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DEPARTMENT OF
WATER RESOURCES

Attorneys for Cummins Farm, Inc.

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 Nos: 45-02583, 45-02689, 45-07020,
45-07035, 45-07110, 45-07238, 45-07374

MOTION TO VACATE TRIAL

Comes now Cummins Farm, Inc. ("Cummins"), by and through its counsel of record, Stoel Rives LLP, and hereby submits the following Motion to Vacate Trial. The Motion to Vacate Trial is supported by the Affidavit of Kevin J. Beaton ("Beaton Aff.") filed concurrently herewith.

I. DISCUSSION

Pursuant to the Court's April 6, 2006 Order Vacating and Resetting Trial, this case is set for trial to commence on Friday, August 4, 2006. Cummins moves the court to enter an Order vacating the trial date and setting a status conference in September to discuss resetting the trial as necessary. This motion is necessitated because the property to which the water rights in this action are appurtenant is subject to a recent foreclosure action, filed on July 17, 2006. *See* Affidavit of Kevin J. Beaton ("Beaton Aff.") at ¶ 2. The legal affect of the recently filed foreclosure on these proceedings is still unclear. The foreclosure creates uncertainty regarding

the legal status of the property to which the water rights in this case are appurtenant and the status of the parties in this action, as there may be a new owner or party of interest in this proceeding.

Motions to vacate a trial setting are submitted to the sound discretion of the court. *State v. Ward*, 98 Idaho 571, 574, 569 P.2d 916, 919 (1977); *Vendelin v. Costco Wholesale Corp.*, 140 Idaho 416, 425, 95 P.3d 34, 43 (2004). Cummins submits that an extension of the trial is necessary and proper to allow Cummins adequate time to evaluate the status of the property, its claim and the parties to this action given the legal uncertainties raised by the recent foreclosure action.

Counsel for the Idaho Department of Water Resources has consented to Cummins' request to vacate the trial. *Id.* at ¶ 3.

II. CONCLUSION

Cummins respectfully requests that the Court enter an Order vacating the August 4, 2006 trial date.

DATED: July 27th, 2006

STOEL RIVES LLP



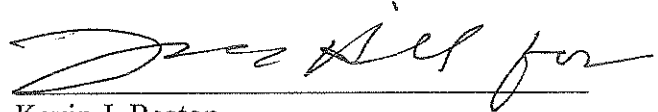
Kevin J. Beaton
Attorneys for Cummins Farms, Inc.

CERTIFICATE OF SERVICE

I certify that on July 27th, 2006, I caused to be served true and correct copies of this Motion to Vacate Trial, to the following persons, in the manner indicated and addressed as follows:

Director of Idaho Dept. of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

☐ Overnight Delivery
☐ Regular Mail
☒ Hand-Delivered
☐ Facsimile


Kevin J. Beaton