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*Attorneys for Defendants the State of Idaho, the Idaho Department of Water Resources, and Gary Spackman, in his official capacity as Director of the Idaho Department of Water Resources*

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants,

v.

IDAHO HOUSE OF REPRESENTATIVES; MIKE MOYLE, in his official capacity as Majority Leader of the House; IDAHO

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

**STATE DEFENDANTS’  
STATEMENT OF  
UNDISPUTED FACTS and  
STATEMENT OF DISPUTED  
FACTS IN RESPONSE TO  
UNITED STATES’  
STATEMENT OF  
UNDISPUTED FACTS  
(Dkt. 37)**

SENATE; and CHUCK WINDER, in his  
official capacity as President Pro Tempore  
of the Senate,

Intervenor-Defendants.

## STATEMENT OF UNDISPUTED FACTS

Defendants the State of Idaho, the Idaho Department of Water Resources, and Gary Spackman, in his official capacity as Director of the Idaho Department of Water Resources (“State Defendants”), by and through their counsel of record and pursuant to Rule 56 of the Federal Rules of Civil Procedure, Local Rule 7.1, and this Court’s Scheduling Order (Dkt. 32) and Order Amending Scheduling Order (Dkt. 33), and in support of their cross-motion for summary judgment, present the following undisputed facts:

### **I. The Snake River Basin Adjudication.**

1. The Snake River Basin Adjudication (“SRBA”) is an action commenced in 1987 in the Twin Falls County District Court, Fifth Judicial District of the State of Idaho, for the adjudication and administration of all rights to use of the surface and ground waters of the Snake River Basin within Idaho. Decl. of Counsel in Support of State Defendants’ Cross-Motion for Summary Judgment and Response to United States’ Motion for Summary Judgment (“Counsel Dec.”) ¶ 3, Ex. 2 at 1 of 27.<sup>1</sup> It is one of five general water right adjudications currently underway in Idaho. Decl. of Craig L. Saxton (“Saxton Dec.”) ¶ 4. The Twin Falls County District Court is commonly known as the “SRBA District Court” and presides over all of these adjudications. *Id.* ¶ 5. The other four are the Coeur d’ Alene-Spokane River Basin Adjudication (“CSRBA”), the Palouse River Basin Adjudication (“PRBA”), the Clark

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<sup>1</sup> Unless otherwise noted, citations to pages within exhibits refer to the pagination in green font in the lower right-hand corners of the pages in the exhibit.

Fork-Pend Oreille River Basins Adjudication (“CFPRBA”),<sup>2</sup> and the Bear River Basin Adjudication (“BRBA”). *Id.* ¶ 4. The SRBA is the oldest and by far the largest adjudication and covers the vast majority of the State of Idaho. *Id.* ¶ 4, Ex. 1.

2. The United States was joined as a party to the SRBA pursuant to 43 U.S.C. § 666 (“McCarran Amendment”). Counsel Dec. ¶ 3, Ex. 2 at 4, 7 of 27. The SRBA’s *Final Unified Decree* was issued in 2014, and all water rights claimed to exist within the boundaries of the SRBA on the date of commencement have now been adjudicated, with the exception of “deferred” claims for *de minimis* domestic and stockwater uses under state law. *Id.* ¶ 3, Ex. 2 at 1, 9-10 of 27; Saxton Dec. ¶ 7. Approximately 160,000 water rights have been decreed in the SRBA to date. Saxton Dec. ¶ 7. As of 2016, the cumulative administrative and judicial costs of the SRBA to the State of Idaho stood at \$94 million. Ann. Y. Vonde, *et al.*, *Understanding the Snake River Basin Adjudication*, 52 IDAHO L. REV. 53, 55-56 (2016). Deferred claims for *de minimis* domestic and stockwater rights are still being filed and adjudicated. Saxton Dec. ¶ 7.

3. The SRBA and Idaho’s other general water right adjudications use special procedures. *See generally* Counsel Dec. ¶ 6, Ex. 5 (“SRBA Administrative Order 1”); Idaho Code §§ 42-1401—42-1428. Claims are filed with the Idaho Department of Water Resources (“IDWR”), which is not a party to an adjudication but rather is the SRBA District Court’s independent expert and technical assistant. Saxton Dec. ¶¶ 6,

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<sup>2</sup> The CSRBA, PRBA, and CFBRBA are collectively known as the “Northern Idaho Adjudications.” Saxton Dec. ¶ 4 n.1.

8; Idaho Code § 42-1406B.<sup>3</sup> IDWR investigates state law-based claims and files recommendations with the court as to whether and how the water right claims should be decreed. Saxton Dec. ¶ 8.<sup>4</sup> If no objections are filed to IDWR’s recommendations, they are “uncontested” and the Presiding Judge generally decrees (or disallows) the claimed water rights as recommended. *Id.* ¶ 11; Counsel Dec. ¶ 6, Ex. 5 at 32 of 57. If an objection is filed to a recommendation, the matter becomes a “subcase” and the Presiding Judge refers it to one of the court’s Special Masters for further proceedings, including litigation or settlement. Counsel Dec. ¶ 6, Ex. 5 at 23-29 of 57. The Special Masters ultimately file recommendations as to whether and how the claimed water rights should be decreed, *id.* ¶ 6, Ex. 5 at 30 of 57, and if the recommendations are not “challenged,” the Presiding Judge generally decrees (or disallows) the claimed water right as recommended. If a Special Master recommendation is “challenged,” the matter is briefed and argued before the Presiding Judge, who issues a decision as to whether and how the claimed water right should be decreed. *Id.* ¶ 6, Ex. 5 at 30-32 of 57.

4. Decrees for individual water rights are called “partial decrees” and define the water rights in a compact, standardized format that simply lists the statutory “elements” of the water right, which are: owner, priority date, source, point of diversion, quantity, purpose of use, place of use, and period of use. Counsel Dec. ¶ 6,

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<sup>3</sup> The State of Idaho and state agencies other than IDWR can and often do appear as parties in the SRBA and Idaho’s other water rights adjudications. Idaho Code § 42-1401C.

<sup>4</sup> IDWR does not investigate claims based on federal law, but simply forwards them to the SRBA District Court. Saxton Dec. ¶ 10.

