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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	)	
	)	MOTION TO RESET TRIAL SCHEDULE
	)	
	)	

COME NOW, the Twin Falls Canal Company ("TFCC"), Objector in the above listed subcases, by and through its attorneys of record, and moves this Court for an Order resetting the schedule in water rights owned by John and Maureen Boling, 47-4048A, 47-4060, 47-7450 and 47-17312 (the "Boling water rights"), so that the subcases are on the same trial schedule as other water users diverting out of Wilson Creek (the "Wilson Creek claimants") (i.e. the remaining water rights on Attachment A). In addition, due to the number of Wilson Creek claimants and water rights, it is appropriate to reset the trial set for the non-Boling water rights to January 14, 2010.¹

¹ The Boling water rights are already set for trial on January 14, 2010.

INTRODUCTION

John and Maureen Boling divert water from an unnamed stream locally known as “Wilson Creek.” During the initial hearing, the Special Master, Department, Claimants and Objectors attempted to keep the group of claimants diverting from Wilson Creek together for purposes of moving forward through summary judgment and, if necessary, trial (the “Munk group”).² Beginning in late July, the Special Master held scheduling conferences to set summary judgment hearings and other deadlines associated with the trial schedule. In addition, counsel for the Objector has had many discussions with the claimants diverting out of Wilson Creek. Through these discussions, it has become evident that the Boling water rights should be included with the group of Wilson Creek claimants.

Since Mr. and Mrs. Boling divert out of Wilson Creek, the facts for these subcases – as it relates to the source and/or existence of waste water in Wilson Creek – will be the same as with the other Wilson Creek subcases.³ To date, Mr. and Mrs. Boling have coordinated their efforts for settlement discussion with the other Wilson Creek claimants. Should the Wilson Creek claimants and Objector be unable to settle the objection, a nearly identical summary judgment motion and oral argument will be presented. Likewise, evidence and testimony presented by the Objector in any trial will be nearly identical for all subcases.

In addition, the Court currently has trials set for various TFCC waste water objections on January 13 and January 14, 2010. On January 13, there are a large number of subcases set for trial. However, on January 14, there are only a few subcases (and only 4 total claimants) set for

² The “Munk group” and “Wilson Creek claimants” each live in and around Wilson Creek near its confluence with Mud Creek. As such, some of the above water rights actually divert out of Mud Creek. However, since most of the rights divert out of Wilson Creek and since all claimants live in the same area, these subcases should be kept on the same trial schedule.

³ The other Wilson Creek subcases are: Subcase Nos. 4-4048 (Munk), 47-4082, 47-14988 (Pearce), 47-4083A (Newton), 47-4083B (Lawrence), 47-4125, 47-4126 (Van Winkle), 47-15277 (Tvrdy) 47-7159, 47-7449 & 47-7456 (Wray).

trial. Given its size, it would be appropriate to reset the trial for the Wilson Creek subcases (including the Boling water rights) for January 14, 2010.⁴

STATEMENT OF FACTS

Many of the above water rights divert from an unnamed stream, locally known as Wilson Creek. TFCC objected to each of these water rights, asserting that the source is comprised, at least in part, of waste water.

During the initial hearing, the Special Master, Department, Claimants and Objector attempted to keep a group of Wilson Creek claimants together – preliminarily referring to the group as the “Munk group.” While most of the Wilson Creek water rights have been include in the same group, the Boling water rights were set on a different schedule. It was not discovered that the Boling water rights should be included with the Wilson Creek claimants until early August.

Currently, the Wilson Creek subcases (non-Boling) are on the following schedule:

Subcase Nos. 4-4048 (Munk), 47-4082, 47-14988 (Pearce), 47-4083A (Newton), 47-4083B (Lawrence), 47-4125, 47-4126 (Van Winkle), 47-15277 (Tvrdy) 47-7159, 47-7449 & 47-7456 (Wray) (*Trial Scheduling Order* (July 29, 2009))

Summary Judgment Hearing	December 8, 2009 at 1:30 pm
Pretrial Conference	January 5, 2010 at 11:30 am
Trial	January 13, 2010

The Boling subcases, however, are on the following schedule:

Subcase Nos. 47-4048A, 47-4060, 47-7450, 47-17312 (Boling) (*Trial Scheduling Order* (August 14, 2009))

Summary Judgment Hearing	December 11, 2009 at 2:30 pm
Pretrial Conference	January 5, 2010 at 2:00 pm
Trial	January 14, 2010

⁴ The Objector does not seek to change the discovery deadline of November 6.

DISCUSSION

Setting each of the Wilson Creek subcases on the same trial schedule is appropriate for purposes of judicial economy. Each water right is diverted from the same source. The facts relating to the existence of waste water in the source will be the same for each water right. Accordingly, the Special Master should reset the trial schedule for the above water rights as follows (the discovery deadline of November 6, 2009 will remain unchanged):

Summary Judgment Hearing	December 8, 2009 at 1:30 pm
Pretrial Conference	January 5, 2010 at 11:30 pm
Trial	January 14, 2010

Setting the summary judgment hearing for December 8, 2009 at 1:30 pm would be beneficial as it would provide the Court and parties with sufficient time to address any concerns that may arise. The hearing is currently scheduled for 1 ½ hours which should provide sufficient time.

Setting the trial for January 14, 2010 is appropriate as there are only a few subcases set for trial that day.

Finally, resetting the trial schedule will not prejudice any party. This motion is being made very early in the litigation schedule. The discovery deadline will remain unchanged and motions for summary judgment are not due until early November.

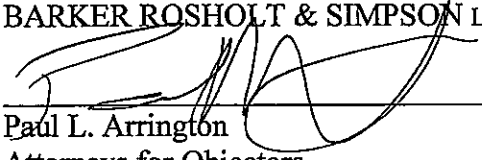
CONCLUSION

The above subcases should be set on the same trial schedule. The Special Master, Department and parties have attempted to keep the water rights together. However, the Objector has recently discovered that there are additional water rights that should be included with the

same group. Accordingly, judicial economy supports resetting the trial schedule for the above subcases.

DATED this 15th day of September, 2009.

BARKER ROSHOLT & SIMPSON LLP



Paul L. Arrington
Attorneys for Objectors

CERTIFICATE OF SERVICE

I certify that on September 15, 2009, I served a true and correct copy of the foregoing **MOTION TO RESET TRIAL SCHEDULE** upon the following individuals by the method indicated as follows:

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Paul L. Arrington

Attachment A

47-4048
47-4048A
47-4060
47-4082
47-4083A
47-4083B
47-4125
47-4126
47-7159
47-7449
47-7450
47-7456
47-14988
47-15277
47-17312