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DEPARTMENT OF
WATER RESOURCES

Shelley M. Davis, ISB # 6788
BARKER ROSHOLT & SIMPSON LLP
205 N. 10th Street, Ste. 520
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for Earl Warthen, Objector

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. 45-10480, 45-10481, 45-10502
	)	and 45-12906
	)	
	)	EARL WARTHEN'S MOTION FOR
Case No. 39576	)	SUMMARY JUDGMENT ON ALL
	)	CLAIMS AND WITHDRAWING
	)	OBJECTION TO SUB-CASE NO.
	)	45-10502
	)	

COMES NOW, the Objector/Claimant Earl Warthen, by and through his counsel of record Shelley M. Davis of the law firm Barker Rosholt & Simpson, LLP, and hereby moves this Court for an Order Granting summary judgment in favor of Mr. Warthen on all objections made by him to the recommendations made by the Idaho Department of Water Resources ("Department") in sub-case numbers 45-10480, and 45-10481 for the reason that the water right upon which the Department based its recommendation for priority, points of diversion, and source was declared forfeited to the property owned by Kevin Smyer in a 1991 Order issued by the Idaho Department of Water Resources. The water right upon

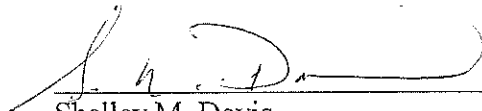
which the Department based its recommendation in sub-case number 45-12906 has also been forfeited through years of non-use.

Mr. Warthen withdraws his objection to the Department's recommendation made in sub-case number 45-10502 and is filing simultaneous to this Motion, Supporting Memorandum and Affidavits, a Motion for Leave to Amend and to Allow the Filing of a Late Claim related to sub-case number 45-10502.

The basis for this Motion and request for relief is explained more fully in the accompanying Memorandum in Support of Motion for Summary Judgment, Affidavit of Shelley M. Davis in Support of Motion for Summary Judgment and Affidavit of Earl Warthen in Support of Motion for Summary Judgment.

Dated this 24th day of February 2006.

BARKER ROSHOLT & SIMPSON LLP



Shelley M. Davis
Counsel for Earl Warthen

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February 2006, I served a true and correct copy of the foregoing *Earl Warthen's Motion for Summary Judgment on All Claims and Withdrawing Objection to Sub-Case No. 45-10502* on the following by U.S. Mail, postage prepaid or Facsimile:

Original hand delivered to:

Clerk
Fifth Judicial District Court
Snake River Basin Adjudication
253 3rd Ave. N.
P.O. Box 2707
Twin Falls, ID 83303-2707

Counsel for the Objector/Claimants via e-mail and U.S. Mail:

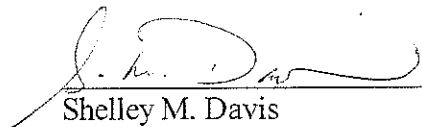
Michael Tribe
Ling, Robinson & Walker
P.O. Box 396
Rupert, ID 83350

Copies to via U.S. Mail:

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United States Department of Justice
Environment and Nat'l Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
P.O. Box 44449
Boise, ID 83711-4449


Shelley M. Davis