Ex. 5 at 12 of 57; Saxton Dec. ¶ 11, Ex. 3; Idaho Code § 42-1412(6). “Partial decrees” and “challenge” decisions are generally certified under I.R.C.P. 54(b) and can be appealed to the Idaho Supreme Court. Counsel Dec. ¶ 6, Ex. 5 at 12, 30-31 of 57; Saxton Dec. ¶ 11, Ex. 3.

5. The *Final Unified Decree* is binding on all parties, including the United States, and incorporates all “partial decrees” issued in the SRBA. Counsel Dec. ¶ 3, Ex. 2 at 7, 10 of 27.

## **II. Stockwater Litigation in the SRBA and the *Joyce Livestock Appeal*.**

6. The United States claimed thousands of water rights in the SRBA for “stockwater” use (“stockwater rights”) based on federal law. Saxton Dec. ¶ 14; Dkt. 36 ¶ 10. It was well-established at the time that water rights based on federal law are not subject to forfeiture under state law. *See, e.g., Arizona v. San Carlos Apache Tribe of Arizona*, 463 U.S. 545, 574 (1983) (“Unlike state-law claims based on prior appropriation, Indian reserved water rights are not based on actual beneficial use and are not forfeited if they are not used.”) (Stevens, J., dissenting). Approximately 6,500 federal law-based stockwater rights were decreed in the SRBA in the name of the United States, most based on an executive order known as “Public Water Reserve 107” or “PWR 107.” Dkt. 36 ¶ 10; Saxton Dec. ¶ 15; *see generally* Counsel Dec. ¶ 5, Ex. 4 (partial decrees based on PWR 107).

7. The United States also filed SRBA claims for thousands of state law-based stockwater rights. Saxton Dec. ¶ 14; Dkt. 36 ¶ 10. Idaho water rights are based on beneficial use of water, and entitle the owner of the water right to beneficially use the

public waters of the States in accordance with the elements of the water rights and Idaho water law. Decl. of Shelley W. Keen (“Keen Dec.”) ¶¶ 13, 15; Decl. of Timothy J. Luke (“Luke Dec.”) ¶ 10. When the United States filed its SRBA claims the forfeiture provisions of Idaho Code § 42-222(2) and its statutory predecessors had been part of Idaho’s water code for at least eighty years. 1905 Idaho Sess. Laws 27-28 (Appendix 13 to *State Defendants’ Memorandum in Support of Cross-Motion for Summary Judgment and Response to United States’ Motion for Summary Judgment (“State’s Brief”)*, filed herewith).

8. Most of the United States’ state law-based stockwater claims were “beneficial use” claims. Saxton Dec. ¶ 16; Dkt. 36 ¶ 10; Dkt. 35 ¶¶ 11, 13. “Beneficial use” stockwater claims assert that valid stockwater rights were established by diverting the water for use by livestock, or by allowing livestock to simply drink from the water source—“instream” stockwatering. Saxton Dec. ¶ 17.<sup>5</sup> The livestock that made the claimed “beneficial use” of stockwater were not owned by the United States, however, but rather by private parties. Counsel Dec. ¶ 13, Ex. 12 at 5-6 of 12; Saxton

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<sup>5</sup> A “beneficial use” claim is a claim under “the constitutional method of appropriation,” which allows a water right to be established by simply diverting water from a surface or ground water source and making beneficial use of it. *Joyce Livestock Co. v. United States*, 144 Idaho 1, 7, 156 P.3d 502, 508 (2007). While “instream” stockwater rights can still be established under this method, Keen Dec. ¶ 14; Luke Dec. ¶ 8; Saxton Dec. ¶ 17, other types of water rights can no longer be established in this way due to mandatory permitting statutes enacted in 1963 (for groundwater) and 1971 (for surface water). Luke Dec. ¶ 8; Saxton Dec. ¶¶ 17-18. “Instream” stockwatering and so-called “domestic” wells are exceptions to the permit requirement. No permit is required for instream stockwatering or to water livestock from wells that fit the statutory definition of a “domestic” well. Keen. Dec. ¶¶ 14, 28; Luke Dec. ¶ 8; Saxton Dec. ¶¶ 17-18.

Dec. ¶ 19; Dkt. 36 ¶¶ 7, 10, 13-15, 18; Dkt. 35 ¶¶ 8-9, 12-14. Even though the United States did not own the livestock that drank the water, IDWR generally recommended that the United States' stockwater claims be decreed in the name of the United States. Counsel Dec. ¶ 13, Ex. 12 at 5-10 of 12; Saxton Dec. ¶ 19. This was a result of IDWR's then-longstanding policy of recommending that water rights be decreed in the name of the title holder of the place of use. *Id.*<sup>6</sup>

9. The United States' beneficial use stockwater claims asserted priority dates as early as 1874, Saxton Dec. ¶ 16, Ex. 5, and the State of Idaho objected to most of them, asserting the United States could not claim a priority date earlier than June 28, 1934, the effective date of the Taylor Grazing Act. Counsel Dec. ¶ 7, Ex. 6 at 2 of 32 n.2.

10. In a subcase designated as the "test case" for addressing the State's objections, Counsel Dec. ¶ 12, Ex. 11 at 2 of 3, the United States did not assert that it or its livestock had beneficially used the stockwater. The United States asserted, rather, that it was entitled to "beneficial use" stockwater rights based solely on federal agencies' administration of federal lands and federal grazing programs. Counsel Dec. ¶ 10, Ex. 9 at 1, 4-5, 7, 13 of 15.

11. The Special Master presiding over the "test case" rejected this argument, Counsel Dec. ¶ 10, Ex. 9 at 4-13 of 15, and the Presiding Judge affirmed this decision in the ensuing "challenge" proceeding. *Id.* ¶ 9, Ex. 8 at 1-2, 7-8 of 11. The State

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<sup>6</sup> IDWR subsequently abandoned this policy and now recommends that water rights be decreed in the name of the water users. Saxton Dec. ¶ 21.



therefore requested leave to amend its objections to assert that the United States was not entitled to *any* beneficial use-based stockwater rights, but this request was denied. Counsel Dec. ¶ 8, Ex. 7 at 1-2 of 20. The State thus resolved its objections through settlements in which the United States agreed to a 1934 priority date. Counsel Dec. ¶ 7, Ex. 6 at 2 of 32 n.2. Many private party objections to the United States' stockwater claims were also resolved by settlements. Dkt. 36 ¶ 23. Because these settlements resolved the objections to thousands of the United States' beneficial use-based stockwater claims, the United States was decreed thousands of beneficial use-based stockwater rights based solely on IDWR's then-longstanding policy of recommending that water rights be decreed in the name of the title holder of the land where the water is used. Counsel Dec. ¶ 13, Ex. 12 at 5-6 of 12; Saxton Dec. ¶¶ 14, 19; Dkt. 36 ¶ 10.

