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DEPARTMENT OF
WATER RESOURCES

Josephine P. Beeman #1806
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
jo.beeman@beemanlaw.com

Attorneys for Gary & Helen DeMoss

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. 01-00217 et al. (See Exhibit A)
	)	
Case No. 39576	)	STATEMENT OF GARY AND HELEN
	)	DEMOSS FOR OCTOBER 16, 2007 HEARING
	)	ON IDAHO POWER COMPANY'S MOTION
	)	TO DESIGNATE BASIN-WIDE ISSUE OR
	)	ALTERNATIVELY TO CONSOLIDATE
	)	SUBCASES ON COMMON ISSUE

Introduction

Gary and Helen DeMoss (DeMoss) submit this Statement for the October 16, 2007 hearing on Idaho Power Company's *Motion to Designate Basin-Wide Issue or Alternatively to Consolidate Subcases on Common Issue* (Idaho Power Motion).¹ The Idaho Power Motion was filed September 4, 2007; Orders setting the October 16 hearing were entered September 5,

¹ The DeMosses note that the United States' *Motion to Consolidate Subcases* (U.S. Motion to Consolidate), also set for hearing October 16, 2007, involves 17 subcases. The DeMosses are not party to these 17 subcases, but all 17 subcases are listed with the Idaho Power Motion. The U.S. Motion to Consolidate involves subcases 01-00217, 01-218, 01-2017, 01-2032, 01-2046, 01-2064, 01-2068, 01-4024, 01-4025, 01-4054, 01-10382, 01-10383, 01-10531, 01-10532, 37-4007, 37-4147, and 63-367. The U.S. Motion to Consolidate was filed August 28, 2007, and the Order setting the hearing was entered August 31, 2007.

2007 and October 5, 2007.² There are forty-eight (48) subcases involved in the Idaho Power *Motion*. Seventeen (17) of the subcases in common with the United States *Motion to Consolidate*, also being heard on October 16. The other thirty-one (31) subcases involve objections filed by the DeMosses.³ Twenty (20) of the DeMoss objections have already been resolved.⁴

² *ORDER SETTING HEARING ON IDAHO POWER COMPANY'S MOTION TO DESIGNATE BASIN-WIDE ISSUE OR ALTERNATIVELY TO CONSOLIDATE SUBCASES ON COMMON ISSUE*, September 5, 2007; and *NOTICE CHANGING TIME OF HEARING ON IDAHO POWER COMPANY'S MOTION TO DESIGNATE BASIN-WIDE ISSUE OR ALTERNATIVELY TO CONSOLIDATE SUBCASES ON COMMON ISSUE*, October 5, 2007.

³ The Idaho Power *Motion* involves 48 subcases: 01-217, 01-218, 01-2017, 01-2032, 01-2046, 01-2064, 01-2068, 01-4024, 01-4025, 01-4054, 01-10382, 01-10383, 01-10531, 01-10532, **37-238A, 37-239A, 37-239D, 37-240A, 37-240D, 37-447C, 37-447D, 37-507, 37-607D, 37-608D, 37-856, 37-859A, 37-1175A, 37-2128, 37-2471, 37-2472, 37-2778, 37-2780, 37-4007, 37-4112, 37-4147, 37-4241, 37-7108, 37-7754, 37-7857, 37-7865, 37-7920, 37-7922, 37-7944, 37-11131, 37-20709, 37-20710, 37-21595**, and 63-367. March 2006, eighteen months before the Idaho Power *Motion* was filed, the DeMosses filed objections in the 31 bolded subcases.

⁴ In particular, at the time the Idaho Power *Motion* was filed, the thirty-one (31) subcases had already been involved in SRBA settlement conferences beginning a year earlier, and were also subject to outstanding trial scheduling orders. In addition, the DeMosses were the only objectors in 23 of the subcases: 37-238A, 37-239A, 37-239D, 37-240A, 37-240D, 37-447C, 37-447D, 37-607D, 37-608D, 37-856, 37-859A, 37-1175A, 37-2778, 37-2780, 37-4241, 37-7108, 37-7754, 37-7857, 37-7865, 37-7920, 37-7922, 37-7944, and 37-11131.

