

SEP 6 2024

By _____

UMJ
Clerk

Deputy Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA) **Subcase Nos. 67-15263, et.al. See Exhibit A**
)
Case No. 39576) **MEMORANDUM DECISION AND**
) **ORDER ON CROSS MOTIONS FOR**
) **SUMMARY JUDGMENT**
)
) **REQUEST FOR EXPERT TECHNICAL**
) **ASSISTANCE FROM THE DIRECTOR OF**
) **IDWR**

I. APPEARANCES

Norman M. Semanko and Garrett M. Kitamura, Parsons Behle & Latimer, Boise, Idaho for claimants Keith and Karen Hood.

Mark J. Widerschein and Katherine Laubach, United States Department of Justice, Environment and Natural Resources Division, Natural Resources Section, for objector United States of America.

II. ISSUE PRESENTED

The sole issue in these subcases is the priority dates of the Hoods' 27 instream stockwater claims. All the claims are located on federal land within what is known as the Horse Flat Allotment. The Hoods claimed a priority date of December 28, 1896, for each of the 27 claims. The *Director's Reports* recommended the priority dates as claimed. The United States of America, Department of the Interior, Bureau of Land Management (the "United States" or "BLM"), filed objections to the *Director's Reports* for each of the claims, asserting that a priority date of December 28, 1896, is not supported by the evidence. Each party has moved for summary judgment.

The United States has moved for partial summary judgment seeking a ruling that the undisputed evidence in the record demonstrates that the United States has rebutted the presumption of correctness of the *Director's Report*, with the result that the Hoods bear the burden of proving their claimed priority date at trial.

The Hoods have moved for dispositive summary judgment seeking a ruling that the undisputed evidence in the record demonstrates that the *Director's Report* correctly identified 1896 as the year in which the Hoods' predecessors-in-interest (David G. Edwards and his son Charles R. Edwards) established the subject water rights by grazing their cattle on the land upon which the instream stockwater right claims are located.

III. APPLICABLE LEGAL STANDARDS

A. Summary Judgment Standard – Bench Trial Setting

Rule 56(a) of the Idaho Rules of Civil Procedure provides that a court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. “The moving party carries the burden of proving the absence of a genuine issue of material fact.” *Banner Life Ins. Co. v. Mark Wallace Dixson Irrevocable Tr.*, 147 Idaho 117, 123, 206 P.3d 481 (2009). Where both parties have filed motions for summary judgment regarding the same issue (as is the case here), the applicable standard of review is not changed, with each party's motions being evaluated on its own merits. *Bedke v. Ellsworth*, 168 Idaho 83, 90, 480 P.3d 121 (2021).

In a bench trial setting, the trier of fact has greater latitude and discretion in making decisions on summary judgment. In a jury trial setting, in contrast, summary judgment should be denied where reasonable people can draw different conclusions from conflicting evidence. *See, e.g., Harris v. Dept of Health and Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992). In a bench trial setting, summary judgment is appropriate despite the possibility of conflicting inferences because the court, as the ultimate trier of fact, is responsible for resolving any conflicting inferences. In the absence of a jury, it is up to the court to arrive at the most probable inferences in the presence of any potentially conflicting facts. *See, e.g., Intermountain Eye & Laser*

Centers, PLC v. Mark Miller, M.D., 142 Idaho 218, 222, 127 P.3d 121, 125 (2005) (citing and applying *Shawver v. Huckleberry Estates, LLC*, 140 Idaho 354, 93 P.3d 685 (2004)). The test for reviewing the inferences drawn by the trial court is whether the record reasonably supports the inferences. *Shawver*, 140 Idaho at 361, 93 P.3d at 692.

B. Evidentiary Weight of the Director's Report

In Section III.2 (pp. 6-7) of the *United States' Motion for Partial Summary Judgment*, the United States correctly sets forth the case and statutory law regarding the presumption of correctness afforded to the Report of the Director. This Special Master adopts the United States' statement thereof.

IV. ANALYSIS

A. The BLM's Motion for Partial Summary Judgment

As explained below, the BLM's *Motion* is **denied**. The BLM's *Motion for Partial Summary Judgment* seeks a ruling that the presumption of correctness of the *Director's Reports* has been rebutted, and therefore the Hoods bear the burden of persuasion regarding the issue of priority date. The Hoods assert the contrary, stating that "[t]he available facts support rather than undermine the presumed correctness of the Director's Reports." *Hood's Response in Opposition to USA's Motion for Partial Summary Judgment*, p. 3.

Rather than attempting to ascertain whether the evidence in the record in these proceedings is sufficient to rebut the presumption of the *Director's Report*, as explained below, this Special Master holds that a determination of such rebuttal is not a matter that can be resolved on summary judgment.

