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Department of Water Resources

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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	)	Subcase No. 63-03613
	)	
Case No. 39576	)	JOINT MOTION TO RESET
	)	INITIAL HEARING AND
	)	MEMORANDUM IN SUPPORT
_____	)	

Motion

The United States Department of Justice, on behalf of the Department of Interior, Bureau of Reclamation, along with Objectors Farmers Union Ditch Company and Boise Project Board of Control, as well as Respondent, the Committee of Nine, files this Motion to Reset Initial Hearing in the above listed subcase for the reasons explained the Memorandum below.

Memorandum

On June 18, 2003, various irrigation entities filed a ***Motion to Consolidate and Memorandum In Support of Motion to Consolidate Common Issue in Subcases Listed in Attachment A*** in thirty-one (31) Basin 63 subcases, including 63-03613. Two days later, the

SRBA Court issued a *Notice Setting Initial Hearing* in eighty (80) Basin 63 subcases, including 63-03613. On June 23, 2003, Judge Burdick issued *Order Separating and Consolidating Common Issue from Subcases in "Exhibit A"*; *Order Rescinding Order of Reference to Special Master As To Consolidated Issue*; and *Order Designating Issue as Consolidated Subcase 91-63* in thirty-one (31) Basin 63 subcase, including 63-03613. Judge Burdick's Orders prompted all but six of the initial hearings set for July 30, 2003 to be vacated. Included among the six subcases that continue to be scheduled for initial hearing on July 30 is 63-03613. The parties to this motion believe that the issues associated with Subcase No. 63-03613 likely depend on the outcome of Consolidated Subcase No. 91-63, and therefore the initial hearing in 63-03613 should be vacated as well.

Consolidated Subcase No. 91-63 was established by the SRBA Court for the express purpose of hearing and resolving "the common issue regarding the ownership of water rights as between the Irrigation Entities and the BOR" in the Arrowrock Division of the Boise Project. Subcase No. 63-03613 is a Bureau of Reclamation ("Reclamation") claim for irrigation storage and irrigation from storage at Arrowrock Reservoir. Two parties have filed Objections to 63-03613, and one party has filed a Response. These three parties, Farmers Union Ditch Company, Boise Project Board of Control, and the Committee of Nine are also participants in Consolidated Subcase No. 91-63.

Farmers Union Ditch Company's ("Farmers Union") Objection is directly related to the title issue (Consolidated Subcase No. 91-63). Farmers Union has objected to the Name and Address, Quantity, Purpose(s) of Use, and Place of Use listed on Reclamation's claim to 63-03613 because "[F]armers asserts an ownership interest in 63-3613 to the extent that water right, as recommended, includes 63-3613A ." *Standard Form 1 Objection* and attached *Appendix A* in

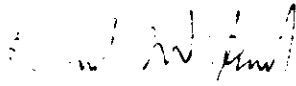
Subcase 63-3613, filed by Farmers Union Ditch Company on January 30, 2003. Thus, Farmers Union's Objection depends on the outcome of 91-63 to validate its argument.

The Boise Project Board of Control's ("BPBC") Objection is not directly related to the title issue but is still tied into the resolution of the ownership issue. BPBC has asserted that the Name and Address, Point(s) of Diversion, and Place of Use listed on the Reclamation claim to water right 63-3613 need to also reference the irrigation districts as the "beneficial users of this water right as specified in the contracts between the objectors and claimant." *Standard Form 1 Objection* in Subcase 63-3613, filed by Boise Project Board of Control on January 30, 2003. Likewise, the Committee of Nine ("the Committee") filed its Response concerning the Name and Address, Point(s) of Diversion, and Place of Use elements, stating that "the Director's Report recommendation does not adequately recognize the ownership interest the beneficial users have in this water right." *Standard Form 2 Response to Objection* in Subcase No. 63-3613, filed by the Committee of Nine on behalf of seventeen irrigation entities on April 1, 2003. Because both the BPBC Objection and the Committee's Response rely on an asserted interest in the claimed water, it is unlikely either the Objection or the Response can be resolved until the question of ownership of the water rights at the Boise Project reservoirs has been settled. However, the parties would like the opportunity to further discuss this matter and determine whether any of the issues raised in this subcase should go forward in advance of the resolution of the ownership issue.

Therefore, the parties petition this Court to vacate the hearing set for July 30, 2003 in Subcase No. 63-03613 and instead order the parties to report back to the Court within 60 days on whether they believe any aspect of this subcase should go forward without a decision on the issue of ownership of the water rights.

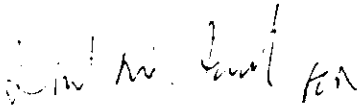
DATED this 24th Day of July, 2003.

Respectfully submitted,



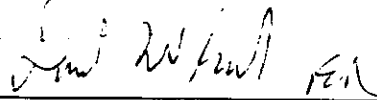
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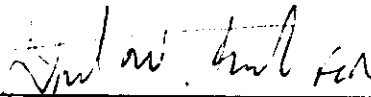
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CERTIFICATE OF MAILING

I hereby certify that on the 24th day of July, 2003, I served a true and correct copy of the **Joint Motion to Reset Initial Hearing and Memorandum in Support** by postage prepaid in the U.S. Mail and envelopes addressed to the following parties upon:

By Facsimile Transmission:

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