ranchers admit that water from various sources may be found within grazing allotments, that pipelines are sometimes long, and that a water source may supply more than one allotment. Ranchers deny any remaining allegations in Paragraph 22.

23. Paragraph 23 purports to characterize 16 U.S.C. § 551, a statute which speaks for itself, and to reach a legal conclusion; therefore, a response is not required. To the extent a response is required, the allegations are denied.

24. Paragraph 24 purports to characterize the decision in *United States v. Grimaud*, 220 U.S. 506 (1911), a ruling which speaks for itself, and to reach a legal conclusion; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

25. Ranchers admit that USFS administers and controls many aspects of grazing on the land it manages, including limiting the number and location of stock and managing improvements. Ranchers deny that USFS administration of stockwater rights is beneficial,

efficient, or contributes in any other way to domestic grazing or the purposes of any federal grazing program, including by facilitating the turn-over of permittees, for example by denying water rights as a base property. Ranchers deny any remaining allegations in Paragraph 25.

26. Ranchers admit that federal agencies other than the BLM and the USFS manage federal lands in Idaho, and that some of these other agencies allow grazing on certain of those lands. Ranchers are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 26 and therefore deny the same.

27. Paragraph 27 purports to characterize the decision in *United States v. State of Idaho*, 131 Idaho 468, 959 P.2d 449 (1998), a ruling which speaks for itself, and to reach legal conclusion; therefore, the allegations do not require a response. Ranchers nonetheless deny that federally owned water rights are "critical" or otherwise important or even beneficial to the administration of grazing on federal lands; to the contrary, federally owned water rights deny otherwise available base property to livestock owners, and are therefore contrary to the purposes of any federal grazing program. Ranchers further lack knowledge or information to confirm that Plaintiff has any intent to "ensure the perpetual use of the water for stockwatering purposes." To the extent a further response is required, the allegations are denied.

28. The first sentence of Paragraph 28 purports to characterize the pre-2017 version of Idaho Code § 42-501, a statute which speaks for itself, and provides for a legal conclusion; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied. Ranchers admit that the vast majority of domestic livestock grazing on federal lands is privately owned, and that the United States owns very few head of domestic livestock. Ranchers admit that the Snake River Basin Adjudication ("SRBA") began in 1987 and the SRBA's *Final Unified Decree* was issued in 2014, and that in the SRBA the Plaintiff obtained

partial decrees for stockwater rights. Ranchers deny that most water rights held by Plaintiff were put to "use," particularly put to "beneficial use" for Plaintiff by privately owned livestock. Ranchers deny any remaining allegations in Paragraph 28.

29. Ranchers admit that the Snake River watershed is vast, covers multiple states, and covers significant area within Idaho.

30. Ranchers admit that on November 19, 1987, the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, issued an order commencing the SRBA as a general stream adjudication.

31. Ranchers admit that Plaintiff sought and obtained decrees for thousands of water rights, some based on federal reserved rights but most based on Idaho law. Ranchers deny that consumption of water by privately owned livestock of permittees or lessees may serve as a basis for Plaintiff's water rights. Ranchers are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 31, and therefore deny the same.

32. Ranchers are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 32, and therefore deny the same. The remaining allegations of Paragraph 32 characterize the law or allege legal conclusions to which no response is required. Ranchers nonetheless deny that there is any "long standing recognition under Idaho law" that instream stockwatering by privately owned stock may serve as a beneficial use to support federal acquisition of water rights. Ranchers further note that water rights, including those that accrued before 1971, may be abandoned or otherwise lost, including through lack of beneficial use. To the extent that a further response is required, the allegations are denied.

33. Ranchers admit that the Plaintiff claimed some stockwater rights in the SRBA based upon state law. Ranchers are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 33 and therefore deny the same.

34. Ranchers admit that the State and some private parties objected to many of Plaintiff's claims for stockwater rights, and that many of these objections were either withdrawn or resolved by settlements. Ranchers deny any remaining allegations in Paragraph 34.

35. The allegations in Paragraph 35 purport to characterize the settlement agreement reached between the United States and certain private parties in 2002, and further offers a legal conclusion based on same. That document speaks for itself. and the legal conclusion does not require a response. To the extent that a response is required, the allegations are denied.

36. Ranchers are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36, and therefore deny the same.

37. Ranchers admit that thousands of stockwater rights were adjudicated to the United States in the SRBA, including thousands for instream stockwatering, through a series of partial decrees issued under Rule 54(b)(l) of the Idaho Rules of Civil Procedure ("*Certificate of Partial Judgment as Final*"). Ranchers are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 37, and therefore deny the same.

38. Ranchers admit that various federal permittees, including some of the proposed intervenors here, chose not to settle with the United States, and to litigate instead; Ranchers further admit that the Idaho Supreme Court ruled in favor of such permittees. The remaining allegations in Paragraph 38 purport to characterize the *Joyce Livestock Company v. United States*, 144 Idaho 1, 156 P.3d 502 (2007) ("*Joyce Livestock*") and *LU Ranching Co. v. United States*, 144 Idaho 89,

156 P.3d 590 (2007), decisions, which speak for themselves. The allegations therefore do not require a response. To the extent that a response is required, the remaining allegations are denied.

