

RAÚL R. LABRADOR
Attorney General
SCOTT L. CAMPBELL
Deputy Attorney General
Chief, Energy and Natural Resources Division
JOY M. VEGA, ISB #7887
MICHAEL C. ORR, ISB # 6720
Deputy Attorneys General
700 W. State Street, 2nd Floor
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: 208-334-2400
Facsimile: 208-854-8072
joy.vega@ag.idaho.gov
michael.orr@ag.idaho.gov

Attorneys for Defendants the State of Idaho, the Idaho Department of Water Resources, and Mathew Weaver, in his official capacity as Director of the Idaho Dept. 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*; MATHEW WEAVER, *in his official capacity as the Director of the Idaho Department of Water Resources*,

Defendants,

v.

IDAHO HOUSE OF REPRESENTATIVES; IDAHO SENATE; MEGAN BLANKSMA, *in her official capacity as Majority Leader*

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

**STATE DEFENDANTS'
MOTION FOR LEAVE TO
FILE RESPONSE TO UNITED
STATES' SUPPLEMENTAL
MEMORANDUM
ADDRESSING NEW CASES
OR ISSUES RAISED AT THE
SUMMARY JUDGMENT
HEARING (Dkt. 73)**

*of the House; CHUCK WINDER, in his
official capacity as President Pro Tempore
of the Senate,*

Intervenor-Defendants,

v.

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

Intervenor-Defendants.

This Court stated during the summary judgment hearing on January 23, 2024, that it would allow the parties to file supplemental briefs, limited to 5 pages, to address new cases or issues discussed at the hearing. *See also* Dkt. 70 (“The Court directed each party to file a 5-page supplemental brief addressing any new cases or issues discussed at today’s hearing by 2/6/2024.”) This Court also cautioned the parties that if their supplemental briefs went beyond the new cases or issues discussed at the hearing, other parties might seek leave to file a responsive brief.

The United States’ supplemental brief (Dkt. 73) raises an entirely new issue that was not discussed at the hearing. Specifically, the United States argues that “withdrawal” of the United States’ challenge to Idaho Code § 42-222(2) is governed by F.R.C.P. 15(a), which addresses the amendment of pleadings before trial. Dkt. 73 at 7. The United States invites this Court to exercise its “ample discretion” to amend the complaint *sua sponte* on behalf of the United States, *id.*, presumably to remove the complaint’s express and unambiguous challenges to the constitutionality of Idaho

Code § 42-222(2), Dkt. 11 at 25, 27, 28, 29, as well as its request for an order permanently enjoining application of that statute to the United States or its agencies. Dkt. 11 at 30.

The United States did not request leave to amend its complaint at the hearing, however, and Rule 15 was not mentioned at the hearing or in the pre-hearing briefs. Further, the United States' Rule 15 argument goes beyond simply responding to the Rule 41(a) issue the State Defendants raised at the hearing, by requesting affirmative relief under Rule 15(a). The State Defendants are entitled to an opportunity to respond to the United States' *de facto* motion for relief under Rule 15(a).

The State Defendants therefore move for leave to file a short brief responding to the entirely new issue the United States raised in its supplemental brief, and opposing the United States' implied request for leave to amend its complaint under Rule 15(a). The State Defendants' proposed response brief is attached hereto.

Respectfully submitted this 8th day of February, 2024.

RAÚL R. LABRADOR
Attorney General
SCOTT L. CAMPBELL
Deputy Attorney General
Chief, Energy and Natural Resources Division

/s/ Michael C. Orr
JOY M. VEGA
MICHAEL C. ORR
Deputy Attorneys General
Energy and Natural Resources Division
Office of the Attorney General
State of Idaho
*Attorneys for Defendants State of Idaho,
the Idaho Department of Water Resources, and*

*Mathew Weaver, in his official capacity as
Director of the Idaho Department of Water
Resources*

RAÚL R. LABRADOR
Attorney General
SCOTT L. CAMPBELL
Deputy Attorney General
Chief, Energy and Natural Resources Division
JOY M. VEGA, ISB #7887
MICHAEL C. ORR, ISB # 6720
Deputy Attorneys General
700 W. State Street, 2nd Floor
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: 208-334-2400
Facsimile: 208-854-8072
joy.vega@ag.idaho.gov
michael.orr@ag.idaho.gov

Attorneys for Defendants the State of Idaho, the Idaho Department of Water Resources, and Mathew Weaver, in his official capacity as Director of the Idaho Dept. 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*; MATHEW WEAVER, *in his official capacity as the Director of the Idaho Department of Water Resources*,

Defendants,

v.