First, the question regarding rebuttal of the correctness of a *Director's Report* cannot be considered a "judgment" as that term is contemplated in the Idaho Rules of Civil Procedure. The word "judgment" as used in Rule 56, I.R.C.P., denotes a final determination of the rights and claims of the parties. Conversely, a determination of whether the presumed correctness of a *Director's Report* has been rebutted is an interim evidentiary determination that affects the respective burdens of production and

persuasion of the litigants. This evidentiary determination is not the final outcome sought by either party; rather it is a step along the way that ultimately gets merged into the final determination of the water right claim.

Black's Law Dictionary defines "judgment" as:

The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination. The final decision of the court resolving the dispute and determining the rights and obligations of the parties. The law's last word in a judicial controversy, it being the final determination by a court of the rights of the parties upon matters submitted to it in an action or proceeding.

Black's Law Dictionary, Abridged Fifth Edition (1983). At the conclusion of the proceedings in these subcases, the SRBA District Court Judge will issue a judgment (i.e. a partial decree) that will adjudge and decree the elements of the subject water rights, including the date of priority. Summary judgment is a mechanism to get to that judgment, in whole or in part, summarily. Although a determination regarding the presumption of the director's report could be reflected in the final outcome of these proceedings, the partial decree issued by the judge will not contain a determination of the correctness of the *Director's Reports* or the evidentiary burdens borne by the parties. Those are interim matters, not matters explicitly set forth in a judgment.

A determination regarding a rebuttal of the presumption of correctness of a director's report is not a "judgment" as that term is used in the Idaho Rules of Civil Procedure. Therefore, the BLM's *Motion for Partial Summary Judgment* is **denied**.

B. The Hoods' Motion for Dispositive Summary Judgement

As explained below, the Hoods' *Motion for Summary Judgment* is **denied**. The Hoods motion seeks a ruling that the evidence in the record supports the recommendation in the *Director's Reports* of a priority date of December 28, 1896, for all 27 of the Hoods' water right claims. The BLM argues that "[t]he Hoods' motion ignores the thousands of pages of documents in the record, including multiple sworn affidavits by the Hoods' predecessors which directly rebut their claimed priority date." *United States'*

Response in Opposition to Claimants' Motion for Summary Judgment, p. 1 (Aug 2, 2024).

Regarding the evidence in the record, of particular note is an Application for Grazing Permit submitted by Charles R. Edwards to United States Department of the Interior, Division of Grazing, signed by Charles R. Edwards on July 27, 1935, and date-stamped at the top of the first page “July 29, 1935” (hereinafter “1935 Application”). The 1935 Application is in the record in two locations – The *Declaration of Keith R. Hood in Support of Hood's Motion for Summary Judgment*, Exhibit F (July 12, 2024), and the *Declaration of Fredric W. Price in Support of United States' Motion for Summary Judgment*, Exhibit 6 (July 12, 2024). The 1935 Application form consists of 16 enumerated questions on four pages, with a map of Township 15 North, Range 3 West, Boise Meridian appended thereto. Although the four pages of the 1935 Application form in both the *Hood Declaration* and the *Price Declaration* are identical, the appended maps are different. One difference is that the map appended to the 1935 Application in the *Price Declaration* is date-stamped at the top with the same “July 29, 1935” stamp. Although both maps indicate “Lands wished to graze on” or “Lands I wish to graze,” the area indicated is different in each map, albeit with some overlap. Regarding the existence of two different maps appended to the 1935 Application, it should be noted that on the first page of the Application, Charles R. Edwards states that he is applying in common with other users and directs the reader to “[s]ee plats” (plural). In other words, there appears to have been more than one plat map submitted with his Application.

Question number 8 of the 1935 Application asks: “Have you previously used the lands covered by this application for grazing permit? yes. If so, how many years and what is the usual period of use each year? For past 40 years.” In the *Director's Reports* under the section entitled “Hood's claimed priority date,” this “past 40 years” statement is specifically mentioned.

The Hoods' *Motion for Summary Judgment* asserts that the undisputed facts in the record indicate that the Hoods' predecessors had been grazing livestock on what is now known as the “Horse Flat Allotment” since the claimed priority date of 1896, and that they are therefore entitled to judgment as a matter of law. The United States asserts that

there is voluminous evidence that demonstrates that the material facts are not undisputed, including evidence regarding the various land patents and homestead certificates in the record.