39. The allegations in Paragraph 39 purport to characterize the *Joyce Livestock* decision and the Notice of Court's Intent to Issue Partial Decree for Federal Uncontested Right Based on State law and Notice of Hearing Thereon, entered in SRBA subcase No. 74-15468 on February 28, 2007, such court documents speak for themselves.; Therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

40. Paragraph 40 purports to characterize the SRBA's *Final Unified Decree*, a court document which speaks for itself; therefore, the allegations do not require a response. Ranchers do, however, deny any implication that water rights addressed in the Final Unified Decree are "conclusive," such that they could not be abandoned or otherwise surrendered. To the extent that a further response is required, the allegations are denied.

41. Ranchers admit that when Senate Bill No. 1111 ("S.B. 1111") took effect in 2017, it repealed and replaced various Idaho statutes, and that the statutes of Chapter 5 of Title 42 of the Idaho Code have been amended several times since 2017 and up to 2022. The remaining allegations in Paragraph 41 purport to characterize S.B.1111, H.B. 608, statutes which speak for themselves; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

42. Ranchers admit that S.B. 1111 modified the law regarding stockwater rights, that the Governor signed S.B. 1111, and that the law immediately took effect; Ranchers deny the remaining characterizations or allegations in Paragraph 42.

43. Paragraph 43 purports to characterize S.B. 1111, a statute which speaks for itself =; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

44. Paragraph 44 purports to characterize S.B. 1111 as codified in Idaho Code § 42-501, a statute which speaks for itself, and the decision in *Joyce Livestock*, a court opinion. It also, offers legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

45. The allegations in Paragraph 45 purport to characterize S.B. 1111 and the *Joyce Livestock* decision, a statute and a ruling which speak for themselves. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

46. Paragraph 46 purports to characterize S.B. 1111, the *Joyce Livestock* decision and Idaho Code § 42-501, statutes and a ruling which speak for themselves. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied. Ranchers further deny that what Plaintiff characterizes as "voluntary" choices by permittees are always truly voluntary and free from some form of coercion.

47. Paragraph 47 purports to characterize the pre-2017 version of Idaho Code § 42-501, S.B. 1111, and the *Joyce Livestock* decision, statutes and a ruling which speak for themselves. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

48. Paragraph 48 purports to characterize S.B. 1111 and the *Joyce Livestock* decision, a statute and ruling which speak for themselves. The allegations also offer legal conclusions;

therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

49. Paragraph 49 purports to characterize letters sent by the Idaho Governor, the Speaker of the Idaho House of Representatives, and the President Pro Tem of the Idaho Senate to the Secretary of the United States Department of the Interior and the Secretary of the United States Department of Agriculture in March 2018, these documents speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

50. Ranchers admit that in March 2018, the Idaho Governor signed 2018 House Bill No. 718 ("H.B. 718"). The remaining allegations in Paragraph 50 purport to characterize H.B. 718, a statute which speaks for itself; therefore, the allegations do not require a response. Ranchers further deny Plaintiff's characterization that H.B. 718 contains "an aggressive new procedure" that has any "sole" purpose, to the extent that legislative purpose can ever be conclusively determined. To the extent a response is required, the allegations are denied.

51. Paragraph 51 purports to characterize H.B. 718 as enacted in 2018, a statute which speaks for itself. The allegations also offer legal conclusions; therefore, the allegations do not require a response. Ranchers further deny Plaintiff's characterization that H.B. 718 had only "two purposes," to the extent that legislative purpose can ever be conclusively determined. To the extent a response is required, the allegations are denied.

52. Paragraph 52 purports to characterize H.B. 718 as enacted in 2018, a statute which speaks for itself. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

53. Paragraph 53 purports to characterize H.B. 718 as enacted in 2018, a statute which speaks for itself. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

54. Paragraph 54 purports to characterize H.B. 718 as enacted in 2018, a statute which speaks for itself . The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

55. Paragraph 55 purports to characterize a letter that the Governor sent to the Secretary of the Department of the Interior, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

56. Paragraph 56 purports to characterize a "spreadsheet" that IDWR sent to the BLM, USFS, and other federal agencies. The document speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

57. Ranchers are without knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 57, and therefore deny the same. Ranchers admit that sections of state legislation and the Idaho Code related to stockwater have been amended multiple times. Ranchers deny the remaining allegations in Paragraph 57.

58. Ranchers admit that S.B. 1305 was enacted. The remaining allegations in Paragraph 58 purport to characterize 2018 Senate Bill No. 1305 ("S.B. 1305") and Idaho Code § 42- 113(2), statutes which speak for themselves. The allegations also offer legal conclusions;; therefore, the allegations do not require a response. To the extent that a response is required, these allegations are denied.

59. Paragraph 59 and its associated footnote purport to characterize S.B. 1305, Idaho Code § 42-113(2), 43 U.S.C. § 315b, 43 C.F.R. § 4100.0-5, 36 C.F.R. § 222.1(b)(3), and the decision in *Public Lands Council v. Babbitt*, 529 U.S. 728 (2000), statutes, regulations, and a ruling which speak for themselves. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied except that Ranchers admit that water rights can serve as a base property, entitling a stock owner to a grazing preference.

