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UNITED STATES OF AMERICA

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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).[1]

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

DATED this 12th day of May, 2003.

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[1] 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

David J. Barber - by permission
Mr. David J. Barber
Deputy Attorney General

UNITED STATES OF AMERICA

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

CERTIFICATE OF SERVICE

I certify that on May 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
550 West Fort Street, MSC 033
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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