During the eighteen months between the filing of the DeMoss objections on March 10, 2006, and the filing of the Idaho Power *Motion* on September 4, 2007, the thirty-one subcases proceeded with settlement conferences, and trial scheduling orders from SRBA Special Master Brigitte Bilyeu:

- Initial hearings for the thirty-one subcases were held August 24, 2006. All parties were required to be present with full settlement authority. *NOTICES SETTING SUBCASES FOR INITIAL HEARING*, July 31, 2006.
- An Order on September 7, 2006 scheduled an informal settlement conference for all thirty-one subcases on October 18, 2006. *ORDER SETTING SETTLEMENT CONFERENCE*, September 7, 2006.
- A second Order on January 16, 2007 scheduled a settlement meeting for May 3, 2007 for twenty-six of the thirty-one subcases. *ORDER SETTING SETTLEMENT MEETING AND SCHEDULING CONFERENCE*, January 16, 2007.
- The *TRIAL SCHEDULING ORDER* of April 19, 2007 set trial for February 6, 2008 for twenty-six of the thirty-one subcases.
- On May 15, 2007, trial for the other five subcases was set for October 20-31, 2008. *ORDER SETTING SCHEDULING CONFERENCE AND TRIAL DATE*, May 15, 2007.

This statement is filed to support entry of the resolutions for the DeMoss objections. The DeMosses understand that ongoing settlement efforts are not prevented by the Idaho Power Motion.⁵

NATURE AND EXTENT OF THE DEMOSS OBJECTIONS

On March 10, 2006, Gary and Helen DeMoss filed *Standard Form 1: Objections* to the Director's Reports for thirty-four subcases in Basin 37. The DeMosses objected to the source, priority date, and period of use elements in each subcase. The intent behind all of these objections was to protect the DeMosses' diversions to storage under junior priority water rights 37-856, 37-2780, 37-7754, and 37-2778 on Dry Creek from curtailment as a result of priority calls from downstream senior direct flow water rights during times of water administration. This is reflected in the common language in the DeMoss objections.⁶

⁵ In a similar circumstance, the designation of SRBA Consolidated Subcase 92-23 on July 24, 2007 affected five of the subcases (37-2128, 37-2471, 37-2472, 37-20709, and 37-20710) where the DeMoss objections have not yet settled. *ORDER GRANTING IN PART, DENYING IN PART MOTION TO DISMISS; CONSOLIDATING COMMON ISSUES INTO CONSOLIDATED SUBCASE; AND PERMITTING DISCOVERY PENDING OBJECTION PERIOD IN BASIN 02; AND NOTICE OF SCHEDULING CONFERENCE* (SRBA 92-23, Judge John Melanson, July 24, 2007). See also, *STATEMENT OF GARY AND HELEN DEMOSS FOR SEPTEMBER 5, 2007 SCHEDULING CONFERENCE* in Idaho Power subcases 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710. At the September 5, 2007 Scheduling Conference in these five subcases, and in order to allow settlement discussions to proceed, Special Master Bilyeu continued the trial date and did not stay the DeMoss objections. *ORDER VACATING TRIAL DATE AND SETTING STATUS CONFERENCE* (Special Master Bilyeu, September 6, 2007). The DeMosses and their counsel understand Idaho Power and the State of Idaho supported this result.

