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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 No. (See "Attachment A")
)
)
)
)
)

PROPOSED SCHEDULING ORDER

Pursuant to the direction of the Special Master, several parties in the above-referenced subcases met at the Idaho Department of Water Resources on November 4, 2008. A proposed schedule was discussed at the meeting, but there was no agreement among the parties. The United States has since filed a proposed scheduling order that incorporates some of the issues discussed at the November 4 meeting. The United States' proposed schedule is flawed, however, in several ways.

First, the United States' proposed schedule contemplates stretching these issues out nearly another two years. Initial hearings in these subcases were held in April 2008. The

American Falls trial would not occur until two and a half years after that initial hearing—i.e., October 2010.

Second, the United States' schedule forbids the parties from filing dispositive motions prior to specific dates. Without providing any reasoning or precedent, the United States would have this Court deny the parties their right to have their dispositive motions heard according to the Idaho Rules of Civil Procedure, and by doing so, would deny the parties their right to resolve preliminary issues. Under the United States' schedule, the State of Idaho, for example, would be denied the right to file a motion for summary judgment based upon simple statutory interpretation in any of the American Falls Reservoir subcases until January 28, 2010! That is 21 months after the initial hearing and more than 20 years after the United States filed its notice of claim for water right no. 01-02064! Furthermore, at no point during the November 4 meeting did the parties discuss the idea of waiving their rights to file dispositive motions.

Third, the United States' schedule forbids the parties from pursuing discovery prior to specific dates. Without providing any reasoning or precedent, the United States would have this Court deny the parties their right to timely discovery responses according to the Idaho Rules of Civil Procedure, and by doing so, would deny the parties their right to resolve these issues in a timely manner. Under the United States' schedule, the parties would not be required to respond to discovery in the Minidoka subcases until February 27, 2009! That is nearly 10 months after the initial hearing and nearly 20 years after the United States filed its notice of claim for water right no. 01-04024! To the extent that responding parties need additional time to respond to discovery requests, they are free to negotiate with the requesting parties for extensions and/or to invoke applicable court procedures seeking the same.

The State of Idaho proposes the following schedule, which provides the parties ample time to prepare for trial while also moving these issues forward in a timely manner.

Minidoka/Lake Walcott Subcases*

Deadline to Submit Summary Judgment Motions and Memoranda	June	4	2009
Deadline to Submit Discovery Requests	June	18	2009
Submission of Expert Reports and I.R.C.P. 26(b)(4)(A) Disclosures	August	6	2009
Submission of Responsive Expert Reports	September	3	2009
Status Conference	September	3	2009
Depositions of Experts	September	7-11	2009
Pretrial Conference	September	30	2009
Trial (1 week)	October	7	2009

* Schedule applies to all issues raised in the Minidoka/Lake Walcott subcases, except the Minidoka Credit.

American Falls Subcases**

Status Conference	September	3	2009
Deadline to Submit Summary Judgment Motions and Memoranda	November	12	2009
Deadline to Submit Discovery Requests	November	26	2009
Submission of Expert Reports and I.R.C.P. 26(b)(4)(A) Disclosures	January	7	2010
Submission of Responsive Expert Reports	January	28	2010
Depositions of Experts	February	1-5	2010
Pretrial Conference	February	24	2010
Trial (2 weeks)	March	3	2010

** Schedule applies to all issues raised in the American Falls subcases, except the Pioneer ownership issue.

Palisades Subcases***

Status Conference	September	3	2009
Deadline to File MSJ/Memoranda	April	15	2010
Deadline to Submit Discovery Requests	April	29	2010
Submission of Expert Reports and I.R.C.P. 26(b)(4)(A) Disclosures	June	3	2010
Submission of Responsive Expert Reports	June	17	2010
Depositions of Experts	June	21-25	2010
Pretrial Conference	July	7	2010
Trial (1 week)	July	14	2010

*** Schedule applies to all issues raised in the Palisades subcases, except the Pioneer ownership issue.

I. EXPERT WITNESSES AND REPORTS

Expert witnesses will not be allowed to offer any opinion not disclosed in the mandatory I.R.C.P. 26(b)(4)(A) disclosures, as supplemented in accordance with I.R.C.P. 26(e).

II. PRE-TRIAL MEMORANDA AND MOTIONS IN LIMINE

Parties shall submit a pre-trial memorandum on or before the date set for pre-trial

conference, which will include the following:

- a. Elements of the party's case;
- b. Defenses of the party's case;
- c. Contested facts;
- d. Contested issues of law;
- e. Evidentiary issues;
- f. Agreed or stipulated facts; and
- g. Memorandum of points and authorities on issues of law.

The Court will also hear any motions in limine brought pursuant to the Idaho Rules of Civil Procedure on the date set for the pre-trial conference.

III. DISCOVERY AND DISPOSITIVE MOTION DEADLINES

To the extent that responding parties need additional time to respond to discovery requests, they are free to negotiate with the requesting parties for extensions and/or to invoke applicable court procedures seeking the same.

The parties reserve the right to present dispositive motions prior to the deadlines to submit motions for summary judgment set forth above.

IV. EFFECT OF GROUPING THESE SUBCASES

By grouping these subcases by reservoir project (i.e., Minidoka, American Falls, and Palisades), the parties have not waived their right to discuss and/or present otherwise relevant evidence. Because of the interrelationship of the development of these projects, it may be necessary to present evidence about some or all of the projects in each subcase.

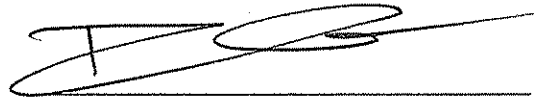
V. SANCTIONS

Failure to comply with this Order shall subject a party or its attorney to appropriate sanctions, including, but not limited to, costs and reasonable attorney fees. A party may be excused from strict compliance with any provisions of this Order only upon motion showing extraordinary circumstances.

VI. CONTINUANCES

If all parties request a continuance of the trial date, this Court will only consider a Motion to Continue if the motion is signed by all parties.

Dated this 19th day of November 2008.

A handwritten signature in black ink, appearing to read 'D. Stanish', written over a horizontal line.

DAVID I. STANISH
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 19th day of November 2008, I caused to be served the original and copies of the **PROPOSED SCHEDULING ORDER** on the following persons by the indicated methods:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to:

SPECIAL MASTER DOLAN
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BINGHAM GWD
BONNEVILLE JEFFERSON GWD
CAREY VALLEY GWD
IGWA INC
JEFFERSON CLARK GWD
MADISON GWD
MAGIC VALLEY GWD
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A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT
FALLS IRRIGATION DISTRICT

Represented by:
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USDI BUREAU OF RECLAMATION
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US DEPARTMENT OF JUSTICE
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- ☐ Hand Delivery
- ☐ Federal Express
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Deputy Attorney General

Attachment A

01- 00217	01- 10043A
01- 00218	01- 10043E
01- 02017	01- 10044
01- 02032	01- 10045
01- 02046	01- 10045A
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