12. Some private parties continued to press their objections to the United States' claims in subcases that had been referred to a different Special Master than the one who handled the "test case." Counsel Dec. ¶ 7, Ex. 6 at 1-3 of 32. Those proceedings lasted several years, *id.*, and ultimately that Special Master accepted the United States' arguments that it was entitled to beneficial use-based stockwater rights based solely on its administration of federal lands and federal grazing programs. *Id.* ¶ 7, Ex. 6 at 9-11 of 32. The Special Master's decision and recommendations were "challenged" to the Presiding Judge, who reversed the Special Master and rejected the United States' arguments. *Id.* ¶ 7, Ex. 6 at 1, 21-30 of 32. The United States appealed this "challenge" decision to the Idaho Supreme Court,

which also rejected the United States' arguments. *Joyce Livestock Co. v. United States*, 144 Idaho 1, 17-20, 156 P.3d 502, 518-21.

13. Idaho water rights and water law do not regulate or control grazing on federal lands. They govern the separate question of how water is allocated and used under Idaho law. Keen Dec. ¶ 29.

14. Section 3 of the Taylor Grazing Act of 1934 states, in part, “[t]hat nothing in this subchapter shall be construed or administered in any way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacture, or other purposes which has heretofore vested or accrued under existing law validly affecting the public lands or which may be hereafter initiated or acquired and maintained in accordance with such law.” 43 Stat. 1271 (codified at 43 U.S.C. § 315b).

15. 43 C.F.R. § 4120.3-9 (1995) states in full as follows: “Any right acquired on or after August 21, 1995 to use water on public land for the purpose of livestock watering on public land shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located. To the extent allowed by the law of the State within which such land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.” 60 Federal Register 9965 (Feb. 22, 1995).

16. Section 701 of the Federal Land Policy and Management Act of 1976 states, in part, that “[n]othing in this Act shall be construed as limiting or restricting the

power and authority of the United States or—, (1) as affecting in any way any law governing appropriation or use of, or Federal right to, water on public lands; (2) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control[.]” 90 Stat. 2743 (43. U.S.C. § 1701 (note)).

### **III. Idaho Stockwater Statutes.**

17. Since 1939, Chapter 5 of Title 42 of the Idaho Code (“Chapter 5”) has addressed stockwater rights appropriated by the United States on lands managed by the Bureau of Land Management (“BLM”) and its predecessor (the Division of Grazing). 1939 Idaho Sess. Laws 412-13 (Appendix 1 to *State’s Brief*). The original statutes comprising Chapter 5 remained substantially unchanged until 2017, when the Idaho Legislature repealed Chapter 5 and replaced it with a number of new stockwater rights provisions intended to “codify and enhance” the Legislature’s understanding of the Idaho Supreme Court’s *Joyce Livestock* decision. 2017 Idaho Sess. Laws 408-09 (Appendix 1 to *State’s Brief*). The Idaho Legislature subsequently amended and sometimes repealed or replaced these new provisions in the 2018, 2020, and 2022 legislative sessions. 2018 Idaho Sess. Laws 747-49 (Appendix 4 to *State’s Brief*); 2020 Idaho Sess. Laws 738-40 (Appendix 5 to *State’s Brief*); 2022 Idaho Sess. Laws 686-88 (Appendix 1 to *State’s Brief*). In 2018, the Legislature also amended Idaho Code § 42-113, a stockwater rights statute that had originally been enacted in 1984. 2018 Idaho Sess. Laws 303-05 (Appendix 3 to *State’s Brief*).

18. The 2018 legislation included a new statute addressing forfeiture of

stockwater rights held by federal agencies, which was codified as Idaho Code § 42-503. 2018 Idaho Sess. Laws 748 (Appendix 4 to *State's Brief*). That statute was repealed in 2020 and replaced by a new statute, Idaho Code § 42-224. 2020 Idaho Sess. Laws 738-40 (Appendix 5 to *State's Brief*). This new provision was not limited to stockwater rights held by federal agencies, but rather applied to all stockwater rights other than those based on federal law. *Id.* Section 42-224 also established a different procedure for addressing forfeiture of stockwater rights. *Id.*

19. Section 42-224 was extensively revised and amended during the 2022 legislative session, but still applies to all stockwater rights except those based on federal law. 2022 Idaho Sess. Laws 686-88 (Appendix 6 to *State's Brief*). The revisions defined a new procedure for addressing allegations that a stockwater right has been lost to forfeiture pursuant to Idaho Code § 42-222(2). *Id.* The procedure consists of interlocking administrative and judicial components. The administrative component is defined by subsections (1)-(9), and the judicial component is defined by subsections (10)-(12). 2022 Idaho Sess. Laws 686-88 (Appendix 6 to *State's Brief*); Idaho Code § 42-224(1)-(12).

20. The overall procedure established by Idaho Code § 42-224 is similar to that used in the SRBA and Idaho's other general water right adjudications. Declaration of Gary Spackman ("Spackman Dec.") ¶ 11. In the SRBA and the other general water right adjudications, IDWR investigates claims and makes recommendations to the SRBA District Court that carry "prima facie" weight. *Id.* Under the 2022 legislation, IDWR investigates claims of forfeiture and if IDWR determines the claim has merit,

issues an order that has no legal effect in and of itself but has “prima facie” weight in the ensuing “civil action” in the SRBA District Court. Idaho Code § 42-224(9)-(11); Spackman Dec. ¶ 11; *see also* Keen Dec. ¶ 23 (discussing the procedure defined by Idaho Code § 42-224). This does not change the burden or standard of proof in court, however. The Idaho Attorney General still has the burden of proving by clear and convincing evidence that a stockwater right has been lost to forfeiture pursuant to Idaho Code § 42-222(2). Idaho Code § 42-224(10)-(11).

