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DEPARTMENT OF
WATER RESOURCES

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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

Case No. 39576

Subcase Nos. 37-00481B, 37-00482G,
37-00483B, 37-00665K, 37-00666J, 37-
00667N, 37-22155, 37-21463, 37-
02625A, 37-02625B, 37-02638, and 37-
02700

**MOTION TO CONSOLIDATE
SUBCASES AND
MEMORANDUM IN SUPPORT**

MOTION TO CONSOLIDATE SUBCASES

Claimant Redstone Partners LP ("Redstone"), by and through its counsel, Givens Pursley LLP, and pursuant to Section 11 of SRBA Administrative Order 1 ("AO1") and Idaho Rule of Civil Procedure Rule 42(a), hereby moves this Court for an order consolidating the above-captioned subcases, all of which involve common questions of law and fact. Redstone's memorandum supporting this motion follows.

MEMORANDUM IN SUPPORT

Section 11 of AO1 and Rule 42(a) allow for the consolidation of actions where there are common questions of law or fact. Here, consolidation is appropriate because all of the above-captioned subcases (save one¹) involve water rights that were recommended to Redstone by the Idaho Department of Water Resources (“IDWR”) and that are used to irrigate the same place of use with a single irrigation system. All twelve of these water right recommendations were objected to on the same grounds by a group of eight individual water users and the Big Wood Canal Company (“BWCC”), collectively referred to here as the “Bellevue 9.”

Each of the Bellevue 9’s objections to Redstone’s water right claims contains the same brief comment:

Combined use of this right along with other rights from the same place of use should be limited to one inch or 0.02 cfs per acre, rather than the quantities in the recommendation. Total volume of water delivered to this property from all water rights shall not exceed 3.5 AF per acre.

This comment evidently aims to assert that Redstone’s water rights were recommended by IDWR for diversion or application amounts in excess of a reasonable duty of water.

These subcases are likely to involve common, or even identical, facts. Objections based on duty of water must take into account such issues as ditch losses, the number of water users on the ditch, whether there is rotation of use among the right holders, the customs attendant to the particular ditch, and the nature of the soils at the places of use. *See, e.g., Beasley v. Engstrom*, 31 Idaho 14, 16 (1917) (“What constitutes a reasonable use of water is a question of fact, and depends on the circumstances of each case, such as the size of the stream, the number of consumers, the character of the soil, the nature of the crops planted, and other considerations,

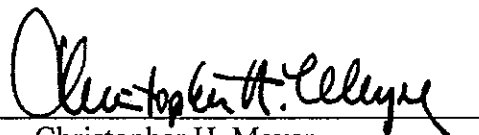
¹ Subcase number 37-02625B is a 0.04 cfs water right recommended for irrigating a 1.8 acre place of use distinct from the other water rights. Nevertheless, subcase number 37-02625B should be consolidated with the other Redstone subcases because, as discussed in the text, the same parties filed the same objection against it as the others.

and the method commonly used in the vicinity....”) (citations omitted). These issues necessarily will involve the same or similar facts among the water rights being challenged in these subcases. Consolidating these twelve subcases is appropriate because doing so will promote judicial economy and avoid inconsistent judgments by providing a single forum to determine the common issues of fact and the question(s) of law raised by the Bellevue 9’s objections.

Redstone respectfully requests this Court grant its Motion to Consolidate. Oral argument is requested.

Respectfully submitted July 9th, 2008.

GIVENS PURSLEY LLP

By 
Christopher H. Meyer
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of July, 2008, the foregoing was filed, served, or copied as follows:

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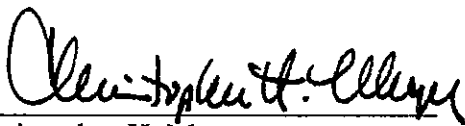
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