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DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
SEP - 7 2010	
By _____	Clerk
_____	Deputy Clerk

Attorney for Greg Obendorf, Respondent

**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 No. 63-32910
	)	
Case 39576	)	RESPONDENT'S
	)	MOTION TO VACATE AND
	)	RESET TRIAL AND
	)	MOTION FOR EXPEDITED
	)	HEARING
	)	
_____	)	

Respondent Greg Obendorf, by and through counsel of record, Dana Hofstetter of Hofstetter Law Office, LLC, hereby moves the Court, pursuant to I.R.C.P., Rules 7(b)(3) and 16(b) and SRBA Administrative Order 1, to vacate and reset trial in this matter and for expedited hearing. The current trial scheduling is for October 5 and 6, 2010. Movant requests resetting the trial to February 24-25, 2011 or March 17-18, 2011, or some other dates convenient for the Court and the parties, with

corresponding adjustments to the other case deadlines. These Motions are supported by the contemporaneously filed *Affidavit of Dana L. Hofstetter*, the Memorandum below and the record.

MEMORANDUM

1. Procedural Background Summary

This Subcase concerns a late claim included in the Late Claim Director's Report dated June 2009. By Order dated April 6, 2010, the Court scheduled trial in this matter for October 5, 2010.

On or about May 28, 2010, Claimant filed a Motion to Amend Claim in this Subcase, adding a stock water purpose of use. After hearing on June 29, 2010, the Motion to Amend Claim was granted.

On or about May 28, 2010, Claimant also filed Motions to File Late Claim Nos. 63-33354 and 63-33361, asserting historic stock water claims with 1944 priorities from the Baldrige and Meadows Drains and the Upper and Lower Haas Ditches which are also implicated in the subject Subcase and which cross Respondents' property. After hearing on August 17, 2010, the Presiding Judge conditionally granted these Motions to File Late Claims. The issues involved in these late claims are interrelated with the issues involved in the subject Subcase. *Affidavit of Dana L. Hofstetter*.

During the last few months, the parties have focused on possible settlement of these matters and settlement remains a possibility, although the imminent trial date may not afford the time to further pursue settlement, in light of counsel's other

professional responsibilities and health issues. *Id.* By email on September 1, 2010, Respondent's counsel inquired of Claimant's counsel whether Claimant might stipulate to resetting the trial to Special Master's alternative available trial dates of February 24-25, 2011 or March 17-18, 2011. *Id.* On September 3, 2010, Respondent's counsel discussed this matter with Claimant's counsel on the telephone. *Id.* As of the date of this filing, Respondent's counsel has not received a final answer from Claimant's counsel as to this matter, necessitating these Motions. *Id.*

2. There is good cause to expedite this hearing as the pretrial conference is scheduled for a week away and trial is less than a month away.

Pursuant to I.R.C.P., Rule 7(b)(3), the Court may shorten the usual time for hearing on a Motion. Because the pretrial conference is one week away and trial is scheduled for less than one month hence, there is the need for the Motion to Vacate and Reset Trial to be heard on an expedited basis at the earliest available opportunity.

3. There is good cause to vacate and reset trial, to allow the parties more time to try to reach settlement without having to simultaneously prepare for trial.

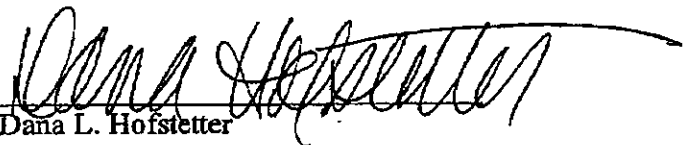
I.R.C.P., Rule 16(b)(7), provides that the Court may modify a trial schedule "upon a showing of good cause." The following "good cause" justifies rescheduling trial in this matter: 1. The parties' efforts have largely focused on settlement to date and while settlement seems possible, additional issues remain to be sorted out before final settlement can be reached; 2. The amended and related late claims have complicated the issues and require more time to be properly addressed prior to trial; and 3. Respondent counsel's work schedule and health issues make the current scheduling difficult to fulfill. *Affidavit of Dana L. Hofstetter.* Thus, there would be substantial benefits to rescheduling while it appears that no prejudice would result.

4. Conclusion

For the foregoing reasons, Respondent respectfully requests that these Motions for Expedited Hearing and to Vacate and Reset Trial are granted.

DATED this 7th day of September, 2010.

HOFSTETTER LAW OFFICE, LLC


Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of September, 2010, I caused to be served a copy of the foregoing on the following person(s) by the method(s) indicated below:

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