#### **IV. The Petitions and the Show-Cause Orders.**

21. The administrative proceedings at issue in this case were initiated by four petitions filed with IDWR pursuant to Idaho Code § 42-224(1) by private parties holding permits to graze their livestock on federal lands. (“Petitions”). Spackman Dec. ¶¶ 4-5, Exs. 1-5.<sup>7</sup> The Petitions collectively alleged the United States owned a total of one hundred twenty-eight (128) stockwater rights located on the federal lands grazed by the Petitioners’ livestock, and that the United States had not grazed or watered its own livestock on those lands. Spackman Dec. ¶ 5, Exs. 1, 2, 4, 5.<sup>8</sup> The Petitions also alleged that the Petitioners had not acted as agents of the United States

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<sup>7</sup> A fifth petition was also filed with IDWR and led to issuance of a show-cause order, but the Director withdrew that show-cause order and dismissed the proceeding after receiving evidence of an agency relationship between the United States and one of the other federal permittees using the same allotment. Spackman Dec. ¶¶ 6-7, Exs. 8, 11.

<sup>8</sup> All but six of the stockwater rights had been decreed to the United States in the SRBA. The exceptions consisted of four licensed rights and two unadjudicated “statutory” (i.e., beneficial use-based) claims. *Id.*; *see also* Appendix 7 to *State’s Brief*, filed herewith (summary of the stockwater rights in the Show-Cause Orders prepared by State Defendants’ Counsel based on Exhibits 10, 12, 13, and 14 to the Spackman Declaration).

for purposes of acquiring the stockwater rights. *Id.* The Petitions asked IDWR to issue orders to the United States pursuant to Idaho Code § 42-224 to show cause why the stockwater rights should not be lost to forfeiture pursuant to Idaho Code § 42-222(2). *Id.*

22. The Director instructed IDWR staff to prepare memoranda analyzing the stockwater rights' places of use. Spackman Dec. ¶ 6; Keen Dec. ¶ 12. Based on the Petitions, the staff memoranda, and applicable Idaho law, the Director determined there was "prima facie" evidence that sixty-eight (68) of the United States' state law-based stockwater rights had been lost to forfeiture pursuant to Idaho Code § 42-222(2). Spackman Dec. ¶ 6, Exs. 10, 12, 13, 14.<sup>9</sup> The Director determined that the remaining sixty (60) stockwater rights (1) were outside his authority to consider because they were based on federal law, or (2) were state law-based water rights for which there was *not* "prima facie" evidence of forfeiture. *Id.*<sup>10</sup> The Director therefore granted the Petitions as to the sixty-eight (68) state law-based stockwater rights, and denied the Petitions as to the remaining sixty (60) stockwater rights. *Id.* The show-cause orders ("Show-Cause Orders") issued in May and June of 2022. Spackman Dec. ¶¶ 6, 8, Exs. 10, 12, 13, 14.<sup>11</sup>

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<sup>9</sup> See also Appendix 7 to *State's Brief*.

<sup>10</sup> See also Appendix 7 to *State's Brief*.

<sup>11</sup> Three of the four show-cause orders are amended orders. The original three orders were withdrawn and amended after IDWR was informed that some of the stockwater rights at issue were based on federal law. IDWR therefore withdrew and amended the orders to remove the federal law-based stockwater rights from the list of water rights subject to the show-cause orders. Spackman Dec. ¶ 8, Exs. 12, 13, 14.

23. The Show-Cause Orders required the United States, pursuant to Idaho Code § 42-224(2), to show cause why the sixty-eight (68) state law-based stockwater rights had not been lost to forfeiture pursuant to Idaho Code § 42-222(2). Spackman Dec. ¶¶ 6, 8, Exs. 10, 12, 13, 14. The Show-Cause Orders stated that, pursuant to Idaho Code § 42-224(6), the United States could request an administrative hearing on the Show-Cause Orders before the Director within twenty-one (21) days of completion of service. *Id.* Finally, the Show-Cause Orders stated that pursuant to Idaho Code § 42-224(7), the sixty-eight (68) stockwater rights for which the Petitions had been granted would be considered forfeited if the United States did not respond to the Show-Cause Orders within twenty-one (21) days, and the Director would issue an order within another fourteen (14) days stating that the stockwater rights had been forfeited pursuant to Idaho Code § 42-222(2). *Id.*

25. The United States responded by filing the Complaint that initiated this case, Dkt. 1, and entering special appearances in the IDWR proceedings that requested hearings but also contested IDWR's jurisdiction. Spackman Dec. ¶ 9. The United States also requested that the administrative proceedings be stayed pending the outcome of this case. *Id.*; Dkt. 37 ¶ 38. The Director granted this request and issued orders staying the administrative proceedings pending the outcome of this case or until otherwise ordered by the Director. Spackman Dec. ¶ 9. No other orders have been issued in the pending administrative proceedings.

24. Exhibit 3 to the Counsel Dec. contains certified copies of the partial decrees issued in the SRBA for the state law-based stockwater rights that are subject to the

Show-Cause Orders. Spackman Dec. ¶¶ 6, 8, Exs. 10, 12, 13, 14; Counsel Dec. ¶ 4, Ex. 3. Exhibit 4 to the Counsel Dec. contains certified copies of the partial decrees issued in the SRBA for the federal law-based stockwater rights originally subject to three of the Show-Cause Orders but subsequently removed in three “amended” Show-Cause Orders. Spackman Dec. Spackman Dec. ¶¶ 6, 8, Exs. 6, 7, 9, 12, 13, 14; Counsel Dec. ¶ 5, Ex. 4.

**STATEMENT OF DISPUTED FACTS IN RESPONSE TO  
UNITED STATES’ STATEMENT OF UNDISPUTED FACTS (DKT. 37)**

Defendants the State of Idaho, the Idaho Department of Water Resources, and Gary Spackman, in his official capacity as Director of the Idaho Department of Water Resources (“State Defendants”), by and through their counsel of record and pursuant to this Court’s Scheduling Order (Dkt. 32) and Order Amending Scheduling Order (Dkt. 33), hereby submit this statement of disputed facts in response to the United States’ Statement of Undisputed Facts (Dkt. 37). The State Defendants submit that certain facts asserted in the United States’ Statement are in dispute, are not material to the United States’ claims, or are legal arguments rather than factual allegations.

1. The State Defendants do not dispute the facts alleged in Paragraph 1, but assert that these facts are not material to the United States’ claims.