60. Paragraph 60 purports to characterize S.B. 1305 and the *Joyce Livestock* decision, a statute and ruling which speak for themselves. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied, except that Ranchers admit that the Idaho legislature has the power to enact legislation and that the Idaho Supreme Court does not have the power to enact legislation.

61. Ranchers admit that S.B. 1305 remains effective.

62. Ranchers admit that 2020 House Bill No. 592 ("H.B. 592") amended some of the legislation that had previously been enacted or amended by S.B. 1111 and H.B. 718, but did not amend Idaho Code § 42-113. The remaining allegations in Paragraph 62 purport to characterize H.B. 592, S.B. 1111, H.B. 718 and S.B. 1305, statutes which speak for themselves. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

63. Ranchers admit that H.B. 592 repealed the forfeiture provisions enacted by H.B. 718, and added a new statute to Chapter 2 of Title 42 of the Idaho Code (Idaho Code § 42- 224) that defines the procedures for determining whether a State law-based stockwater right has been lost through non-use pursuant to the substantive forfeiture provisions of Idaho Code § 42- 222(2).

The remaining allegations in Paragraph 63 purport to characterize H.B. 592 and Idaho Code § 42-224, statutes which speak for themselves. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

64. Ranchers admit that the procedures set forth in H.B. 592 apply to all state-law-based stockwater rights, regardless of ownership.

65. Paragraph 65 purports to characterize H.B. 592 and Idaho Code § 42-224(4), statutes which speak for themselves. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

66. The allegations in Paragraph 66 purport to characterize Idaho Code § 42-222(2), the *Sagewillow, Inc. v. Idaho Dep't of Water Res*., 138 Idaho 831, 70 P.3d 669 (2003) decision, and the *Zezi v. Lightfoot*, 57 Idaho 707, 68 P.2d 50 (1937) decision, a statute and rulings which speak for themselves. The allegations also offer legal conclusions; therefore, the allegations do not require a response. Ranchers do admit, however, that "longstanding" Idaho law allowed for the loss or forfeiture of water rights by failure to apply them to beneficial use. To the extent that a further response is required, the allegations are denied.

67. The allegations in Paragraph 67 purport to characterize H.B. 592 and Idaho Code §§ 42-502 and 42-224, statutes which speak for themselves. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

68. The allegations in Paragraph 68 purport to characterize H.B. 592 and Idaho Code § 42-504, statutes which speak for themselves. The allegations also offer legal conclusions;

therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

69. The allegations in Paragraph 69 purport to characterize the show-cause order IDWR issued to the Plaintiffs on October 27, 2021, a document which speaks for itself. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

70. Ranchers admit that the stockwater rights at issue in the show-cause order referenced in Paragraph 70 of the Amended Complaint were decreed in the SRBA. Ranchers deny that at the time that they were issued these, these rights "supported" grazing by two separate Forest Service permittees. The remaining allegations in Paragraph 70 purport to characterize a private agreement between the Plaintiff and one of its grazing permittees, the show cause order, and the partial decrees for the stockwater rights identified in the show-cause order, documents which speak for themselves. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

71. Ranchers admit that on November 12, 2021, IDWR issued an order withdrawing the show-cause order referenced in Paragraphs 69 and 70. Ranchers deny the remaining allegations in Paragraph 71 because they allege legal conclusions and purport to summarize, interpret, apply or draw conclusions from the November 12, 2021 order, which speaks for itself.

72. Ranchers admit that, in addition to the petition that led to issuance of the show-cause order referenced in Paragraph 69, IDWR also received other petitions filed by private parties pursuant to Idaho Code § 42-224, but did not issue show-cause orders in response to those petitions until after Idaho Code § 42-224 was amended by H.B. 608. Ranchers deny the remaining

allegations in Paragraph 72 because they purport to summarize, interpret, apply or draw conclusions from Idaho Code § 42-224, which speaks for itself.

73. Ranchers admit that H.B. 608 took effect on March 24, 2022, and made amendments to Idaho Code § 42-224. Ranchers deny the remaining allegations in Paragraph 73 because they purport to summarize, interpret, apply or draw conclusions from Idaho Code § 42-224 and the *Joyce Livestock* decision, which speak for themselves.

74. Paragraph 74 purports to characterize H.B. 608 and Idaho Code § 42-224, statutes which speak for themselves. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

75. Paragraph 75 purports to characterize H.B. 608, Idaho Code § 42-224, and the *Joyce Livestock* decision, statutes and a ruling which speak for themselves The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

76. Paragraph 76 purports to characterize H.B. 608, Idaho Code § 42-224, and the *Joyce Livestock* decision, statutes and a ruling which speak for themselves. The allegations also offer legal conclusions; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

77. Paragraph 77 purports to characterize H.B. 608 and Idaho Code § 42-224, statutes which speak for themselves; therefore, the allegations do not require a response. To the extent that a response is required, the allegations are denied.

78. Ranchers admit that IDWR issued show-cause orders to the United States; such orders speak for themselves, and the remaining allegations of Paragraph 78's first sentence are legal conclusions ; therefore, no response to these allegations is required. Ranchers are without

knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of Paragraph 78, and therefore deny the same.

