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SPECIAL INSTRUCTIONS: Enclosed for filing is **United States' Response to the SRBA Court's Order Setting Expedited Hearing on Status of Claims**. Due to the length of the complete filing, only the brief is enclosed in this fax. The complete filing, including both the brief and Attachments 1 & 2, is being mailed.

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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. 51-02002, <i>et al.</i> [Exhibit A]
	)	Subcase Nos. 51-12756, <i>et al.</i> [Exhibit B] and
Case No. 39576	)	Subcase Nos. 51-12604, <i>et al.</i> [Exhibit C]
	)	
	)	UNITED STATES' RESPONSE TO THE
	)	SRBA COURT'S ORDER SETTING
	)	EXPEDITED HEARING ON STATUS
	)	OF CLAIMS

In response to the Court's Order Setting Expedited Hearing on Status of Claims, the United States offers this pre-hearing explanation of the issues identified in the Order. As explained in more detail below, the United States believes that these four claims are properly before this court as a result of the Court's granting of the United States' 1998 Motion to Amend the original instream flow claims and no further action is required by this Court or by the parties with regard to the amendment or filing of these claims.

The four specific claim numbers at issue all have a similar history and their story begins

with the United States' *Standard Form 4 – Motion to File Amended Notice of Claim* (SRBA Subcase Nos. 51-12756, 51-12761, 55-13476, 55-13477, 55-13485, 55-13486, and 55-13487) and *Memorandum in Support* (filed February 26, 1998).¹⁷ In that Motion, the United States sought to make technical amendments to several of its instream flow claims filed on behalf of the Shoshone-Paiute Tribes. Specifically, two of the original claims were to be amended to more precisely define the quantity of water claimed within the original stream reach such that some portions of that reach would have lower flows. Through those refinements to the claims, the streams were divided into shorter segments with separate claim numbers assigned to each of those shorter segments. In both cases, the original claim was divided into three segments, one of which retained the original claim number and two new claim numbers were assigned to the other two segments.²¹ Further, in each instance, the amended claims sought less water than had been claimed in the original claim. (See Attachment 2 – *United States' Memorandum in Support of the United States' Motion to file Amended Notices of Claim* at n. 1).

Technical amendments may be made to claims before the court, as anticipated by Administrative Order 1, as amended. *SRBA Administrative Order 1 – Rules of Procedure* (amended 10/10/97) (“A.O.1”) at § 4(d)(2) and § 17(b)(3). Where an amendment seeks less water than was originally claimed and does not otherwise change the parameters of the claim that may create different impacts than would have been anticipated by the original claim, there is no

¹⁷ The *Motion to Amend* and *Memorandum in Support* are attached as Attachments 1 and 2. A possible source of the confusion in this matter may stem from the fact that the new claim numbers were not included in the caption of the Motion to Amend. Indeed, as a Motion to Amend, it was appropriate that only the claim numbers to be amended were listed in the caption. The new claim numbers were identified appropriately within the body of the Motion and Memorandum.

²¹ The United States' practice for assigning claim numbers has been to call staff at IDWR who specify the numbers to use. In most cases, IDWR has a second opportunity to see the claim number as the claims go through IDWR for abstracting and reporting to the Court. Here, the claims were already before the Court and the technical amendments merely refined the original claims in such a manner as to split the original claim into three segments.

need for additional notice or an opportunity to comment. I.C. § 42-222(1) (2004). Here, the amendments did not expand the geographic scope of the original claims and in fact reduced the flows claimed in the original stream reach.^{3/} Conceivably, the amendments could have been made within the framework of the original claim number by specifying on the face of that single claim form the three smaller stream segments and the specific flows claimed for each of those smaller segments. However, for purposes of administration of the rights, it would probably be simpler to have those three segments defined as three separate water rights. That procedural option for the amendments was the one chosen by the United States.

Turning to the specific questions posed by the Court's Order, the United States believes that the first enumerated question misstates the history by characterizing these as new claims. As explained above and as explained in the *United States' Memorandum in Support*, these were properly characterized as claim amendments as allowed by A.O. 1 § 17(b)(3). As such, and because the nature of the amendments do not require additional notice, there is no need to refile the amendments as late claims, nor is there any need for IDWR to abstract and report the claims. It also follows that there is no need for a new objection and response period.

As to the Court's third and fourth questions, the United States believes that no further action is required by this Court or by the parties to resolve these issues. Judge Hurlbutt's granting of the Motion to Amend properly resolved the Motion before the Court. Because of the unique nature of the amendments, four new claim numbers were generated, but these were merely subdivisions of the claims that were already properly before the Court. At most, the

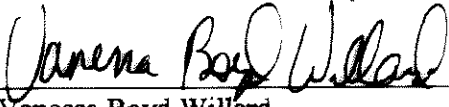
^{3/} This situation is analogous to amendment of an irrigation claim that might be pending before this Court. If the owner of a 1,000 acre farm decided to split his or her 2,000 acre-foot water right in anticipation of a possible future sale, the amendment might take the form of division into two new claims, each to serve 500 acres. At the same time, the claim could be refined to account for the fact that 20 acres of irrigated land had been converted to a non-irrigation use, resulting in two claims, one for 1,000 acre-feet and one for 900 acre-feet. Such an amendment would result in a new claim number, but would not require additional notice.

Court's and IDWR's records need to be made consistent with Judge Hurlbutt's Order, but that should only be an administrative or explanatory action, and will not require further formal action by this Court. Further, all four of these claims are on the current "Exhibit B" list of Duck Valley subcases (*i.e.*, Subcases 51-12756, *et al.*) defining the consolidated non-consumptive instream flow claims, so no action is necessary to correct the consolidation of claims. Finally, no change to the trial schedule is necessary because of the 1998 Amendments.

In summary, while the United States recognizes that it is unusual for a claim amendment to result in the creation of new claim numbers, that is exactly what happened in this instance. However odd that may have been procedurally for IDWR and the Court's record keeping procedures, the new claim numbers were explained in the 1998 Motion, specifically identified in the amended claims submitted to and approved by this Court, and no further judicial action is required.

Dated this 18th day of January 2005.

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CERTIFICATE OF MAILING

I hereby certify that on this 18th day of January 2005, I caused to be served true and correct copies of the attached **United States' Response to the SRBA Court's Order Setting Expedited Hearing on Status of Claims** as follows:

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