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DEPARTMENT OF
WATER RESOURCES

Names of Parties Filing Document:

UNITED STATES OF AMERICA

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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 Numbers: 37-07426 and 37-08165
	)	
Case No. 39576	)	MOTION TO GRANT THE UNITED
	)	STATES' OBJECTIONS FOR
	)	FAILURE TO PROSECUTE AND
	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT

Pursuant to Idaho R. Civ. P. 41(b), the United States of America, by and through the undersigned attorney, respectfully moves the Special Master to grant the United States' objections to Water Right Claim Numbers 37-07426 and 37-08165 for failure to prosecute. A Memorandum of Points and Authorities, the Affidavit of Larry A. Brown in support of this motion, and Attachments 1, 2, 3, and 4 to the Affidavit of Larry A. Brown are filed herewith.

MEMORANDUM OF POINTS AND AUTHORITIES

IDAHO R. CIV. P. 41(b) allows for complete dismissal of an action for failure to prosecute. The claimant of a water right in the Snake River Basin Adjudication (hereinafter "SRBA"), like a plaintiff in a tort action, has an affirmative duty to seek prompt adjudication of a claim. Cf. Nagal v. Wagers, 727 P.2d 1250 (Ct. App. 1986). Thus, if an SRBA claimant unduly delays adjudication of a water right claim, IDAHO R. CIV. P. 41(b) would likewise allow for complete dismissal such claim. Here, the United States, under IDAHO R. CIV. P. 41(b), respectfully requests the Special Master to grant its objections for failure of the Claimants to seek prompt adjudication of their water right claims.

In applying IDAHO R. CIV. P. 41(b), the Special Master should consider the length of the delay caused by the Claimants' failure to prosecute, the justification for the delay, and the resulting prejudice to the moving party. See Grant v. City of Twin Falls, 746 P.2d 1063 (Ct. App. 1987). Moreover, a court has the inherent power to dismiss claims for failure to prosecute with due diligence independent of any statute or rule of the court. See Bartlett v. Peak, 688 P.2d 1189 (1984).

Claimants Robert and Bernardine Erkins filed Water Right Claim Number 37-08165 on August 22, 1988, and filed Water Right Claim Number 37-07426 on September 27, 1988 (hereinafter collectively "claims"). The claims were recommended by the Idaho Department of Water Resources ("IDWR") on November 1, 2005 and notice of the recommendation was mailed to the Claimants' address of record on November 4, 2005. On March 9, 2006, the United States filed and properly served timely objections to IDWR's recommendations. See Standard Form 1

Objection, In Re SRBA, Case No. 39576, Subcase Number 37-07426 (March 9 2006) at 4; Standard Form 1 Objection, In Re SRBA, Case No. 39576, Subcase Number 37-08165 (March 9 2006) at 4. There is no evidence in the record that the Claimants are deceased. There is no record of anyone filing a Notice of Change of Ownership. Other than unsworn statements by Mr. Randy Erkins during the general introduction on the day set for Initial Hearing, there is no record of anyone informing the Court or IDWR of a change in address, change of phone number, or change in status.

The Special Master properly notified the Claimants of the date, time, and location of the Initial Hearing. Notice Setting Initial Hearing, In Re SRBA, Case No. 39576, Subcase Numbers 37-07426 and 37-08165 (July 31, 2006). Neither the Claimants, nor Claimants' representative, appeared at the Initial Hearing held on August 24, 2006 in Gooding, Idaho. Affidavit of Larry A. Brown in Support of the United States' Motion to Grant the United States' Objections for Failure to Prosecute, In Re SRBA, Case No. 39576, Subcase Numbers 37-07426 and 37-08165 (November 21, 2006) (hereinafter "Brown Aff.") at 2. Neither the Claimants, nor Claimants' representative, filed motions related to a possible Federal Bankruptcy Order in accordance with the Special Master's Order Setting Deadline and Status Conference, In Re SRBA, Case No. 39576, Subcase Numbers 37-07426 and 37-08165 (September 8, 2006). Brown Aff. at 3. There has been no action taken to defend against the United States' objections, to provide admissible evidence for the record of any special circumstances that would serve as good cause to stay adjudication of the claims, or to seek prompt adjudication of the claims. Thus, there is nothing in the record that justifies the delay in proceedings to adjudicate the claims.

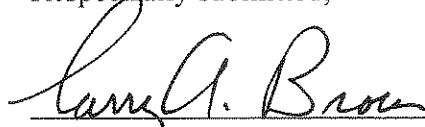
The United States is unduly prejudiced by the delay in adjudication. The United States has expended considerable resources in attending the Initial Hearing, initiating phone calls attempting to contact the Claimants, drafting pleadings, and drafting this Motion. See Brown Aff. at 2-3. Unless the claims are adjudicated, the United States must continue to appear in court proceedings ordered by the Special Master to preserve its objections. Given the facts in the record, the Special Master should grant the United States' objections, pursuant either to IDAHO R. CIV. P. 41(b) or to the Special Master's inherent authority, for failure of the Claimants of record to seek prompt adjudication of the claims.

Attachments 1 and 2 to the Brown Aff. are each entitled Idaho Department of Water Resources Recommended Water Rights Acquired Under State Law. Attachments 1 and 2 were created by the United States Department of the Interior, Bureau of Land Management. Attachment 1 represents a description of Water Right Number 37-07426 that would resolve the United States' objection to Water Right Number 37-07426. Brown Aff. at 4. Attachment 2 represents a description of Water Right Number 37-08165 that would resolve the United States' objection to Water Right Number 37-08165. Brown Aff. at 4. Subject to concurrence by the Idaho Department of Water Resources, the Special Master grant this Motion and should issue

Special Master's Reports and Recommendations for Water Right Claim Numbers 37-07426 and 37-08165 in conformance with Attachments 1 and 2 to the Brown Aff.

DATED this 12th day of December, 2006.

Respectfully submitted,

A handwritten signature in cursive script, reading "Larry A. Brown", is written over a horizontal line.

Larry A. Brown
Of Attorneys for the United States

CERTIFICATE OF SERVICE

I certify that on Dec 12, 2006, I served a true and correct copy of the foregoing **MOTION TO GRANT THE UNITED STATES' OBJECTIONS FOR FAILURE TO PROSECUTE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; SUBCASE NUMBERS 37-07426 AND 37-08165, the AFFIDAVIT OF LARRY A. BROWN IN SUPPORT OF MOTION TO GRANT THE UNITED STATES' OBJECTIONS FOR FAILURE TO PROSECUTE; SUBCASE NUMBERS 37-07426 AND 37-08165, ATTACHMENTS 1, 2, 3, AND 4 TO THE AFFIDAVIT OF LARRY A. BROWN IN SUPPORT OF MOTION TO GRANT THE UNITED STATES' OBJECTIONS FOR FAILURE TO PROSECUTE; SUBCASE NUMBERS 37-07426 AND 37-08165** upon the following individuals by placing the document in the United States Mail in Washington D.C., postage paid, and addressed as follows:

Original to:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Copies to:

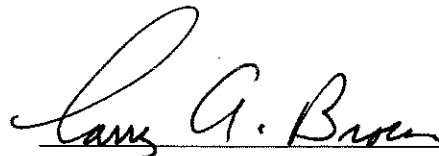
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