79. Ranchers are without knowledge or information sufficient to form a belief as to the truth of the allegations of in the first and third sentences of Paragraph 79 and therefore deny the same. The footnote to Paragraph 79 purports to characterize 1926 Presidential Executive Order, Public Water Reserve 107 and federal statutes, the Executive Order and these statutes speak for themselves. The allegations also offer legal conclusions to which no response is required. The remaining allegations in Paragraph 79 purport to characterize amended show-cause orders, a special appearance, and a stay order; these documents speak for themselves, and thus no response to these allegations is required.

80. Ranchers admit that the allegations in the first sentence of Paragraph 80 of the Amended Complaint. Ranchers are without knowledge or information sufficient to form a belief as to the truth of the second and last sentences of Paragraph 80, and therefore deny the same. The remaining allegations in Paragraph 80 purport to characterize a show-cause order and a special appearance, these documents speak for themselves. The allegations also offer legal conclusions; thus no response to these allegations is required.

81. Paragraph 81 purports to characterize S.B. 1111, H.B. 718, S.B. 1305, H.B. 592, and H.B. 608, the Idaho statutes enacted, amended, and/or repealed by these bills, and the *Joyce Livestock* decision, statutes and a ruling which speak for themselves; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

RESPONSES TO "DECLARATORY RELIEF" ALLEGATIONS

82. Paragraph 82 characterizes the law or alleges legal conclusions, to which no response is required.

83. Ranchers admit that Idaho Code §§ 113(2)(b), 42-224, 42-501, 42-502 and 42-504 were enacted, amended and/or repealed by S.B. 1111, H.B. 718, S.B. 1305, H.B. 592, and/or H.B. 608. Ranchers deny the remaining allegations in Paragraph 83.

84. Ranchers deny the allegations in Paragraph 84.

85. Ranchers admit that Defendants assert that the challenged provisions of the Idaho Code are valid and that IDWR has begun to apply Idaho law to Plaintiff. Ranchers are without knowledge or information as to the truth of the remaining allegations in Paragraph 85, and therefore deny the same.

86. Paragraph 86 characterizes the law or alleges legal conclusions, to which no response is required. To the extent a response is required, the allegations are denied.

RESPONSES TO "FIRST CLAIM FOR RELIEF" ALLEGATIONS

87. Ranchers incorporate by reference their responses to Paragraphs 1 through 86 above.

88. Ranchers admit that H.B. 608 amended Idaho Code § 42-224, which defines procedures for determining whether stockwater rights based on Idaho State law have been lost through non-use. Ranchers deny the remaining allegations in Paragraph 88.

89. Paragraph 89 purports to characterize 43 U.S.C. § 666, a statute which speaks for itself; therefore, no response is required. To the extent that a response is required, Ranchers deny the allegations in Paragraph 89.

90. Paragraph 90 purports to characterize 43 U.S.C. § 666 and Idaho Code § 42-224, statutes which speak for themselves; therefore, no response is required. To the extent that a response is required, Ranchers deny the allegations in Paragraph 89.

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RESPONSES TO "SECOND CLAIM FOR RELIEF" ALLEGATIONS

91. Ranchers incorporate by reference their responses to Paragraphs 1 through 90 above.

92. Paragraph 92 purports to characterize provisions of the Idaho Code and the United States Constitution, these statutes and the Constitution speak for themselves and provide for legal conclusions, therefore, no response is required. To the extent a response is required, Ranchers deny the allegations in Paragraph 92.

93. Paragraph 93 purports to characterize provisions of the Idaho Code, these statutes speak for themselves and provide for legal conclusions, therefore, no response is required. To the extent a response is required, Ranchers deny the allegations in Paragraph 93.

94. Paragraph 94 purports to characterize provisions of the Idaho Code. These statutes speak for themselvesTherefore, no response is required. To the extent that a response is required, Ranchers deny the allegations in Paragraph 94.

95. Paragraph 95 purports to characterize provisions of the Idaho Code. These statutes speak for themselves.Therefore, no response is required. To the extent that a response is required, Ranchers deny the allegations in Paragraph 95.

96. Paragraph 96 purports to characterize provisions of the Idaho Code and the United States Constitution, these statutes and the Constitution speak for themselves and therefore, no response is required. To the extent that a response is required, Ranchers deny the allegations in Paragraph 96.

97. Ranchers deny the allegations in Paragraph 97.

RESPONSES TO "THIRD CLAIM FOR RELIEF" ALLEGATIONS

98. Ranchers incorporate by reference their responses to Paragraphs 1 through 97 above.

99. Paragraph 99 characterizes the law or alleges legal conclusions, to which no response is required. To the extent that a response is required, the allegations are denied.

100. Paragraph 100 characterizes the law or alleges legal conclusions, to which no response is required. Ranchers deny the allegations in Paragraph 100.

RESPONSES TO "FOURTH CLAIM FOR RELIEF" ALLEGATIONS

101. Ranchers incorporate by reference their responses to Paragraphs 1 through 100 above.

102. Paragraph 102 characterizes the law or contracts or alleges legal conclusions, to which no response is required. Ranchers deny the allegations in Paragraph 102.