2. The State Defendants do not dispute the facts alleged in Paragraph 2, but note that the quotation of Idaho Code § 42-501 (repealed 2017) is incomplete.

3. The first sentence of Paragraph 3 is a legal argument rather than a factual allegation because it purports to interpret and explain a federal regulation, and the State Defendants therefore direct this Court to the cited regulation. The State



Defendants do not dispute the facts alleged in the remainder of Paragraph 3, but assert that these facts are not material to the United States' claims.

4. The State Defendants dispute the allegation in the first sentence of Paragraph 4 that the term "water sources" includes "artificial ponds, wells, or troughs [or] water pipelines," or any other water development infrastructure that diverts or conveys water from a "source." The only "sources" of water are ground water and naturally occurring surface waters such as springs, creeks, streams, ponds, lakes, or rivers. Decl. of Shelley W. Keen ("Keen Dec.") ¶¶ 14-18, 26-27, 29-30; Decl. of Timothy J. Luke ("Luke Dec.") ¶¶ 8-12; Decl. of Craig L. Saxton ("Saxton Dec.") ¶¶ 9, 17. The State Defendants do not dispute the remaining facts alleged in Paragraph 4.

5. The State Defendants dispute the allegation in the second sentence of Paragraph 5 that the Forest Service "administers" state law-based water rights, because only the Idaho Department of Water Resources ("IDWR") is authorized to "administer" Idaho water rights. Luke Dec. ¶ 12. To the extent Paragraph 4 alleges that the Forest Service uses its state law-based water rights to "benefit the grazing program," the State Defendants dispute the allegation. Supporting or benefiting a federal grazing program is not a "beneficial use" of a state law-based stockwater right. *Joyce Livestock Co. v. United States*, 144 Idaho 1, 17-20, 156 P.3d 502, 518-21 (2007). The State Defendants do not dispute the remaining facts alleged in Paragraph 5.

6. The State Defendants do not dispute the facts alleged in Paragraph 6.

7. The State Defendants do not dispute the facts alleged in Paragraph 7, except to correct the statement that: "The State commenced the SRBA ... ." The SRBA was

commenced by order of the Twin Falls County District Court of the Fifth Judicial District of the State of Idaho, rather than by “[t]he State.” Decl. of Counsel in Support of State Defendants’ Cross-Motion for Summary Judgment and Response to United States’ Motion for Summary Judgment (“Counsel Dec.”) ¶ 3, Ex. 2 at 1 of 27.

8. The State Defendants do not dispute the facts alleged in the first sentence of Paragraph 8. The State Defendants dispute the allegation in the second sentence that only the federal government can acquire instream stockwater rights. Keen Dec. ¶¶ 14, 26-28; Luke Dec. ¶ 8; Saxton Dec. ¶¶ 17-18. The remaining assertions in this paragraph are legal arguments rather than factual allegations because they purport to interpret and explain “Idaho law,” including “Idaho Const. art. XV, § 3,” and the State Defendants therefore direct this Court to the cited legal authorities.

9. The State Defendants do not dispute the facts alleged in Paragraph 9, but assert they are not material to the United States’ claims. The State Defendants also object to the allegations in the second sentence of Paragraph 9 pursuant to F.R.C.P. 52(c) as not being supported by admissible evidence, relying on inadmissible hearsay, and not supported by personal knowledge.

10. The State Defendants dispute the allegation in the third sentence of Paragraph 10 that SRBA decrees were issued “[a]s a result” of the referenced “settlements” between the State of Idaho and the Bureau of Land Management (“BLM”). Such settlements only resolved certain “objections” lodged by the State of Idaho, and often there were several years between execution of the settlements and issuance of the decrees. *Compare* Dkt. 36 ¶ 22 (referring to “settlement agreement

on June 6 ,1999, July 1, 1999, and March 11, 2003”) *with* Counsel Dec. ¶ 4, Ex. 3 at 26 of 67 (date stamp on partial decree). The State Defendants do not dispute the remaining facts alleged in Paragraph 10.

11. The State Defendants do not dispute the facts alleged in the first five sentences and the last sentence of Paragraph 11, but assert they are not material to the United States’ claims. The State Defendants dispute the allegation in the sixth sentence of Paragraph 11 that the FSG settlement “allowed” the United States and FSG permittees to hold stockwater rights diverting from the same sources for use on the same federal lands. Idaho law has always “allowed” multiple water rights held by different owners to divert from the same source, for the same use, and often at the same point of diversion. *Keen* Dec. ¶ 27; *see also Joyce Livestock Co.*, 144 Idaho at 7, 156 P.3d at 508 (“The prior appropriation doctrine recognizes that two or more parties can obtain a right to use water from the same source.”). An Idaho water right does not entitle the water right holder to exclusive use of or access to the source from which they divert. *Keen* Dec. ¶ 17, 30; *Luke* Dec. ¶ 10. The State Defendants do not dispute the other facts alleged in Paragraph 11. The State Defendants object to the allegations in the third, fourth, and fifth sentences of Paragraph 11 pursuant to F.R.C.P. 52(c) as not being supported by admissible evidence, relying on inadmissible hearsay, and not supported by personal knowledge.

12. The State Defendants dispute the alleged facts in the first sentence of Paragraph 12 that: “The FSG and other settlements ... resulted in the adjudication of thousands of stockwater rights to the United States in the SRBA.” The referenced

settlements resolved certain “objections” and often there were several years between execution of the settlements and issuance of the decrees, as evidenced in Paragraph 10, above. The State Defendants do not dispute the remaining facts alleged in Paragraph 12.

13. The State Defendants do not dispute the facts alleged in the first sentence of Paragraph 13. The second sentence in Paragraph 13 is a legal argument rather than a factual allegation because it purports to interpret and explain the Idaho Supreme Court’s decision in *Joyce Livestock Co. v. United States*, 144 Idaho 1, 156 P.3d 502 (2007), and the State Defendants therefore direct this Court to that decision. The State Defendants dispute the assertions in the third and fourth sentences of Paragraph 13 to the extent they proffer Exhibit 5 to the Price Declaration (Dkt. 36) as a formal legal opinion issued by the Idaho Attorney General, rather than as advocacy by a Deputy Attorney General on behalf of the Idaho Department of Lands (“IDL”) in its efforts to secure a water permit. *See* Dkt. 36 ¶ 26, Dkt. 36-5 Ex. 5 at 1 of 6 (“On Behalf of the Idaho Department of Lands”). The Idaho Office of the Attorney General represents the interests of state agencies in such matters. Idaho Code § 67-1401(1). The State Defendants object to the allegations in the third and fourth sentences of Paragraph 13 pursuant to F.R.C.P. 52(c) as not being supported by admissible evidence, relying on inadmissible hearsay, and not supported by personal knowledge.