⁶ The following quoted material appears in each of the 34 objections:

REASONS SUPPORTING OBJECTION(S): With historical practice pursuant to decree and water master delivery, diversions to storage under water rights 37-856, 37-2780, 37-7754, and 37-2778 have not been subject to curtailment as a result of priority calls from downstream senior direct flow irrigation water rights before April 1 or by downstream senior direct flow stockwater rights at any time of the year, or by downstream senior direct flow hydropower water rights, recreation or aesthetics water rights, or instream flow water rights at any time of the year. In accordance with the

The DeMoss objections in Basin 37 included 22 downstream senior priority water rights (37-238A , 37-239A , 37-239D, 37-240A , 37-240D , 37-447C , 37-447D , 37-507, 37-607D , 37-608D , 37-1160 , 37-1175 , 37-2128, 37-2471, 37-2472, 37-4091, 37-4112, 37-4241, 37-11131, 37-20709, 37-20710, and 37-21595), 8 water rights for which DeMoss withdrawals of objection have been granted (37-859A , 37-1175A, 37-7108 , 37-7857 , 37-7865 , 37-7920 , 37-7922 , and 37-7944), and the 4 DeMoss rights with storage components (37-856, 37-2780, 37-2778, and 37-7754). The Idaho Power *Motion* does not include three of the downstream senior rights to which the DeMosses filed objections.⁷

historical practice, these four water rights should not be subject to curtailment as a result of priority calls from downstream senior direct flow water rights.

This water right should be decreed with the following general provisions.

Separate Streams:

For purposes of water distribution in the Big Wood River drainage basin (including the Malad River to which the Big Wood River is a tributary in Basin 37), water rights from the following sources to the extent recommended herein, are not considered junior to water rights from the Big Wood River, and the Malad River, and will be administered separately from all other water rights in Basin 37:

Dry Creek tributary to Big Wood River in T05S, R14E, Section 22

Separate Administration:

The following water rights from the following sources of water in Basin 37 shall be administered separately from all other water rights in Basin 37 in accordance with the prior appropriation doctrine as established by Idaho law:

Dry Creek tributary to Big Wood River in T05S, R14E, Section 22

The following water rights from the following sources of water in Basin 37 shall be administered separately from all other water rights in the Snake River basin in accordance with the prior appropriation doctrine as established by Idaho law:

Dry Creek tributary to Big Wood River in T05S, R14E, Section 22

⁷ Subcases 37-1160, 37-1175, and 37-4091 arise from rights of the Justice Ditch Company and are three of the twenty-two downstream senior priority rights.

RESOLUTION OF DEMOSS OBJECTIONS

In eight subcases DeMoss objections have been withdrawn.

On May 4, 2007, the DeMosses filed *Motions to Withdraw Objection* for eight subcases in which they were the only objectors: 37-859A, 37-1175A, 37-7108, 37-7857, 37-7865, 37-7920, 37-7922, and 37-7944. This was several months before the Idaho Power *Motion* was filed; however, in accordance with SRBA docket sheet procedures and the Court's available calendar, the *Motions to Withdraw Objection* were heard and granted on September 26, 2007, three weeks after the Idaho Power *Motion* was filed. The Special Master's *ORDER DISMISSING OBJECTION* (September 28, 2007) noted that the DeMoss motions were unopposed. The *Order* removed the DeMosses as a party.

In ten subcases DeMoss objections have been resolved through stipulation.

The May 3, 2007 settlement conference, and discussions following, resulted in the preparation of Stipulations to Resolve Objection for ten subcases in which the DeMosses were the only objectors: 37-238A, 37-239A, 37-239D, 37-240A, 37-240D, 37-447C, 37-447D, 37-607D, 37-608D, and 37-11131. By the time of the October 16 hearing, all ten stipulations will have been filed with the SRBA court and served on the parties. Idaho Power was included in the service.

In two subcases, DeMoss objections were settled through agreement.

The DeMoss objections to water rights 37-507 and 37-4241, held by North Side Canal Company, have been resolved by written agreement of the parties. The "Agreement between Gary A. and Helen DeMoss and North Side Canal Company regarding Water Rights 37-856, 37-2778, 37-2780, And 37-7754" is being recorded in Gooding County and will be referenced by

name and date of execution in the Remark for Water Rights 37-856, 37-2778, 37-2780, and 37-7754. The Agreement provides that the DeMoss objections to 37-507 and 37-4241 will be withdrawn with prejudice.