103. Ranchers are without sufficient knowledge of Plaintiff's motivation for entering the "settlements" referenced in Paragraph 103 of the Amended Complaint, and in any case the "settlements" speak for themselves. Ranchers therefore deny the allegations in Paragraph 103. Ranchers further deny that any part of the settlements guaranteed water rights for the Plaintiff in perpetuity, in contravention of Idaho law, or otherwise isolated the settlement agreement parties' water rights from the application of Idaho law.

104. Ranchers deny the allegations in Paragraph 104.

RESPONSES TO "FIFTH CLAIM FOR RELIEF" ALLEGATIONS

105. Ranchers incorporate by reference their responses to Paragraphs 1 through 104 above.

106. Ranchers admit that a "civil action" pursuant to Idaho Code § 42-224 could result in a court order and judgment determining that some or all of the state law-based stockwater rights at issue in this case have been lost through non-use. Ranchers deny the remaining allegations in Paragraph 106.

107. Paragraph 107 characterizes the law or alleges legal conclusions, to which no response is required. To the extent a response is required, the allegations are denied.

108. Ranchers deny the allegations in Paragraph 108.

109. Ranchers deny the allegations in Paragraph 109.

RESPONSE TO "PRAYER FOR RELIEF"

110. Ranchers deny that the Plaintiff is entitled to a judgment awarding the relief requested in Paragraph 110, deny that the Plaintiff has stated facts entitling it to relief, deny that the Plaintiff has stated claims for which relief may be granted, deny that the Plaintiff is entitled to any relief whatsoever, and requests that this Court dismiss the Amended Complaint with prejudice.

AFFIRMATIVE DEFENSES

1. The Plaintiff's claims, or some of them, fail to state claims for which relief may be granted.

2. The Plaintiff's claims that its state law-based stockwater rights were decreed for use by federal grazing permittees, to support or enable federal grazing programs, or for any purpose other than watering livestock owned by the Plaintiff, are barred and foreclosed by the doctrine of *res judicata* or principles of collateral estoppel.

3. The Plaintiff's claims that its state law-based stockwater rights are not subject to the requirements, limitations, standards and procedures of Idaho water law, including but not limited to the statutory forfeiture procedures and provisions of Idaho Code §§ 42-224 and

42- 222(2), are barred and foreclosed by the doctrine of *res judicata* or principles of collateral estoppel.

4. The Plaintiff's claims are precluded by the primary jurisdiction doctrine.

5. Plaintiff's claims are barred by the doctrines of waiver, estoppel, laches, or by the equal footing doctrine.

6. Injunctive relief is not appropriate because Plaintiff has an adequate legal remedy.

7. Plaintiff is precluded from recovering under the allegations of the Amended Complaint due to its failure to exhaust administrative remedies.

8. Plaintiff's requested relief is overbroad and violates principles of comity and federalism.

9. Ranchers have a right to discovery from other parties to this action, including Plaintiff, and reserve the right to amend this Answer to add additional affirmative defenses supported by the facts, and the non-inclusion of such defenses here should not be deemed to waive any such further amendment of this Answer.

RANCHERS' REQUEST FOR RELIEF

WHEREFORE, Defendant-Intervenor Ranchers pray

1. That the Court enter judgment in their favor and against Plaintiff United States of America.

2. For an Order declaring that the challenged laws of the State of Idaho valid and enforceable.

3. For an Order awarding Ranchers their reasonable costs and attorney fees pursuant to Federal Rule of Civil Procedure 54(d) and as otherwise allowed by law.

4. For any and all further relief as the Court may find to be just, equitable, and appropriate under the circumstances.

Respectfully submitted this 30 day of August 2022,

/s/ DRAFT
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*Admission *Pro Hac Vice* pending

Attorney for Defendant-Intervenors Joyce Livestock Co.; LU Ranching Co.; Pickett Ranch & Sheep Co.; and Idaho Farm Bureau Federation

CERTIFICATE OF SERVICE

I hereby certify that, on August _____, 2022, I filed the foregoing document with the Clerk of the Court using this Court's CM/ECF system, which will send a notification to all counsel of record pursuant to Fed. R. Civ. P. 5 and D. Idaho L.R. 5.1(k).

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Attorneys for Applicants in Intervention Joyce Livestock Co.; LU Ranching Co.; Pickett Ranch & Sheep Co.; and Idaho Farm Bureau Federation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, *Plaintiff* v. STATE OF IDAHO, STATE OF IDAHO DEPARTMENT OF WATER RESOURCES, an agency of the State of Idaho, and GARY SPACKMAN, in his official capacity as Director of the Idaho Department of Water Resources *Defendants*, --- IDAHO HOUSE OF REPRESENTATIVES; MIKE MOYLE, in his official capacity as Majority Leader of the House; IDAHO SENATE; and CHUCK WINDER, in his official capacity as President Pro Tempore of the Senate, *Applicants in Intervention*, and --- JOYCE LIVESTOCK CO.; LU RANCHING CO.; PICKETT RANCH & SHEEP CO; and IDAHO FARM BUREAU FEDERATION, *Applicants in Intervention*.	Case No. 1:22-cv-00236-DCN **DECLARATION OF DON PICKETT IN SUPPORT OF PICKETT RANCH & SHEEP CO.**