IDAHO HOUSE OF REPRESENTATIVES; IDAHO SENATE; MEGAN BLANKSMA, *in her official capacity as Majority Leader*

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

**STATE DEFENDANTS'
[PROPOSED] RESPONSE TO
UNITED STATES'
SUPPLEMENTAL
MEMORANDUM (Dkt. 73)**

*of the House; CHUCK WINDER, in his
official capacity as President Pro Tempore
of the Senate,*

Intervenor-Defendants,

v.

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

Intervenor-Defendants.

The United States argues in its supplemental brief that under F.R.C.P. 15(a), the Court should amend the United States' complaint to remove its challenges to the constitutionality of Idaho Code § 42-222(2). Dkt. 73 at 7. This is not one of the “new cases or issues discussed at [the] hearing” of January 23, 2024. Dkt. 70. Neither Rule 15 nor the issue of amending the complaint were discussed or even mentioned at the hearing, or in the pre-hearing briefs. The State Defendants therefore submit this short response to the United States' Rule 15 argument.

First, even if the United States had moved for leave to amend the complaint under Rule 15, which it has not, that motion would be untimely and barred by this Court's *Scheduling Order (Legal Track)*. The *Scheduling Order* required “all” motions to amend the pleadings to be filed no later than October 6, 2022, and the United States also has not made the requisite showing of “good cause” for extending that deadline. Dkt. 32 at 2-3. That deadline and the “good cause” requirement were intended to prevent exactly what the United States has done in this case: create a

“moving target,” *id.*, by expressly challenging Idaho Code § 42-222(2), only to later unconvincingly deny that it had ever done so, then to “abandon” that claim at the hearing, and finally to request, through post-hearing supplemental briefing, that its complaint be amended to remove the claim altogether.

Second, the United States’ Rule 15 argument is just that: an argument, not a motion, and it does not satisfy the requirements of Rule 7(b). The United States’ Rule 15 argument does not “state the relief sought,” F.R.C.P. 7(b)(1)(C), and also does not “state with particularity the grounds for seeking the order.” F.R.C.P. 7(b)(1)(B). Rather, it simply repeats discredited assertions that the United States never challenged the constitutionality of Idaho Code § 42-222(2). Dkt.73 at 7.¹

Further, granting the United States’ implied request for leave to amend its complaint would prejudice the State Defendants because the United States unambiguously challenged a core requirement of Idaho water law—the “continuing obligation” of making beneficial use of a water right, *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 727, 735, 947 P.2d 400, 408 (1997)—but did not request leave to amend its complaint under Rule 15(a) until *after* the hearing. Especially in a “legal track” case that “the parties agree[d]” would “likely be settled on legal motions alone,” Dkt. 32, allowing the complaint to be amended at this late stage of the proceedings would effectively endorse the United States’ creation of a “moving target,” and

¹ Contrary to the United States’ assertion, Dkt. 73-7, the United States expressly challenged the constitutionality of Idaho Code § 42-222(2) in *both* the complaint *and* summary judgment briefing, and sought an order permanently barring application of that statute to the United States and its agencies. Dkt. 11 at 25, 37, 28, 29, 30; Dkt. 34-1 at 46; Dkt. 60 at 89.

severely prejudice the State Defendants. The State Defendants were clear throughout their briefing that they viewed United States' express and unambiguous challenge to Idaho Code § 42-222(2) as the most important issue in this case, and moved for summary judgment on that claim. *See, e.g.*, Dkt. 43-1 at 35-43; Dkt. 64 at 10-20. The United States entirely failed to defend against the State Defendants' summary judgment motion and should not be allowed to avoid a ruling on that motion by once again moving the goal posts.

The State Defendants therefore request that this Court disregard the United States' Rule 15 argument, or, in the alternative, deny the United States' attempt to move for a Rule 15(a) amendment under the guise of supplemental briefing.

Respectfully submitted this 8th day of February, 2024.

RAÚL R. LABRADOR
Attorney General
SCOTT L. CAMPBELL
Deputy Attorney General
Chief, Energy and Natural Resources Division

/s/ Michael C. Orr
JOY M. VEGA
MICHAEL C. ORR
Deputy Attorneys General
Energy and Natural Resources Division
Office of the Attorney General
State of Idaho
*Attorneys for Defendants State of Idaho,
the Idaho Department of Water Resources, and
Mathew Weaver, in his official capacity as
Director of the Idaho Department of Water
Resources*