STATUS OF REMAINING DEMOSS OBJECTIONS

In five subcases, Consolidated Subcase 92-23 addresses the substance of the DeMoss objections.

The DeMoss objections include five Idaho Power hydropower rights that are now part of Consolidated Subcase 92-23: 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710. Resolution of Consolidated Subcase 92-23, consistent with the conditions presently recommended for 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710, would achieve the DeMosses' core purpose of protecting "diversions to storage under water rights 37-856, 37-2780, 37-7754, and 37-2778" from curtailment as a result of Idaho Power's downstream senior priority water rights in Basin 37. See *STATEMENT OF GARY AND HELEN DEMOSS FOR SEPTEMBER 5, 2007 SCHEDULING CONFERENCE* in Idaho Power subcases 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710.

In two subcases, settlement efforts are ongoing.

The two subcases are: 37-4112 and 37-21595. King Hill Irrigation District is the claimant of both rights.

Three additional subcases, not listed with the Idaho Power Motion, have had Stipulations entered resolving the DeMoss objections.

The May 3, 2007 settlement conference, and discussions following, also resulted in the preparation of Stipulations to Resolve Objection for three additional subcases in which the DeMosses were objectors: 37-1160, 37-1175, and 37-4091 (Justice Ditch Company). These

stipulations have been filed with the SRBA court and served on the parties. As a courtesy, Idaho Power was included in the service.

The four remaining subcases are the DeMoss claims on Dry Creek.

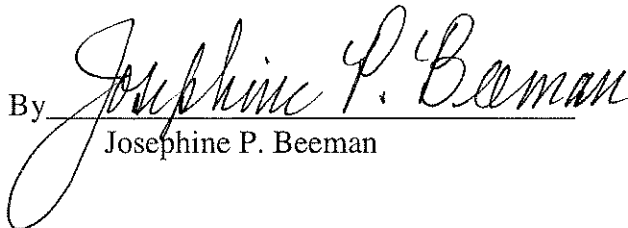
The core purpose of the DeMoss objections in basin 37 is to protect “diversions to storage under water rights 37-856, 37-2780, 37-7754, and 37-2778” – the four DeMoss rights on Dry Creek. Settlement has been reached with fifteen of the twenty-two senior priority direct flow rights downstream of the DeMoss diversions on Dry Creek. The remaining seven rights involve Idaho Power and King Hill Irrigation District with whom the DeMosses are continuing settlement efforts.

CONCLUSION

The DeMosses support entry of the resolutions for their objections in Basin 37. Particularly, in those subcases where the DeMosses were the only objectors, resolution of the DeMoss objections should allow entry of a Special Master’s Report & Recommendation and Partial Decree.

Respectfully submitted this 15th day of October 2007.

BEEMAN & ASSOCIATES, P.C.
Attorneys for Gary A. and Helen DeMoss

By 
Josephine P. Beeman

CERTIFICATE OF MAILING

I certify that on October 15, 2007, I mailed a copy of the foregoing **STATEMENT OF GARY AND HELEN DEMOSS FOR OCTOBER 16, 2007 SCHEDULING CONFERENCE** to the following:

NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY
Represented by:
BARKER, ROSHOLT & SIMPSON LLP
113 MAIN AVE W, STE 303
PO BOX 485
TWIN FALLS, ID 83303-0485
Phone: 208-733-0700

fax

IDAHO POWER CO
Represented by:
JAMES S LOCHHEAD
BROWNSTEIN HYATT ET AL
410 17TH STREET, SUITE 2200
DENVER, CO 80202
Phone: 303-223-1100

fax

IDAHO POWER CO
Represented by:
JOHN K SIMPSON
1010 W JEFFERSON, STE 102
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

fax

STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

fax

IGWA INC
Represented by:
RANDALL C BUDGE
201 E CENTER, STE A2
PO BOX 1391
POCATELLO, ID 83204-1391
Phone: 208-232-6101

fax

A&B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT
FALLS IRRIGATION DISTRICT
Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396
Phone: 208-436-4717