This Special Master agrees with the United States that the material facts in the record are not undisputed and that summary judgment is not appropriate. That being said, this conclusion is based upon a different view of the disputed facts than the view asserted by the United States. Specifically, this Special Master is focused on the above-quoted “question number 8” from the 1935 Application. The question refers to “**lands covered by this application . . .**” The Hoods’ *Motion for Summary Judgment* seeks to apply Charles R. Edwards’ statement about having grazed the land “[f]or the last 40 years” to each and every one of their stockwater claims within the Horse Flat Allotment. The problem is, however, that in ascertaining what lands Charles R. Edwards was applying for (i.e. what are the “lands covered by this application”), it is far from clear that each of the Hoods’ 27 water right claims on the Horse Flat Allotment can be given the benefit of Charles R. Edwards’ “40 years” statement.

In looking at the evidence in the record in an attempt to figure out what lands were “covered” under the 1935 Application, this Special Master has closely examined the two different maps appended to the 1935 Application, as well as the lands specified in the Class 1 License issued to Charles R. Edwards & Son by the Division of Grazing on October 5, 1936 (hereinafter “1936 License”). See *Price Dec.*, Ex. 7. Specifically, this Special Master has carefully studied the following: 1) the “Lands I wish to graze” indicated on the map attached to the 1935 Application submitted in the *Hood Declaration*; 2) the “Lands wished to graze on” indicated on the map attached to the 1935 Application submitted in the *Price Declaration*; 3) the lands described in the 1936 License under the heading: “A tentative, individual allotment of”; and 4) the lands described in the 1936 License under the heading: “A tentative, joint allotment to you, HARRY H. HATAHORN, JAMES L. WARREN, and LESLIE H. BUHL of SEE BACK HEREOF.”

When examining these various land descriptions, a few things become apparent. First, although the described lands appear to overlap in numerous places, they do not

appear to be all the same. Secondly, the lands described in the 1936 License do not appear to exactly coincide with either map. Third, some of the subject water right claims on what is now known as the Horse Flat Allotment are located upon land that is neither described in the 1935 Application maps, nor in the 1936 License. The result of this is factual uncertainty as to which of the Hoods' water right claims are located upon land that can fairly be credited with Charles R. Edwards' statement that he had been grazing thereon for the last 40 years.

Because of this factual uncertainty, it cannot be said that the material facts are not in dispute. The matter must proceed to trial.

In accordance with the foregoing, both motions for summary judgment are **denied**, and these subcases shall proceed to trial as scheduled. At this point in time, the presumption of correctness of the *Director's Reports* remains intact.

V. REQUEST FOR EXPERT TECHNICAL ASSISTANCE FROM THE DIRECTOR OF IDWR

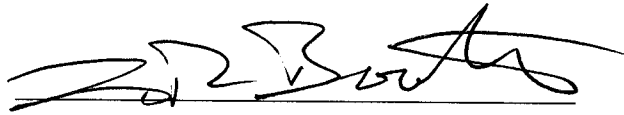
Pursuant to Idaho Code 42-1401B, this Special Master hereby requests expert technical assistance from the Director of IDWR in preparing a map that shows the following:

1. The "Lands I wish to graze" indicated on the map attached to the 1935 Application submitted in the *Hood Declaration*.
2. The "Lands wished to graze on" indicated on the map attached to the 1935 Application submitted in the *Price Declaration*.
3. The lands described in the 1936 License under the heading: "A tentative, individual allotment of."
4. The lands described in the 1936 License under the heading: "A tentative, joint allotment to you, HARRY H. HATAHORN, JAMES L. WARREN, and LESLIE H. BUHL of SEE BACK HEREOF."
5. The beginning and ending points, and the stream reaches of the Hoods' 27 claims at issue.
6. Such other information as the Director deems appropriate.

It is requested that the map be provided to the Court and the parties no later than Thursday, September 19, 2024.

IT IS SO ORDERED,

Dated _____

A handwritten signature in black ink, appearing to read 'Theodore R. Booth', written over a horizontal line.

THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

67-15263
67-15264
67-15265
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CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT; REQUEST FOR EXPERT ASSISTANCE FROM IDWR was mailed on September 06, 2024, with sufficient first-class postage to the following:

KAREN M HOOD
KEITH & KAREN HOOD
KEITH R HOOD

Represented by:
NORMAN M SEMANKO
PARSONS BEHLE & LATIMER
800 W MAIN STREET STE 1300
BOISE, ID 83702
Phone: 208-562-4900

UNITED STATES OF AMERICA
Represented by:
U S DEPARTMENT OF JUSTICE
ENVIRO & NAT'L RESOURCES DIV
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

KAREN M HOOD
KEITH & KAREN HOOD
PO BOX 100
CAMBRIDGE, ID 83610-0100
Phone: 208-550-3884

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

A handwritten signature in black ink, appearing to read "Tracy", is written over a horizontal line. The signature is stylized and cursive.