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Department of Water Resources

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Attorneys for Joyce Livestock

**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 55-10135, 55-11061,
) 55-11385 and 55-12452
)

) **JOYCE LIVESTOCK'S MOTION TO**
) **ALTER OR AMEND THE SPECIAL**
) **MASTER'S REPORT AND**
) **RECOMMENDATION, FINDINGS OF**
) **FACT AND CONCLUSIONS OF LAW**
) **AND UNOPPOSED MOTION FOR**
) **EXTENSION OF TIME TO FILE**
) **MEMORANDUM IN SUPPORT OF**
) **MOTION TO ALTER OR AMEND**

MOTION

Joyce Livestock Company ("Joyce Livestock") pursuant to Idaho R. Civ. P. 59(e) and the SRBA Court's Administrative Order 1, 13, hereby moves to alter or amend the *Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law* filed in the above-captioned Subcases on October 6, 2003. The basis of this Motion to Alter or Amend is Joyce

Livestock's objection to the Court's recommendation denying Joyce Livestock's claim (55-10135) and Joyce Livestock's objection to the Court's recommendation awarding the BLM partial decrees adjudicating water rights for claims 55-11061, 55-11385 and 55-12452. In addition, without limitation, Joyce Livestock believes that the Court erred in determining that Joyce Livestock's predecessors-in-interest did not intend to transfer appurtenant water rights,¹ that the Court erred in failing to recognize that water rights can be held in common, that the Court erred in concluding that the practice of grazing in common somehow precludes the appropriation of water or Joyce Livestock's claim in particular, and that the Court erred in holding that the BLM is entitled to its claimed rights.²

Pursuant to Idaho R. Civ. P. 7(b)(3), a memorandum in support of this motion would be due no later than fourteen (14) days following the filing of the within Motion to Alter or Amend. However, due to counsel's current case load and deadlines in other unrelated matters, coupled with the intervening holidays, counsel respectfully requests an extension of time within which to file Joyce Livestock's Memorandum in Support of Motion to Alter or Amend. Counsel for Joyce Livestock has conferred with counsel for the United States regarding the requested extension of time, and counsel for the United States does not oppose the requested extension of time. Further, the United States does not oppose the following proposed briefing schedule: (1) January 9, 2004

¹ It is Joyce Livestock's position that the evidence presented at trial and applicable law support the conclusion that Joyce Livestock's predecessors-in-interest intended to transfer, and did in fact transfer, the water rights at issue.

² The United States is not entitled to its claimed water rights because the United States BLM is not capable now, and never has been capable, of putting the subject water to beneficial use and, further, there is no legal basis for a "management" based water right under either federal or state law.

deadline for Joyce Livestock to file Opening Memorandum in Support of Motion to Alter or Amend; (2) February 6, 2004 deadline for Responses to Joyce Livestock's Memorandum; (3) February 27, 2004 deadline for Joyce Livestock to file a Reply Memorandum.

Finally, Joyce Livestock requests that this matter be set for oral argument following the conclusion of substantive briefing.

DATED this 24~~th~~ day of November, 2003.

Respectfully submitted,

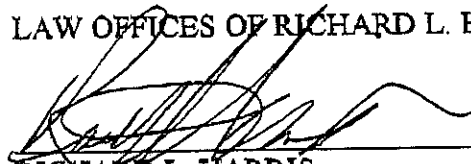
McQUAID BEDFORD &
VAN ZANDT, LLP

A handwritten signature in black ink, appearing to read "Michael J. Van Zandt", written over a horizontal line.

Michael J. Van Zandt
Attorneys for Joyce Livestock

As local counsel, having reviewed the foregoing Motion to Alter or Amend the Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law and Motion for Extension of Time to File Memorandum in Support of Motion to Alter or Amend, I hereby execute the same this 24th day of November, 2003.

LAW OFFICES OF RICHARD L. HARRIS



RICHARD L. HARRIS

Attorneys for Joyce Livestock

CERTIFICATE OF SERVICE

I certify that on November 24, 2003, I served a true and correct copy of foregoing **JOYCE LIVESTOCK'S MOTION TO ALTER OR AMEND THE SPECIAL MASTER'S REPORT AND RECOMMENDATION, FINDINGS OF FACT AND CONCLUSIONS OF LAW** upon the following individuals by placing the document in the United States Mail, postage paid, and addressed as follows:

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