I, Don F. Pickett, declare and state as follows:

1. I am a fourth-generation Idaho rancher and co-owner of Pickett Ranch & Sheep Co.
2. Our ranch is a family operation dating back to 1881.
3. Our family has continued to ranch uninterrupted from that date through today, and currently my two brothers, Douglas and David, and I operate the ranch day-to-day,with our sons being the fifth generation of Picketts to do so.
4. We operate on approximately 9,000 deeded acres of irrigated farm ground, and 43,000 deeded acres of dry pasture lands.
5. We also run cattle and sheep on lands administered by the United States Forest Service in Idaho, and the Bureau of Land Management in Idaho, Utah, and Nevada, collectively holding permits for about around 22,000 actively grazed animal unit months.
6. We also operate on an additional 5,300 acres of state endowment lands administered by the Idaho Department of Lands.
7. We have 30-50 employees, some of whom have worked with our family for half a century, as long as Doug has been alive.
8. We are members of the Idaho Farm Bureau.
9. I am also an attorney, having received my law degree from University of Idaho Law School in 1985.
10. We hold stockwater rights decrees on our grazing allotments, but our ability to exercise and protect those rights is seriously curtailed.
11. My brothers, David and Douglas, and I operated Pickett Ranch & Sheep Co. when it was a party to what the federal government calls the “FSG settlement.”

12. As a result of that settlement, the company holds water rights decrees on its grazing allotments.

13. However, to avoid prolonged and expensive litigation with the federal government, we had to agree to onerous terms that favored the federal government and limited our rights.

14. I believe the terms imposed by that settlement and the Snake River Basin Adjudication process severely limit our exercise of our water rights and render them effectively worthless, because it allows the federal government to dictate our use of our own stockwater rights.

15. The disposition of the United States' suit against Idaho in this court is likely to further impact the status and limits on Pickett Ranch & Sheep Co.'s stockwater rights, and its ability to exercise and vindicate those rights, which are already severely curtailed.

16. On or around July 20, 2022, I attended a meeting at the USFS Ranger District office that was also attended by Terry Padilla, Regional Range Director..

17. That meeting was to discuss reconstruction of stock water facilities following a 90,000 acre fire that destroyed about 38 miles of fence and about 18 water troughs in or around September, 2020.

18. We have had and continue to have great difficulty getting USFS to cooperate with repairing damaged and destroyed fences and water facilities.

19. Terry Padilla discussed this lawsuit in that meeting. He suggested that it will be much more difficult for us to accomplish repair of this damaged infrastructure if the United States loses this case against Idaho.

20. I understood Mr. Padilla to be warning us ranchers not to speak up against the United States' efforts in this suit, lest we face reprisals in the form of Forest Service interference with our grazing allotments by, for example, continuing to prevent or delay repair of damaged fences and watering facilities.

21. I believe such threats are an illustration of why it is important for ranchers to have a voice in this litigation; the Forest Service clearly wants to leverage interference with our water rights, and this lawsuit will either help or hinder their success in such abusive tactics.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 28th day of August 2022.

/s/ Don F. Pickett
DON F. PICKETT

CERTIFICATE OF SERVICE

I hereby certify that, on August 30, 2022, I filed the foregoing document with the Clerk of the Court using this Court's CM/ECF system, which will send a notification to all counsel of record pursuant to Fed. R. Civ. P. 5 and D. Idaho L.R. 5.1(k).

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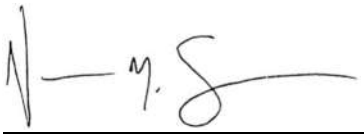

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Attorneys for Applicants in Intervention Joyce Livestock Co.; LU Ranching Co.; Pickett Ranch & Sheep Co.; and Idaho Farm Bureau Federation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff

v.

STATE OF IDAHO, STATE OF IDAHO DEPARTMENT OF WATER RESOURCES, an agency of the State of Idaho, and GARY SPACKMAN, in his official capacity as Director of the Idaho Department of Water Resources

Defendants,

IDAHO HOUSE OF REPRESENTATIVES; MIKE MOYLE, in his official capacity as Majority Leader of the House; IDAHO SENATE; and CHUCK WINDER, in his official capacity as President Pro Tempore of the Senate,

Applicants in Intervention, and

JOYCE LIVESTOCK CO.; LU RANCHING CO.; PICKETT RANCH & SHEEP CO; and IDAHO FARM BUREAU FEDERATION,

Applicants in Intervention.

Case No. 1:22-cv-00236-DCN

DECLARATION OF PAUL NETTLETON IN SUPPORT OF JOYCE LIVESTOCK CO.

