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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	)	Subcase Nos. See Attachment A
	)	
Case No. 39576	)	OPPOSITION TO MOTION FOR
	)	CHANGE OF TRIAL LOCATION
	)	
	)	

COME NOW, ALBERT & ALVERA FOLS, CHARLES & MARY HARLING, A.C. & LUELLA PILKERTON, LLOYD & SHERYL TUTOR, MARCI DIXON, AND TRACY MASCIA (hereinafter collectively referred to as the "Carmen Creek Users"), claimants in the SRBA, by and through their attorneys of record, Barker Rosholt & Simpson LLP, and file this *Opposition to Motion for Change of Trial Location*.

On April 9, 2009, 16 claimants (hereinafter collectively referred to as "Burns Group"), filed a *Motion for Change of Trial Location*. The Burns Group is dissatisfied with the location of the trial in this matter, the SRBA Courthouse in Twin Falls, Idaho, and requested the Special Master to move the trial to Salmon, Idaho. For the reasons set forth below, the Court should deny the motion.

I. VENUE FOR THE SRBA DISTRICT COURT IN TWIN FALLS COUNTY WAS DESIGNATED BY THE IDAHO SUPREME COURT.

IDWR filed a petition for the SRBA in 1987. *See Walker v. Big Lost River Irr. Dist.*, 124 Idaho 78, 80 (1993). In response and in accordance with court rules, the Idaho Supreme Court issued an order assigning District Judge Daniel C. Hurlbutt, Jr. as the presiding judge over the SRBA “and designated the district court of the fifth judicial district, Twin Falls County, as the county and court of venue for SRBA”. *Id.* On November 19, 1987, the fifth judicial district in and for the county of Twin Falls issued an order commencing an adjudication of the Snake River basin pursuant to Idaho Code § 42-1406A. *See* S.L. 1994, ch. 454.

Venue in this matter lies in the SRBA District Court in Twin Falls County. The Court issued an *Amended Trial Scheduling Order* on March 25, 2009, setting the trial for the SRBA Courthouse in Twin Falls, Idaho. It is clear from the original order by the Supreme Court designating the district court in the fifth judicial district in Twin Falls County as the “court of venue” for the SRBA, that venue in this matter properly lies in Twin Falls, not Lemhi County, Idaho, as suggested by the Burns Group. Jurisdiction remains with the SRBA District Court as well. *See* 124 Idaho at 81. The case cited by the Burns Group is not applicable in this matter since the case concerned venue for a case filed against public officers (the State Land Board) under Idaho Code § 5-402(2). *See Priest Lake Coalition, Inc. v. State of Idaho ex rel.*, 111 Idaho 354, 356 (1986). The venue provisions of Idaho Code § 5-402 simply do not apply to the SRBA.

The Burns Group alleges that they filed the motion because of the “inconvenience and inequity that would result from holding the trial in Twin Falls”. *See Motion for Change* at 2. Again, venue is proper in the SRBA District Court in Twin Falls County. The Burns Group was well aware of the venue of the court when they filed their claims. Accordingly, the fact the

SRBA Courthouse was located in Twin Falls was known to the Burns Group when they joined the SRBA litigation.

Next, it is unknown at this point whether all 16 claimants will be involved as witnesses in this matter, hence it may be unnecessary for all those individuals and families involved to travel to Twin Falls for the trial. Moreover, the Carmen Creek Users are subject to the same location and will have to make the necessary arrangements to attend trial in Twin Falls. Therefore, there is no "inequity" in holding trial at the same location. In addition, the convenience of the parties alone does not justify changing venue. *See e.g. Stephan v. Hoffman*, 86 Idaho 304, 309 (1963).

As for the difficulty in traveling to Twin Falls in late February, the Carmen Creek Users would accommodate any requests to move the trial to late March or April to ensure better travel conditions. At any rate, with respect to the Burns Group's counsel (Rigby Andrus & Moeller), it is clear there would be no inconvenience to them since traveling from Rexburg to Twin Falls (191 miles on interstate) is essentially no different than traveling from Rexburg to Salmon (156 miles on state highway).

The Court has properly set the trial for the SRBA Courthouse in Twin Falls County, consistent with the Supreme Court's order. Therefore, the Court should deny the Burns Group's motion.

DATED this 15th day of April, 2009.

BARKER ROSHOLT & SIMPSON LLP



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CERTIFICATE OF MAILING

I certify that on 15th day of April, 2009, I mailed the original and copies of the foregoing motion, including all exhibits, to the following persons:

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Copies to:

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ATTACHMENT A

"Burns Group" Claims		Carmen Creek Users Claims
75-69A	75-10061B	75-69M
75-69B	75-10061C	75-70M
75-69F	75-10061J	75-10061N
75-69H	75-10061R	75-10061X
75-69K	75-10061T	75-10062L
75-69L	75-10061Y	75-10062V
75-69N	75-10061Z	75-14019
75-69P	75-10062A	75-14021
75-69Q	75-10062AA	75-14025
75-69S	75-10062AB	75-14027
75-69W	75-10062AC	75-14038
75-69X	75-10062AL	75-14040
75-70A	75-10062C	75-14044
75-70B	75-10062H	75-14046
75-70F	75-10062P	75-14049
75-70H	75-10062R	75-14050
75-70K	75-10062W	75-14051
75-70L	75-10062X	75-14052
75-70N	75-10062Y	75-14055
75-70P	75-10136A	75-14056
75-70Q	75-10136B	75-14057
75-70S	75-10137A	75-14058
75-70T	75-10137B	
75-70X	75-10678	
75-70Y	75-14387	
75-10061A	75-14388	
75-10061AA	75-14393	
75-10061AC	75-14441	
75-10061AE	75-14443	
75-10061AM		