14. The State Defendants do not dispute the facts alleged in the first and last sentences of Paragraph 14. The remaining sentences are legal arguments rather

than factual allegations because they selectively quote and purport to interpret and explain legislation enacted in 2017, and the State Defendants therefore direct this Court to the legislation as it was enacted. 2017 Idaho Sess. Laws 408-09 (Appendix 2 to *State's Brief*). The State Defendants also assert that much of this legislation is not material to the United States' claims because it was subsequently amended or repealed. 2018 Idaho Sess. Laws 747-49 (Appendix 4 to *State's Brief*); 2020 Idaho Sess. Laws 738-40 (Appendix 5 to *State's Brief*); 2022 Idaho Sess. Laws 686-88 (Appendix 6 to *State's Brief*).

15. The State Defendants do not dispute the facts alleged in Paragraph 15 except to the extent they misstate the sequence of the quoted passages within the letter. The State Defendants also assert that the facts alleged in Paragraph 15 are not material facts with respect to the United States' claims.

16. The State Defendants do not dispute that Idaho House Bill 718 was approved in March of 2018. The remaining assertions in Paragraph 16 are legal arguments rather than factual allegations because they selectively quote and purport to interpret and explain this legislation, and the State Defendants therefore direct this Court to the legislation as it was enacted. 2018 Idaho Sess. Laws 747-49 (Appendix 4 to *State's Brief*). The State Defendants also assert that the allegations in Paragraph 16 are not material to the United States' claims because they pertain to legislation that was subsequently amended or repealed. 2020 Idaho Sess. Laws 738-40 (Appendix 5 to *State's Brief*); 2022 Idaho Sess. Laws 686-88 (Appendix 6 to *State's Brief*).

17. The State Defendants' response to Paragraph 16 (above) is incorporated and restated here in response to the factual allegations and legal assertions in Paragraph 17.

18. The State Defendants' responses to Paragraphs 16 and 17 are incorporated and restated here in response to the factual allegations and legal assertions in Paragraph 18.

19. The State Defendants' responses to Paragraphs 16, 17, and 18 are incorporated and restated here in response to the factual allegations and legal assertions in Paragraph 19.

20. The State Defendants do not dispute the facts alleged in the first sentence of paragraph 20 except the assertion that the referenced letters were "required by H.B. 718." The letters did not cite or reference H.B.718, Dkt. ¶ 27.a, Ex. 10, and Paragraph 20's characterization of the letters as being "required" by H.B. 718 is a legal argument rather than a factual allegation. The State Defendants also assert that the existence of the letters and the content of the letters are not material facts with respect to the United States' claims. The State Defendants do not dispute the facts alleged in the second sentence in Paragraph 20, but assert they are not material facts with respect to the United States' claims.

21. The State Defendants do not dispute the facts alleged in the first sentence of Paragraph 21. The State Defendants do not dispute the second sentence's allegation that the so-called "stockwater legislation" was "subsequently amended ... several times," but the remainder of the sentence is a legal argument rather than a

factual allegation because it purports to interpret and explain the subsequently enacted legislation, and the State Defendants therefore direct this Court to that legislation. 2020 Idaho Sess. Laws 738-40; 2022 Idaho Sess. Laws 686-88 (Appendices 5 and 6 to the *State's Brief*).

22. The State Defendants do not dispute the facts alleged in the first sentence of Paragraph 22, but assert they are not material facts with respect to the United States' claims. The second sentence in Paragraph 22 is a legal argument rather than a factual allegation because it purports to interpret and explain the 2018 amendments to Idaho Code § 42-113(2), and the State Defendants therefore direct this Court to that legislation. 2018 Idaho Sess. Laws 303-05 (Appendix 3 to *State's Brief*).

23. The State Defendants do not dispute the facts alleged in the first sentence of Paragraph 23. The remaining assertions in Paragraph 23 are legal arguments rather than factual allegations because they purport to interpret and explain the 2018 amendments to Idaho Code § 42-113(2), and the State Defendants therefore direct this Court to that legislation. 2018 Idaho Sess. Laws 303-05 (Appendix 3 to *State's Brief*).

24. The State Defendants do not dispute the facts alleged in Paragraph 24.

25. The State Defendants do not dispute the facts alleged in Paragraph 25.

26. The State Defendants dispute the assertion that "H.B. 592 amended the forfeiture proceeding created by H.B. 718." The forfeiture procedure provision enacted under H.B. 592 was a "NEW SECTION" of the Idaho Code—Idaho Code § 42-

224—not an amendment to an existing statute. 2020 Idaho Sess. Laws 738 (Appendix 5 to *State’s Brief*) (capitals and underlining in original). The remaining assertions in Paragraph 26 are legal arguments rather than factual allegations because they purport to interpret and explain Idaho Code § 42-224 as it was enacted under H.B. 592, and the State Defendants therefore direct this Court to that legislation. 2020 Idaho Sess. Laws 738-39 (Appendix 5 to *State’s Brief*). The State Defendants also assert that the provisions of Idaho Code § 42-224 as enacted under H.B. 592 are not material to the United States’ claims.

27. The assertions in Paragraph 27 are legal arguments rather than factual allegations because they purport to interpret and explain H.B. 592 and Idaho Code § 42-224 as it was originally enacted under H.B. 592, and the State Defendants therefore direct this Court to that legislation. 2020 Idaho Sess. Laws 738-39 (Appendix 5 to *State’s Brief*). The State Defendants also assert that the provisions of Idaho Code § 42-224 as it was originally enacted under H.B. 592 are not material to the United States’ claims.

28. The State Defendants do not dispute the facts alleged in the first sentence of Paragraph 28, but note that this sentence quotes only a portion of Idaho Code § 42-222(2). The States Defendants do not dispute the facts alleged in the second sentence of Paragraph 28 except for its characterization of Idaho Code § 42-222(2) as being “rarely applied.” Forfeiture of a water right pursuant to this statute is uncommon but not “rare.” Keen Dec. ¶ 20. The State Defendants also assert that the question



of whether forfeiture pursuant to Idaho Code § 42-222(2) is “rare” is not material to the United States’ claims.