USDI BUREAU OF RECLAMATION
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

MINIDOKA IRRIGATION DISTRICT
Represented by:
W KENT FLETCHER
1200 OVERLAND AVE
PO BOX 248
BURLEY, ID 83318
Phone: 208-678-3250

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

fax

UNITED STATES OF AMERICA
REGIONAL DIRECTOR PN REGION
BUREAU OF RECLAMATION PN-3100
1150 N CURTIS RD STE 100
BOISE, ID 83706-1234
Phone: 208-378-5306

fax

OPPIO FAMILY LIMITED
PARTNERSHIP
PO BOX 381
GOODING, ID 83330
Phone: 208-934-9474

CAROLYN F COLEMAN
GARY R COLEMAN
1651 SHOESTRING RD
GOODING, ID 83330

HOWARD L MORRIS
RHONDA K MORRIS
1101 E 2900 S
HAGERMAN, ID 83332
Phone: 208-837-6213

JUANITA M O MALEY
PATRICK J O MALEY
1413 S 1600 E
GOODING, ID 83330
Phone: 208-934-0939

EQUITABLE TITLE
IDAHO POWER CO
IDAHO POWER COMPANY
Represented by:
JAMES C TUCKER
IDAHO POWER CO
PO BOX 70
BOISE, ID 83707
Phone: 208-388-2200

fax

EQUITABLE TITLE
STATE OF IDAHO
Represented by:
STATE OF IDAHO
700 W JEFFERSON ROOM 210
P O BOX 44449
BOISE, ID 83711-4449
Phone: 208-334-2400

fax

PETER A BOWLER
555 RIVER ROAD #E
BLISS, ID 83314
Phone: 208-837-6436

KING HILL IRRIGATION DISTRICT
Represented by:
DANIEL V. STEENSON
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

fax

HARRIETT B RAVENSCROFT
VERNON F RAVENSCROFT
1331 SHOE STRING RD
BLISS, ID 83314-5119
Phone: 208-345-2670

MOLLIE B DALTON
Represented by:
JEFFREY E ROLIG
PO BOX 5455
TWIN FALLS, ID 83303-5455
Phone: 208-733-5500

AWALT FAMILY REVOCABLE TRUST
PO BOX 392
SAN MIGUEL, CA 93451-0392

AND EVERYONE LISTED ON THE SRBA'S
EXPEDITED SERVICE LIST

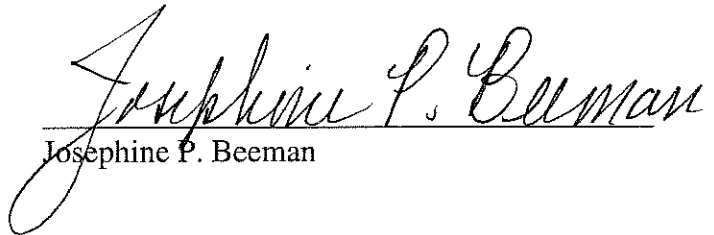

Josephine P. Beeman

EXHIBIT A

Subcase Nos:

01-00217
01-00218
01-02017
01-02032
01-02046
01-02064
01-02068
01-04024
01-04025
01-04054
01-10382
01-10383
01-10531
01-10532
37-00238A
37-00239A
37-00239D
37-00240A
37-00240D
37-00447C
37-00447D
37-00507
37-00607D
37-00608D
37-00856
37-00859A
37-01175A
37-02128
37-02471
37-02472
37-02778
37-02780
37-04007
37-04112
37-04147
37-04241
37-07108
37-07754
37-07857
37-07865
37-07920

Subcase Nos. Continued:

37-07922
37-07944
37-11131
37-20709
37-20710
37-21595
63-00367