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DEPARTMENT OF
WATER RESOURCES

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COPY

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 Exhibit A.

**MOTION TO REMAND SUBCASES TO
THE DIRECTOR OF IDWR FOR
INJURY ANALYSIS PURSUANT TO
IDAHO CODE § 42-1425(2)(a)**

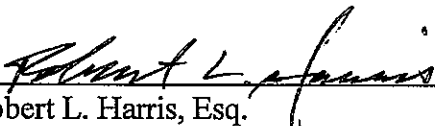
John E. Burns, Ruth C. Burns, George Matejko, Rick Rice, Linda Rice, Robert M. Ernest, Jacqueline D. Ernest, William W. Clementz, James R. Quinn and Rowena D. Quinn, by and through counsel of record, Robert L. Harris of Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby moves the Court to remand the above subcases to the Director of the Idaho Department of Water Resources for a hearing to determine whether the Department's accomplished transfer findings contained in their Supplemental 706 Report submitted to the Court in January of 2010 injured existing water rights or constituted an enlargement of the original rights. The objectors specifically objected to the 706 Report's findings that an accomplished transfer had effectively removed water from their respective properties on the south side of Carmen Creek to the north side of Carmen Creek. Such a finding would necessarily require that any and all irrigation on the south side ceased entirely, and the

claimants have not had an opportunity to present evidence from prior landowners testifying to the continued use and utilization of water late in the irrigation season on their respective properties.

While the above claimants had presumed that the hearing pursuant to Idaho Code § 42-1426(a) would likely have been set up automatically, and our review of the Court documents, it appears that such a hearing has not been provided for at this point. Depending on the Director's schedule, we hope to have the hearing as soon as possible, and not jeopardize the currently scheduled trial date to be held in October of 2010.

The hearing for this motion will be held on June 3, 2010, at 1:30 p.m.

DATED this 10th day of May, 2010.


Robert L. Harris, Esq.
Attorneys for John E. Burns, Ruth C. Burns, George Matejko, Rick Rice, Linda Rice, Robert M. Ernest, Jacqueline D. Ernest, William W. Clementz, James R. Quinn and Rowena D. Quinn

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2010, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

IDWR Document Depository P.O. Box 83720 Boise, ID 83720-0098	Chief, Natural Resources Division Office of the Attorney General State of Idaho P.O. Box 44449 Boise, ID 83711-4449
United States Department of Justice Environmental and Natural Resource Division 550 West Fort Street, MSC 033 Boise, ID 83724	Steven K. Yowell 3509 Ballance Court Chesapeake, VA 23321
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Rodney & Susan Edmiston PO Box 155 Carmen, ID 83462	Rick & Linda Rice PO Box 285 Carmen, ID 83462
Shirley Mattis PO Box 265 Carmen, ID 83462	James & Rowena Quinn PO Box 1473 Carmen, ID 83462
Robert & Jacqueline Ernest PO Box 32 Carmen, ID 83462	Robert & Fransicka Mosher PO Box 213 Carmen, ID 83462

- 3 - MOTION TO REMAND SUBCASES TO THE DIRECTOR OF IDWR FOR INJURY ANALYSIS PURSUANT TO IDAHO
CODE § 42-1425(2)(A)

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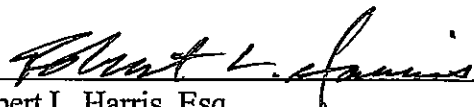
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Exhibit A

