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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 Nos.: 35-12996, 43-10957, 43-10997,
	)	43-11005, 43-11052, 43-11054, 43-11056, 43-
	)	11058, 43-11069, 43-11071, 43-11158, 43-
	)	11160, 43-11166, 43-11172, 43-11268, 43-
	)	11272
	)	
Case No. 39576	)	CORRECTED RESPONSE TO THE
	)	STATE OF IDAHO'S MOTION TO
	)	WITHDRAW ITS OBJECTIONS^{1/}
	)	

The United States hereby responds to the State of Idaho's Motion to Withdraw its Objections
in the above referenced subcases, dated September 26, 2003. These subcases are subject to the

^{1/} This response corrects two errors to the caption of the previously filed response. The United States inadvertently listed two subcase numbers incorrectly, 43-111582 and 43-11286. The correct subcase numbers are included above, 43-11158 and 43-11268. The United States regrets any inconvenience this error may have caused the Court or the parties.

Court's Order of August 25, 2003 establishing a summary judgment schedule on the legal issue of whether a homestead entry application pending at the establishment of Public Water Reserve No. 107 (PWR 107) defeats the federal reservation. While the State is certainly entitled to end its participation in the briefing, the "withdrawal" of the State's objections should not prevent the Special Master from ruling upon this important legal matter.

Quite simply, the State's motion is a nullity because its objections to water rights based upon PWR 107 were disposed of almost two years ago. In 1997 and 1998, the State filed objections to these and hundreds of other claims made by the United States for stockwater based on PWR 107 and state law. The State alleged that these claims should not exist. *See Domestic and Stock Water Right Objection*, subcase 23-10872, dated September 9, 1998. In his *Memorandum Decision and Order on Challenge (Scope of PWR 107 Reserved Rights); Order of Recommitment to Special Master Cushman Consolidated Subcases 23-10872 et al., Joint Submission Subcases 23-10894 et al.* (Issued December 28, 2001), Judge Burdick ruled against the State's objection and determined that the decision "constitutes a final disposition of the objections raised in this matter" *Id.* at 36.² The State had objected to "numerous subcases." *Id.* at 3. In disposing of these objections, the Court determined that it had resolved the "significant number of subcases dependant on this ruling." *Id.* at 36. The Court then certified its ruling as a final judgment under I.R.C.P. 54(b). *Id.*

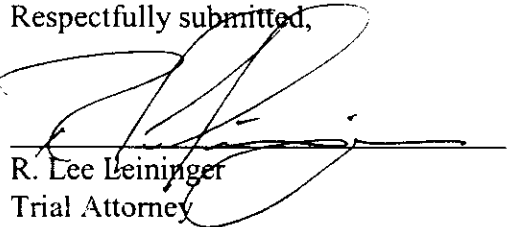
The State did not appeal the Court's ruling. Therefore, the State's claims that the water rights

² The issue before Judge Burdick arose from the State's Motion for Summary Judgment, re: subcases 23-10872, *et al.*, dated Sept. 18, 1998. In its dispositive motion, the State requested that the Court "grant Summary Judgment in favor of the State of Idaho and dismiss the above referenced subcases." *Id.* at 2.

motion and the issue argued therein, notwithstanding the State's desire to withdraw already resolved objections.

DATED this 2ND day of October, 2003.

Respectfully submitted,



R. Lee Leininger
Trial Attorney

United States Department of Justice

CERTIFICATE OF SERVICE

I certify that on this 2ND ^{Corrected} day of October, 2003, I served a true and correct copy of foregoing Response to the State of Idaho's Motion to Withdraw Its Objections upon the following individuals by serving as indicated, postage pre-paid, addressed as follows:

via facsimile transmission:

Diana R. Delaney, Chief Deputy Clerk
(Original)
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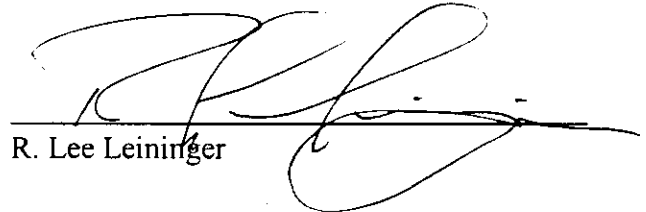
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