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MAY 15 2003

Department of Water Resources

**Names of Parties Filing Document:**

UNITED STATES OF AMERICA

STATE OF IDAHO

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

In Re SRBA

Case No. 39576

) Subcase Numbers: See Attached Exhibit A  
)  
) **JOINT MOTION TO VACATE**  
) **HEARING ON DISPOSITIVE**  
) **MOTIONS AND TO PROCEED WITH**  
) **HEARING UNDER I.C. § 42-1411(A)**

The United States of America, by and through the United States Department of the Interior, Bureau of Land Management (hereinafter "BLM"), and the State of Idaho hereby jointly move to vacate the hearing on dispositive motions filed in the above referenced subcases and, instead, to proceed under I.C. § 42-1411(A)(12) with an evidentiary hearing on certain of these

subcases. In support of this motion, the parties agree as follows:

These water rights were claimed by the United States, on behalf of the BLM, under state and federal law bases. The federal law basis for the claim is executive order Public Water Reserve No. 107, which reserved water for stockwatering use at vacant unappropriated springs and waterholes on the federal domain as of the date of the reservation, April 17, 1926. The state law basis for the claim is the beneficial use of stockwatering at these water sources as of 1934, a date previously stipulated to by the United States and the State of Idaho.

The State of Idaho objected to these claims and the Court set a schedule for filing dispositive motions to resolve the pending objections. A hearing on dispositive motions was set for 10:00 AM, Thursday, May 15, 2003. Neither party filed dispositive motions. The United States, however, filed affidavits to support its *prima facie* showing of the federal reservation of 16 of these springs or waterholes. See Affidavit of Deena M. Teel, filed December 9, 2002 (Subcase 35-12996) and Affidavit of Steven R. Davis, filed March 14, 2003 (Subcases 43-10957, 43-11997, 43-11005, 43-11052, 43-11054, 43-11056, 43-11058, 43-11069, 43-11071, 43-11158, 43-11160, 43-11166, 43-11172, 43-11268, and 43-11272). Accordingly, the parties request that the Court vacate the hearing on dispositive motions and, instead, proceed with an evidentiary hearing on the filed affidavits pursuant to I.C. § 42-1411(A)(12).<sup>1/</sup>

The parties also request that they be permitted to participate at the hearing by telephone.

DATED this 24 day of May, 2003.

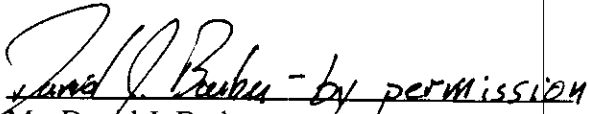
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<sup>1/</sup> The BLM is continuing its review of the remaining 157 subcases scheduled for the dispositive hearing and will submit affidavits for these subcases in the near future.

Respectfully submitted,

STATE OF IDAHO

UNITED STATES OF AMERICA

  
Mr. David J. Barber  
Deputy Attorney General

  
R. Lee Leininger  
Trial Attorney  
U.S. Department of Justice

**CERTIFICATE OF SERVICE**

I certify that on Aug 15, 2003, I served a true and correct copy of the foregoing **Joint Motion to Vacate Hearing on Dispositive Motions and to Proceed with Hearing Under I.C. § 42-1411(A)(12), subcase nos.: 35-12939, et al.** upon the following individuals by placing the document in the United States Mail in Washington D.C., postage paid, and addressed as follows:

U.S. Department of Justice  
General Litigation Section  
Environment and Natural Resources Division  
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R. Lee Leininger

## Exhibit A

|          |          |          |          |
|----------|----------|----------|----------|
| 35-12939 | 47-15454 | 47-15665 | 47-16494 |
| 35-12956 | 47-15457 | 47-15677 | 47-16496 |
| 35-12996 | 47-15461 | 47-15680 | 47-16509 |
| 43-10957 | 47-15465 | 47-15722 | 47-16510 |
| 43-10997 | 47-15468 | 47-15726 | 47-16517 |
| 43-11005 | 47-15471 | 47-15734 | 47-16518 |
| 43-11052 | 47-15472 | 47-15738 | 47-16519 |
| 43-11054 | 47-15473 | 47-15742 | 47-16520 |
| 43-11056 | 47-15478 | 47-15785 | 47-16521 |
| 43-11058 | 47-15480 | 47-15791 | 47-16522 |
| 43-11069 | 47-15482 | 47-15799 | 47-16524 |
| 43-11071 | 47-15487 | 47-15810 | 47-16531 |
| 43-11158 | 47-15492 | 47-15812 | 47-16534 |
| 43-11160 | 47-15495 | 47-15833 | 47-16535 |
| 43-11166 | 47-15498 | 47-15875 | 47-16536 |
| 43-11172 | 47-15501 | 47-15895 | 47-16543 |
| 43-11268 | 47-15507 | 47-16044 | 47-16545 |
| 43-11272 | 47-15510 | 47-16056 | 47-16546 |
| 47-15285 | 47-15515 | 47-16062 | 47-16554 |
| 47-15287 | 47-15529 | 47-16078 | 47-16555 |
| 47-15297 | 47-15532 | 47-16082 | 47-16556 |
| 47-15299 | 47-15535 | 47-16084 | 47-16558 |
| 47-15310 | 47-15538 | 47-16086 | 47-16560 |
| 47-15319 | 47-15540 | 47-16114 | 47-16561 |
| 47-15334 | 47-15543 | 47-16116 | 47-16562 |
| 47-15337 | 47-15546 | 47-16118 | 47-16563 |
| 47-15340 | 47-15549 | 47-16148 | 47-16564 |
| 47-15343 | 47-15551 | 47-16150 | 47-16565 |
| 47-15346 | 47-15554 | 47-16245 | 47-16577 |
| 47-15349 | 47-15557 | 47-16247 | 47-16578 |
| 47-15352 | 47-15560 | 47-16259 | 47-16584 |
| 47-15399 | 47-15563 | 47-16261 | 47-16590 |
| 47-15402 | 47-15566 | 47-16263 | 47-16591 |
| 47-15405 | 47-15573 | 47-16267 | 47-16592 |
| 47-15408 | 47-15576 | 47-16273 | 47-16614 |
| 47-15411 | 47-15581 | 47-16277 | 47-16615 |
| 47-15414 | 47-15584 | 47-16279 | 47-16633 |
| 47-15417 | 47-15607 | 47-16281 | 47-16634 |
| 47-15427 | 47-15610 | 47-16287 | 47-46635 |
| 47-15430 | 47-15638 | 47-16313 | 47-16636 |
| 47-15446 | 47-15641 | 47-16477 | 47-16637 |
| 47-15450 | 47-15644 | 47-16478 | 47-16638 |
| 47-15451 | 47-15656 | 47-16481 | 47-16639 |