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Department of Water Resources

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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	) Subcase No.: 51-04037
	)
Case No. 39576	) WATERONE ENTERPRISES, LLC'S
_____	) MOTION FOR SUMMARY JUDGMENT

WaterOne Enterprises LLC , a California limited liability company ("WaterOne, California"), Thomas Scroggins, an individual, and Virginia Canavero, an individual, by and through counsel, Stoel Rives LLP, moves the Court for Summary Judgment granting WaterOne, California's Objection in Subcase No. 51-04037, filed April 24, 2002 and requesting that the Idaho Department of Water Resources ("IDWR") issue a Notice of Completed Administrative Proceeding and Amended Director's Report stating that WaterOne, California is the proper claimant of Water Right No. 51-04037. This Motion is based on the MEMORANDUM DECISION AND ORDER issued by District Judge Morfitt, in Case No. CV 2001-03402 on November 5, 2002, finding WaterOne, California the fee simple owner of Murphy Hot Springs (hereinafter "Order"). See Affidavit of Teresa A. Hill, Exhibit A. This Motion is supported by the Affidavit of Thomas Scroggins in Support of Motion to File Late Objection ("Scroggins Affidavit), Motion to File Late Objection and Objection, which were filed by WaterOne, California on March 24, 2002. In addition, this Motion is supported by WaterOne, California's

Motion to Supplement Objection and for Issuance of Amended Director's Report and the Affidavit of Teresa A. Hill, both filed concurrently herewith.

The grounds for this Motion are as follows:

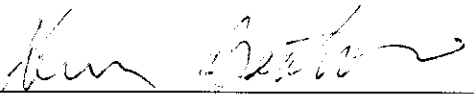
1. On March 19, 2002 the IDWR issued a Notice of Completed Administrative Proceeding and Amended Director's Report for Subcase No. 51-04037 substituting Purity Sweet for WaterOne Enterprises, LLC as the claimant of water rights under Right No. 51-4037.
2. On April 24, 2002 WaterOne, California filed a Motion to File Late Objection, Objection and Scroggins Affidavit, objecting to IDWR's identification of Purity Sweet as the claimant of Right No. 51-4037. WaterOne, California supported its objection through the Scroggins Affidavit, which stated that in January 2001 WaterOne, California had purchased real property in Owyhee County (hereinafter "Murphy Hot Springs") and that the Quitclaim Deed had specifically transferred Idaho Water Right No. 51-04037 to WaterOne, California.
3. WaterOne, California's Objection, as supported by the Scroggins Affidavit, further stated that the March 2002 transfer of ownership of Water Right No. 51-04037 to Purity Sweet was done without notice to WaterOne, California and without authority from WaterOne, California. Therefore WaterOne, California was still the owner of Right No. 51-04037.
4. On June 6, 2002 this Court held a hearing on various pending motions, including WaterOne, California's Motion to File Late Objection. This Court granted WaterOne, California's motion. In addition, this Court recognized the quiet title action pending in Owyhee County District Court, case no. CV 01-3402, between WaterOne, California and Purity Sweet, to determine ownership of the land to which Water Right No. 51-04037 is appurtenant. *See* June 7, 2002 Order, footnote 1. In a letter to Judge Morfitt, this Court indicated its intention to hold the subcase in abeyance until the issue of ownership of the land at Murphy Hot Springs was resolved. *See* June 7, 2002 letter from Special Master Dolan.

5. On November 5, 2002, Judge Morfitt issued an Order in case no. CV 01-03402 finding WaterOne, California has fee simple ownership of Murphy Hot Springs. *See* Order, Hill Affidavit, Exhibit A at 21.

6. Based on the Order establishing WaterOne, California's ownership of Murphy Hot Springs, this Court should grant WaterOne, California's Objection and find WaterOne, California, not Purity Sweet, is the appropriate claimant of Water Right No. 51-04037. Water Right No. 51-04037 is appurtenant to the real property at Murphy Hot Springs, which WaterOne, California has been determined to be the fee simple owner. Idaho law recognizes the common law presumption that water rights pass with the conveyance of the land. *See* I.C. § 42-220 (stating that water rights under Idaho law "shall become appurtenant to, and shall pass with a conveyance of, the land which the right of use is granted.") *See also*, Idaho Op. Atty. Gen. No. 88-6, 1998 WL 38554 (Idaho A.G.)(stating that in the absence of language in the deed indicating a contrary intention, everything that is properly appurtenant to the land – that is everything which is essential or reasonably necessary to the beneficial use and enjoyment of property – is to be considered as passing with the land). In addition, the Quitclaim Deed transferring Murphy Hot Springs to WaterOne, California specifically transferred Water Right No. 51-04037 with the land. WaterOne California's fee simple ownership of Murphy Hot Springs along with the presumption that the water rights are appurtenant to the land and the specific conveyance of the water right to WaterOne, California, undisputedly establishes that WaterOne, California is the proper claimant of Water Right No. 51-04037. WaterOne, California's ownership is not undermined by the alleged transfer of the water right to Purity Sweet, which was done without notice or authorization by WaterOne, California or its sole members and managers. Summary judgment granting WaterOne, California's objection and requesting that IDWR issue a Notice of Completed Administrative Proceeding and Amended Director's Report reflecting WaterOne, California as the proper claimant of Water Right No. 51-04037, is therefore appropriate.

Dated this 7th day of January, 2003

STOEL RIVES LLP

By: 
Kevin J. Beaton
Attorneys for WaterOne, Enterprises, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of January, 2003, I caused to be served a true copy of WATERONE ENTERPRISES, LLC'S MOTION FOR SUMMARY JUDGMENT upon the following individuals, in the following manner:

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Deputy Attorney General
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