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SPECIAL INSTRUCTIONS: Attached for filing is United States' Response to Motion for Expedited Hearing in Subcase Nos. 01-02017, *et al.*.

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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 In Re SRBA	)	Subcase No.: 01-02017, 01-02032, 01-02046,
	)	01-02064, 01-04052, 01-10042, 01-10382,
Case No. 39576	)	01-10383, 01-10384, 01-10485, 01-10486,
	)	01-10487, 01-10531, and 01-10532
	)	
	)	UNITED STATES' RESPONSE TO
	)	MOTION FOR EXPEDITED HEARING

The State moves this Court for an expedited hearing on its motion to consolidate all of the subcases related to American Falls Reservoir. The State's Motion for Expedited Hearing must be denied for two reasons. First, contrary to the State's request, a potential consolidation of the subcases demands careful consideration because of the potential for a ripple effect through the other related subcases addressed during the April 29, 2008 Initial Hearings. Second, the State has failed to justify its request for expedited consideration of its motion to consolidate.

The subcases the State seeks to consolidate are several of the many subcases heard at Initial Hearings on April 28 , 2008. At that hearing, the State proposed grouping the subcases by issue. After discussion, the parties decided to address two issues prior to addressing the remaining issues. Those two issues are the “Ownership Issue,” *i.e.*, the application of the Idaho Supreme Court’s decision in *United States v. Pioneer Irrigation District*, 144 Idaho 106, 157 P.3d 600 (2007) to various types of water uses, and the high water/source issue. The Court agreed to the parties’ suggested approach and issued scheduling orders addressing both issues. The State’s motion is not appropriate for expedited consideration because it has the potential to upset this existing procedural framework. Further, even if consolidation would not upset the existing framework, consolidation almost certainly would impact it. As one example, it is likely that “test cases” will be used, if some of the issues identified at the Initial Hearings are litigated. Granting the State’s Motion to Consolidate would likely serve as a “de facto” designation of American Falls as the vehicle for any such test cases. In short, the State’s Motion for Expedited Hearing effectively proposes divorcing scheduling of the subcases that are the subject of its motion from the scheduling of many other subcases that overlap substantially both in terms of issues and parties. Rather than an expedited consideration done in isolation, scheduling of these subcases should be addressed in a forum that allows for careful and integrated consideration of the various related subcases and issues.

Even if that were not the case, the State’s Motion for Expedited Hearing would have to be denied because the State offers no justification for expedited consideration. The entire basis of the State’s request for expedited consideration is that a scheduling conference was previously set for October 2, 2008. That scheduling conference was set almost five *months* ago. The State does not explain why it waited until five working *days* before the conference to seek

expedited consideration of a fundamental scheduling issue. Moreover, the State seeks expedited consideration despite not having done the 706 report it was ordered to do, not having explained IDWR's failure to do the 706 report and not having sought relief from this Court's Order. With the State not having explained its long delay in seeking consolidation, the parties can only assume the State is seeking to have its motion for consolidation heard on an expedited basis to gain tactical advantage. Such procedural legerdemain should not be condoned.

DATED this 30th day of September, 2008.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on this 20th day of September 2008, I served a true and correct copy of the foregoing UNITED STATES' RESPONSE TO MOTION FOR EXPEDITED HEARING as indicated below:

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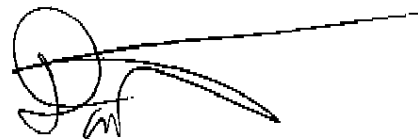
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