I, Paul Nettleton, declare and state as follows:

1. I co-own and operate Joyce Livestock Co., a five-generation Idaho family ranch, with my son Chad.
2. My family has been ranching in Idaho since 1865.
3. To the best of my knowledge, ours is the oldest family-owned ranch in Idaho.
4. We are a member of the Idaho Farm Bureau Federation.
5. We have approximately 11,000 deeded acres and between 80,000 and 100,000 federal Bureau of Land Management grazing allotments.
6. Our summer grazing allotment in particular is very dependent on stockwater.
7. We run about 700 head of cattle, a number which has been declining as the federal government has grown more hostile to ranchers and grazing and continuously reduced the number of cattle we are permitted to graze on our allotments.
8. We hold stockwater rights on federally-owned land where we hold and use grazing permits.
9. My ranch was a named party to *Joyce Livestock Co. v. United States*, and won a landmark victory over the United States at the Idaho Supreme Court in 2007, regarding its competing claims to stockwater rights on our grazing allotments.
10. We have been honored by the agricultural community for being one of only two ranches (the other being LU Livestock Co.) who were willing to stand up to the federal government to defend our water rights instead of accepting the terms of participation in the Snake River Basin Adjudication.
11. That stand cost our ranch ten years of litigation and hundreds of thousands of dollars in attorney fees (which were not awarded to us by the courts).

12. According to Don Sonke, then president of the Ada County Farm Bureau, our "legal battle secured water rights on the range for generations," and "those water rights saved ranching in Idaho as we know it . . . they've [Joyce and LU Livestock Cos.] sacrificed a lot."

13. Now, in this case, the federal government again seeks to make it more difficult to vindicate our water rights, and easier for the government to continue holding declared rights that it has forfeited under the state law that we fought for in the *Joyce* litigation.

14. States' rights are at issue in this litigation, but so are Idaho ranchers' rights.

15. We ranchers must be given a voice in this litigation that will determine the future of our stockwater rights, including our ability to maintain them, our ability to vindicate them against federal claims or objections to our claims, and the ease with which the federal government can appropriate them.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 28th day of August, 2022.

/s/ Paul Nettleton
PAUL NETTLETON

CERTIFICATE OF SERVICE

I hereby certify that, on August 30, 2022, I filed the foregoing document with the Clerk of the Court using this Court's CM/ECF system, which will send a notification to all counsel of record pursuant to Fed. R. Civ. P. 5 and D. Idaho L.R. 5.1(k).

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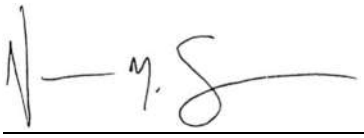

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff

v.

STATE OF IDAHO, STATE OF IDAHO DEPARTMENT OF WATER RESOURCES, an agency of the State of Idaho, and GARY SPACKMAN, in his official capacity as Director of the Idaho Department of Water Resources

Defendants,

IDAHO HOUSE OF REPRESENTATIVES; MIKE MOYLE, in his official capacity as Majority Leader of the House; IDAHO SENATE; and CHUCK WINDER, in his official capacity as President Pro Tempore of the Senate,

Applicants in Intervention, and

JOYCE LIVESTOCK CO.; LU RANCHING CO.; PICKETT RANCH & SHEEP CO; and IDAHO FARM BUREAU FEDERATION,

Applicants in Intervention.

Case No. 1:22-cv-00236-DCN

DECLARATION OF RUSS HENDRICKS IN SUPPORT OF IDAHO FARM BUREAU FEDERATION

I, Russ Hendricks, on behalf of Idaho Farm Bureau Federation ("IFBF"), declare and state as follows:

1. I currently serve as Director of Governmental Affairs for IFBF.
2. I have served IFBF since 1990, and was appointed to my current position in 2013.
3. IFBF is a voluntary, grassroots organization of nearly 80,000 Idaho families dedicated to strengthening agriculture and protecting the rights, values, and property of our member families and neighbors.
4. Hundreds of our members are permittees on federal grazing allotments within Idaho, some of which are listed individually in this suit.
5. IFBF was organized in 1939 as an independent farm organization. It was chartered under the laws of the state of Idaho in May of 1939 and maintains status as a 501(C)(5) non-profit corporation.
6. IFBF's scope and influence cover local, county, state, national, and international issues. It is a non-partisan organization.
7. In my capacity as Director of Governmental Affairs, I have witnessed various efforts by the United States Bureau of Land Management ("BLM") and United States Forest Service ("USFS") to appropriate Idaho ranchers' stock watering rights on BLM and USFS grazing allotments.
8. These efforts include the United States' actions in the Snake River Basin Adjudication, which conveyed at least 17,000 stock watering rights to the USFS and BLM.
9. These efforts also include the United States' positions in its litigation against two ranchers who chose to defend their rights instead of accepting the partial decree

decisions in favor of the federal government within the Snake River Basin Adjudication. That litigation led to the Idaho Supreme Court's 2007 *Joyce Livestock* decision, which the United States lost, and under which it is likely the federal agencies have forfeited many of the stock water rights decreed to it in the Snake River Basin Adjudication.

10. These efforts also include USFS and BLM's strategy in recent years of pressuring ranchers to sign voluntary agreements attempting to portray them as agents of the federal government, which USFS and BLM undertook in order to ensure that they, rather than the ranchers signing those agreements, would secure stock watering rights on those ranchers' allotments.

11. IFBF has undertaken efforts to warn ranchers about the effect of waiving their water rights by entering such agreements.

12. The matter presently before this Court represents the most recent effort by USFS and BLM to thwart ranchers' property rights under state law.

