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Department of Water Resources

Attorneys for WaterOne Enterprises LLC,  
a California limited liability company

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

)  
) Case No.: 51-04037  
)  
) MOTION TO DISMISS

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COMES NOW claimant WaterOne Enterprises, LLC California ("WaterOne California") by and through its attorneys of record, and moves this court for an order: (1) dismissing the Motion to Alter or Amend the Special Master's Recommendation filed by Mathew Olivas on June 27, 2003 ("Motion to Amend"), (2) vacating the Order Setting Trial for November 6, 2003, and (3) decreeing water right 51-04037 as recommended in the 2<sup>nd</sup> Amended Special Master Report and Recommendation. WaterOne California also seeks a ruling on its Motion for Attorneys Fees and Costs.

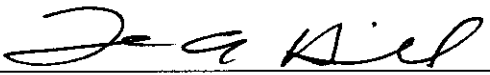
Mathew Olivas filed a Motion to Amend the Special Master's Recommendation for water right no. 51-04037, seeking the deletion of language limiting the purpose of use for the water and objecting to the quantity of the water under the right. A hearing was held on this motion on August 14, 2003 where Mr. Olivas and Don and Cecil Dozier sought to appear *pro se* on behalf of "WaterOne." This Court issued an Order Setting Trial on the issues contested by Messrs Olivas and Dozier on August 15, 2003. However, this Court specifically found that "any person wishing to appear at the trial and represent WaterOne Enterprises, LLC, must be an attorney

admitted to practice in the State of Idaho ... who has filed a written notice of appearance with the SRBA.” Order Setting Trial at 3. This Court further stated that any attorney wishing to appear at the November 6, 2003 trial on behalf of WaterOne Enterprises, LLC “shall file a notice of appearance in writing with the SRBA Court **no later than Friday, September 26, 2003.**” *Id.* at 4 (emphasis in original). The Order Setting Trial stated that “[i]n the event no attorney appears to represent WaterOne Enterprises, LLC, for the purpose of litigating the remaining two contested elements, the pending *Motion to Alter or Amend the Special Master’s Recommendation* will be dismissed as not properly filed and water right 51-04037 will continue as recommended in the **2<sup>nd</sup> Amended Special Master Report and Recommendation.**” *Id.* at 3. No notice of appearance was filed on behalf of Messrs Olivas and Dosier by the Court ordered deadline of Friday, September 26, 2003. Messrs Olivas and Dosier are the only parties attempting to contest the elements of the water right; therefore, WaterOne California seeks an order dismissing the Motion to Amend and recommending the water right as settled by the parties in the Standard Form 5 and reflected in the Special Master’s 2<sup>nd</sup> Recommendation. Because Mr. Olivas’ improperly filed Motion to Amend is the only pending contest to the water right, the November 6, 2003 trial on the contested issues should be vacated.

In the Order Setting Trial, this Court further indicated that it would take WaterOne California’s Motion for Attorneys Fees and Costs under advisement pending the determination of this issue. WaterOne reasserts its Motion for Attorneys Fees and Costs filed on July 11, 2003 and seeks an award of the reasonable expenses incurred in responding to Mr. Olivas’ improper Motion to Amend since an order dismissing Mr. Olivas’ motion will conclude this issue.

Dated this 30<sup>th</sup> day of September, 2003

STOEL RIVES LLP

By: 

Teresa A. Hill

Attorneys for WaterOne Enterprises, LLC

### CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30<sup>th</sup> day of September, 2003, I caused to be served a true copy of the foregoing to the following in the manner described below:

David J. Barber  
Deputy Attorney General  
Natural Resources Division  
P.O. Box 4449  
Boise, Idaho 83711-4449

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Mathew Olivas  
359 North 400 West  
Paul, Idaho 83347

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Janet O'Crowley  
317 West C Street  
Shoshone, Idaho 83352

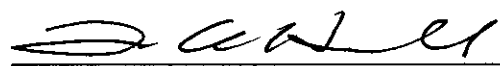
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Idaho Department of Water Resources  
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United States Department of Justice  
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