29. The assertions in Paragraph 29 are legal arguments rather than factual allegations because they purport to interpret and explain H.B. 592, Idaho Code § 42-224 as it was originally enacted under H.B. 592, and amendments to Idaho Code § 42-502 under H.B. 592, and the State Defendants therefore direct this Court to that legislation. 2020 Idaho Sess. Laws 738-39 (Appendix 5 to *State’s Brief*). The State Defendants also assert that the provisions of Idaho Code § 42-224 as originally enacted under H.B. 592, and that legislation’s amendments to Idaho Code § 42-502, are not material to the United States’ claims.

30. The assertions in Paragraph 30 are legal arguments rather than factual allegations because they purport to interpret and explain H.B. 592’s amendments to Idaho Code § 42-504, and the State Defendants therefore direct this Court to that legislation. 2020 Idaho Sess. Laws 740 (Appendix 5 to *State’s Brief*). The State Defendants also assert that the amendments to Idaho Code § 42-502 under H.B. 592 are not material to the United States’ claims.

31. The State Defendants dispute the allegation that H.B. 608 enacted “another new statute.” This legislation did not enact a “new statute” but rather extensively revised an existing statute, Idaho Code § 42-224. 2022 Idaho Sess. Laws 686-88 (Appendix 6 to *State’s Brief*). The remaining assertions in Paragraph 30 are legal arguments rather than factual allegations because they purport to interpret and explain H.B. 608 and its amendments Idaho Code § 42-224. The State Defendants

therefore direct this Court to the legislation. 2022 Idaho Sess. Laws 686-88 (Appendix 6 to *State's Brief*).

32. The assertions in Paragraph 32 are legal arguments rather than factual allegations because they purport to interpret and explain H.B. 608 and its amendments to Idaho Code § 42-224. The State Defendants therefore direct this Court to the legislation. 2022 Idaho Sess. Laws 686-88 (Appendix 6 to *State's Brief*).

33. The State Defendants' responses to Paragraph 32 are incorporated and restated here in response to the assertions in Paragraph 33.

34. The State Defendants do not dispute the facts alleged in Paragraph 34 except the allegation in the last sentence that the October 2021 show-cause order stated "the stock water rights would be forfeited" if the United States did not respond to the order within twenty-one days. The order stated, rather, that the Director would issue an order "declaring the stockwater rights forfeited pursuant to Idaho Code § 42-222(2)." Spackman Dec. ¶ 6, Ex. 8 at 4. The State Defendants do not dispute the remaining facts alleged in Paragraph 34, but assert that that none of the allegations in Paragraph 34 are material to the United States' claims. *Id.* ¶ 6, Ex. 11.

35. The State Defendants dispute the allegation in the first sentence of Paragraph 35 that the referenced stockwater rights "supported" grazing by two Forest Service permittees because Idaho allows instream stockwatering even in the absence of a water right, Keen Dec. ¶¶ 14, 26-28; Luke Dec. ¶ 8; Saxton Dec. ¶¶ 17-18, and "instream" stockwatering from the same source for which the United States holds a stockwater right does not necessarily constitute a "use" of that stockwater

right. Keen Dec. ¶ 27. The State Defendants do not dispute the remaining facts alleged in Paragraph 35, but assert that that none of the allegations in Paragraph 35 are material to the United States' claims.

36. The State Defendants do not dispute the facts alleged in Paragraph 36 except the allegation that the show-cause order cited "H.B. 592." The order actually cited Idaho Code § 42-224(10). Spackman Dec. ¶ 7, Ex. 11 at 2. The State Defendants assert that assert that none of the allegations in Paragraph 35 are material to the United States' claims.

37. The State Defendants do not dispute the facts alleged in Paragraph 37 except to the extent they characterize IDWR's issuance of the show-cause order as a response to the enactment of H.B. 608. The show-cause orders were issued in response to petitions filed by private parties. Spackman Dec. ¶ 4.

38. The State Defendants dispute the allegations in the first and second sentences of Paragraph 38 that the United States identified "twenty-four" stockwater rights based on federal law in the April 2022 show-cause orders, and that the amended show-cause orders issued in May 2022 deleted only "twenty" of these federal law-based stockwater rights. In fact, twenty-eight (28) federal law-based stockwater rights were identified and deleted from the April 2022 show-cause orders. Spackman Dec. ¶ 8, Exs. 12-14; Counsel Dec. ¶ 5 & Ex. 4.<sup>12</sup> The State Defendants do not dispute the remaining facts alleged in Paragraph 38.

39. The State Defendants do not dispute the facts alleged in Paragraph 39.

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<sup>12</sup> See also Appendix 7 to *State's Brief*.

40. The State Defendants dispute the allegation in Paragraph 40 that the water rights “listed in the orders to show cause” included “four” non-decreed water rights. This allegation fails to acknowledge that the water rights “listed” in the show-cause orders are not just the sixty-eight (68) stockwater rights for which the petitions were granted. The show-cause orders also “listed” sixty (60) stockwater rights for which the petitions were denied, Spackman Dec. ¶¶ 6, 8, Exs. 10, 12, 13, 14,<sup>13</sup> and two of this group were not “decreed”—75-4236 (statutory claim) and 75-7672 (license). *Id.* ¶ 6, Ex. 10 at 3 n.2 of 12; *id.* ¶ 6, Ex. 10 at 10 of 12. Thus, all but six (6) of the one hundred twenty-eight (128) water rights “listed” in the show-cause orders were decreed water rights. *Id.*

41. The State Defendants do not dispute the facts alleged in Paragraph 41 to the extent they apply to stockwater rights decreed pursuant to “Public Water Reserve 107” or other federal law. The State Defendants do, however, dispute the assertions in Paragraph 41 to the extent they apply to state law-based stockwater rights, particularly assertions that federal ownership of state law-based stockwater rights is necessary or “essential” to prevent “one [federal grazing] permittee from excluding one or multiple other permittees’ use [of water] on the same allotment; requiring payment from the successor to use the water; and from transferring a water right away from an allotment onto other land, hindering water use by multiple and successive permittees[.]” These assertions incorrectly suggest that ownership of a state law-based stockwater right confers ownership of the water itself, or endows the