CARMEN CREEK WATER RIGHTS

		Current January 11, 2010 706 ADR				Prior Recommendation		Difference		OBJECTION	
		Water Right No.	Owner	Individual Diversion Rate Limitation (cfs)	Total Place of Use (Acres)	Individual Diversion Rate Limitation (cfs)	Total Place of Use (Acres)	Individual Diversion Rate Limitation (cfs)	Total Place of Use (Acres)		
1882	South Side (Burns)	75-10062A	Burns	0	0	0.042	10.9	-0.042	-10.9		Water Right should not have been disallowed
		75-10062P	Malejko	0	0	0.036	9.4	-0.036	-9.4		Water Right should not have been disallowed
		75-14443	Rice	0	0	0.031	8	-0.031	-8		Water Right should not have been disallowed
		75-10062W	Ernest	0	0	0.008	1.7	-0.008	-1.7		Water Right should not have been disallowed
		75-10062AC	Clementz	0	0	0.008	2.1	-0.008	-2.1		Water Right should not have been disallowed
		75-14540	Quinn	0	0	0.02	3.2	-0.02	-3.2		Water Right should not have been disallowed
	Middle Group	75-10062Y	Edmiston	0.025	7.1	0.015	7.1	0.01	0		Quantity
		75-10062AA	Cabigas & Greenway	0.011	3	0.008	3	0.003	0		Quantity
		75-10062AL	Yowell	0.018	5	0.01	5	0.008	0		Quantity
		75-10062C	Hudson	0.04	11.2	0.043	11.2	-0.003	0		Quantity
		75-14388	Fadness	0.016	4.4	0.005	4.4	0.011	0		Quantity
		75-10062H	Tippett	0.015	4.1	0.016	4.1	-0.001	0		Quantity
		75-10062R	Mosher	0.021	6	0.023	6	-0.002	0		Quantity
		75-10062X	Mattis	0.024	6.7	0.026	6.7	-0.002	0		Quantity
		75-10136A	Eisenhauer	0.016	4.4	0.017	4.4	-0.001	0		Quantity
		75-10136B	Hershey	0.016	4.5	0.017	4.5	-0.001	0		Quantity
		75-10062AB	Jackson	0.03	8.4	0.033	8.4	-0.003	0		Quantity
	North Side (Fols)	75-10062L	Pilkerton	0.008	2.3	0	0	0.008	2.3		Water Right should have been disallowed
		75-10062V	Harling	0.007	1.9	0	0	0.007	1.9		Water Right should have been disallowed
		75-14027	Tutor	0.01	2.9	0	0	0.01	2.9		Water Right should have been disallowed
		75-14046	Edgren & Brady	0.006	1.7	0	0	0.006	1.7		Water Right should have been disallowed
		75-14057	Marcia	0.006	1.6	0	0	0.006	1.6		Water Right should have been disallowed
		75-14058	Fols	0.034	9.5	0	0	0.034	9.5		Water Right should have been disallowed
		TOTALS		0.303	84.7	0.358	100.1	-0.055	-15.4		



CARMEN CREEK WATER RIGHTS

		Current January 11, 2010 706 ADR				Prior Recommendation		Difference		OBJECTION	
		Water Right No.	Owner	Individual Diversion Rate Limitation (cfs)	Total Place of Use (Acres)	Individual Diversion Rate Limitation (cfs)	Total Place of Use (Acres)	Individual Diversion Rate Limitation (cfs)	Total Place of Use (Acres)		
1875	South Side (Burns)	75-10061A	Burns	0	0	0.085	10.9	-0.085	-10.9		Water Right should not have been disallowed
		75-10061R	Matejko	0	0	0.073	9.4	-0.073	-9.4		Water Right should not have been disallowed
		75-14441	Rice	0	0	0.062	8	-0.062	-8		Water Right should not have been disallowed
		75-10061Y	Ernest	0	0	0.013	1.7	-0.013	-1.7		Water Right should not have been disallowed
		75-10061AE	Clementz	0	0	0.017	2.1	-0.017	-2.1		Water Right should not have been disallowed
		75-10061Q	Quinn	0	0	0.025	3.2	-0.025	-3.2		Water Right should not have been disallowed
	Middle Group	75-10061AA	Edmiston	0.056	7.1	0.031	7.1	0.025	0		Quantity
		75-10061AC	Cabigas & Greenway	0.024	3	0.0144	3	0.0096	0		Quantity
		75-10061AM	Yowell	0.039	5	0.019	5	0.02	0		Quantity
		75-10061B	Hudson	0.088	11.2	0.087	11.2	0.001	0		Quantity
		75-10061C	Fadness	0.035	4.4	0.011	4.4	0.024	0		Quantity
		75-10061J	Tippett	0.032	4.1	0.031	4.1	0.001	0		Quantity
		75-10061T	Mosher	0.047	6	0.047	6	0	0		Quantity
		75-10061Z	Mattis	0.053	6.7	0.052	6.7	0.001	0		Quantity
		75-10137A	Eisenhauer	0.035	4.4	0.035	4.4	0	0		Quantity
	75-10137B	Hershey	0.035	4.5	0.035	4.5	0	0		Quantity	
	North Side (Fols)	75-10061N	Pilkerton	0.018	2.3	0	0	0.018	2.3		Water Right should have been disallowed
		75-10061X	Harling	0.015	1.9	0	0	0.015	1.9		Water Right should have been disallowed
		75-14025	Tutor	0.023	2.9	0	0	0.023	2.9		Water Right should have been disallowed
		75-14044	Edgren & Brady	0.013	1.7	0	0	0.013	1.7		Water Right should have been disallowed
		75-14055	Marcia	0.013	1.6	0	0	0.013	1.6		Water Right should have been disallowed
		75-14056	Fols	0.075	9.5	0	0	0.075	9.5		Water Right should have been disallowed
		TOTALS		0.601	76.3	0.6374	91.7	-0.0364	-15.4		