13. Respectfully, my belief is that because the United States lost regarding Idaho's substantive law (in *Joyce*) it now seeks to interfere with Idaho's recent codification of the *Joyce* decision and with Idaho's administration, adjudication, and enforcement of its decades-old water rights law in order to maintain purported stock water rights that it has likely forfeited by lack of beneficial use under the *Joyce* decision.

14. I believe that the United States' lawsuit threatens the rights of Idaho ranchers, because an outcome favoring the United States would render ranchers' water rights more difficult to vindicate, and would aid the United States government in

maintaining decrees of stockwater rights long after it has forfeited those rights under state law by lack of beneficial use.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 30th day of August, 2022.

/s/ Russ Hendricks
RUSS HENDRICKS
IDAHO FARM BUREAU FEDERATION

CERTIFICATE OF SERVICE

I hereby certify that, on August 30, 2022, I filed the foregoing document with the Clerk of the Court using this Court's CM/ECF system, which will send a notification to all counsel of record pursuant to Fed. R. Civ. P. 5 and D. Idaho L.R. 5.1(k).

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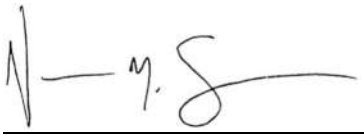

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, *Plaintiff* v. STATE OF IDAHO, STATE OF IDAHO DEPARTMENT OF WATER RESOURCES, an agency of the State of Idaho, and GARY SPACKMAN, in his official capacity as Director of the Idaho Department of Water Resources *Defendants*,	Case No. 1:22-cv-00236-DCN **DECLARATION OF TIM LOWRY IN SUPPORT OF LU RANCHING CO.**
IDAHO HOUSE OF REPRESENTATIVES; MIKE MOYLE, in his official capacity as Majority Leader of the House; IDAHO SENATE; and CHUCK WINDER, in his official capacity as President Pro Tempore of the Senate, *Applicants in Intervention*, and	
JOYCE LIVESTOCK CO.; LU RANCHING CO.; PICKETT RANCH & SHEEP CO; and IDAHO FARM BUREAU FEDERATION *Applicants in Intervention*.	

I, Tim Lowry, declare and state as follows:

1. I am an Idaho rancher and an owner and operator of LU Ranching Co.

2. LU Ranching Co. is a family corporation, incorporated in 1976.

3. We are a cow and calf operation, and run around 400 mother cows.

4. We are public lands dependent, and we hold Bureau of Land Management grazing permits for the spring, summer, and early fall.

5. During the Snake River Basin Adjudication period, LU Ranching filed for decrees of our stockwater rights on our private land and on our grazing allotments where we'd engaged in beneficial use.

6. The United States objected to our filings, and we were sucked into a decade of expensive litigation.

7. Our case was a companion case to the *Joyce Livestock Co.* case decided by the Idaho Supreme Court in 2007; our case was decided the same day on similar reasoning.

8. We have been honored by the agricultural community for being one of only two ranches (the other being Joyce Livestock Co.) who were willing to stand up to the federal government to defend our water rights instead of accepting the terms of participation in the Snake River Basin Adjudication.

9. That stand cost our ranch ten years of litigation and hundreds of thousands of dollars in attorney fees (which were not awarded to us by the courts).

10. According to Don Sonke, then president of the Ada County Farm Bureau, our "legal battle secured water rights on the range for generations," and "those water rights

saved ranching in Idaho as we know it . . . they've [Joyce Livestock and LU Ranching Cos.] sacrificed a lot."

11. Now, in this case, the federal government again seeks to make it more difficult to vindicate our water rights and easier for the government to continue holding declared rights that it has forfeited under the state law that we fought for in the *Joyce* and *LU Ranching* litigation.

12. States' rights are at issue in this litigation, but so are Idaho ranchers' rights.

13. Because we had received inaccurate advice from a state bureaucrat who told us that we did not need to object to the United States's claims because they had objected to ours, the United States was able to obtain overlapping decrees for our stockwater rights, despite their lack of beneficial use.

14. We do have an earlier priority date for the rights on our grazing allotments, however, based on our predecessors in use.

15. Because we did not file timely objections to the United States' claims to stockwater rights on our allotments, we have not had a way to seek adjudication of the fact that the United States has forfeited its competing stockwater rights on our allotments due to lack of beneficial use.

16. Like many ranches, we stand to benefit from the statutes challenged by the federal government in this case, which provide a process for determining which stockwater rights the United States has forfeited and clearing any legal cloud over our property rights.

I declare under penalty of perjury that the foregoing is true and correct.

///

Executed on this 29 day of August, 2022.

/s/ Tim Lowry
TIM LOWRY

CERTIFICATE OF SERVICE

I hereby certify that, on August 30, 2022, I filed the foregoing document with the Clerk of the Court using this Court's CM/ECF system, which will send a notification to all counsel of record pursuant to Fed. R. Civ. P. 5 and D. Idaho L.R. 5.1(k).

Stephen Bartell
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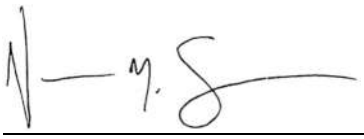

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