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<sup>13</sup> See also Appendix 7 to *State’s Brief*.

water rights holder with exclusive control over and use of the source from which the water is diverted. Keen Dec. ¶¶ 13, 15-17, 29-30; Luke Dec. ¶¶ 10, 12. State law-based stockwater rights are rights of beneficial use only, and do not confer ownership of the water or the source, do not endow the water right holder with exclusive use of or control over the water source, and do not authorize the water right holder to prevent or condition use of the water source by any other person or entity. *Id.* The State Defendants also dispute the allegation in the last sentence of Paragraph 41 that “private ownership of waters used on federal grazing allotment could result in de-watering of the federal lands, rendering the lands useless for future grazing.” Even assuming, purely for the sake of argument, that *all* of the United States’ state law-based stockwater rights were forfeited, “instream” stockwatering and stockwatering from wells diverting less than 13,000 gallons per day could continue even in the absence of any permitted, licensed, or decreed stockwater rights. Keen Dec. ¶¶ 14, 26-28; Luke Dec. ¶ 8; Saxton Dec. ¶¶ 17-18. Further, the approximately 6,500 stockwater rights decreed to the United States based on federal law, Dkt. 36 ¶ 10, are not subject to forfeiture under Idaho law and may not be transferred to private lands or into private ownership. Finally, Idaho Code § 42-504 prohibits transferring state law-based stockwater rights used on federal lands to any private lands.<sup>14</sup>

42. The State Defendants dispute the allegations in Paragraph 42 that federal grazing permittees “rely” on stockwater rights held by the United States to “provide

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<sup>14</sup> The United States is challenging this statutory safeguard against “de-watering.” Dkt. 11 at 30 of 30.

water for stock,” and that in some cases forfeiture of the United States’ stockwater rights would “terminate the only stockwater rights that provide water for the United States’ permittees.” These allegations suggest that stockwatering may not occur in the absence of a stockwater right, but in Idaho no water right is required for “instream” stockwatering, and no water right is required for stockwatering from “domestic” wells. Keen Dec. ¶¶ 14, 26-28, 30-31; Luke Dec. ¶ 8; Saxton Dec. ¶¶ 17-18. “Domestic” wells are not limited to homes, residential areas, or “domestic” locations. Luke Dec. ¶ 8. They can be located anywhere, including on federal lands, *id.*; Keen Dec. ¶ 28, provided the United States gives permission. Keen Dec. ¶ 28. The State Defendants also object to the factual allegations in the first sentence of Paragraph 42 pursuant to F.R.C.P. 52(c), because they rely on material that cannot be presented in a form that would be admissible in evidence, rely on inadmissible hearsay, and are not supported by personal knowledge.

43. The assertions in Paragraph 43 are irrelevant legal arguments rather than factual allegations because they attempt to analogize a Nevada case to this case, and incorrectly assume that Nevada law applies or is controlling in Idaho. Further, while Nevada law may allow privately-held stockwater rights used on federal lands to be transferred to private lands, Idaho law does not. Idaho law expressly provides that such privately-held stockwater rights “shall never be utilized for any purpose other than the watering of livestock on the federal grazing allotment that is the place of

use for that stockwater right.” Idaho Code § 42-504.<sup>15</sup> To the extent the assertions in Paragraph 43 regarding events in Nevada might be considered factual allegations, the State Defendants assert that they are not material to the United States’ claims. The State Defendants also object to the allegations in Paragraph 43 because they rely on material that cannot be presented in a form that would be admissible in evidence, rely on inadmissible hearsay, and are not supported by personal knowledge. F.R.C.P. 56(c).

44. The State Defendants do not dispute the facts alleged in Paragraph 44, except insofar as the reference in the last sentence to “the certainty afforded by holding these decreed water rights” is intended to mean that the Forest Service reasonably assumed that once a water right has been decreed it is immune from forfeiture. Decreed water rights are subject to forfeiture under Idaho law, Keen Dec. ¶ 20, and this was well-established long before commencement of the SRBA. *Albrethsen v. Wood River Land Co.*, 40 Idaho 49, 59-60, 231 P. 418, 422 (1924).

45. The State Defendants dispute the facts alleged in Paragraph 45 to the extent they assert that “incentivizing” federal investment in “water infrastructure development and maintenance,” water “pipelines,” and water “infrastructure improvements” is a valid use of the United States’ state law-based stockwater rights. These water rights were decreed for “stockwater” use, Counsel Dec. ¶ 4, Ex. 3 (partial decrees), not to provide “incentive” for the federal government or federal land

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<sup>15</sup> The United States’ challenge to this statute, if successful, would open the door to moving privately-held stockwater rights off of federal lands.

management agencies to finance water developments or range improvements on federal lands. Supporting the administration of federal lands and federal grazing programs is not a valid use of an Idaho stockwater right. *Joyce Livestock Co.*, 144 Idaho at 17-20, 156 P.3d at 518-21. The State Defendants do not otherwise dispute the facts alleged in Paragraph 45, but assert they are not material to the United States' claims.

46. The State Defendants do not dispute the facts alleged in Paragraph 46 but assert they are not material to the United States' claims.

47. The State Defendants do not dispute the facts alleged in Paragraph 46 except for the allegation that IDWR "is preventing use from occurring" under the permit. The permit is still "active" and IDWR has taken no action to "prevent" use of the water development. Keen Dec. ¶ 25. The State Defendants also assert that the facts alleged in Paragraph 47 are not material to the United States' claims.

48. The State Defendants do not dispute the facts alleged in Paragraph 48 except for the assertion that federal grazing permittees "depend" on federally-owned stockwater rights. No water rights are necessary for "instream" stockwatering or for stockwatering from "domestic" wells. Keen Dec. ¶¶ 14, 26-28; Saxton Dec. ¶¶ 17-18; Luke Dec. ¶ 8. Federal grazing permittees can also apply for their own stockwater rights, if necessary, including stockwater rights for "water developments" and "range improvements" built by the United States, provided the United States consents. Keen Dec. ¶ 28. Further, the United States was decreed approximately 6,500 stockwater rights based on federal law, Dkt. 36 ¶ 10, and they are not subject to forfeiture.



Respectfully submitted this 17<sup>th</sup> day of March, 2023.

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