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DEPARTMENT OF
WATER RESOURCES

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10929-1_1404222_2

Attorneys for Claimant W & H Limited Liability Company

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 NOS. 63-32910 and
63-33354

**W & H LIMITED LIABILITY
COMPANY'S MOTION FOR
ORDER SETTING MANDATORY
SETTLEMENT CONFERENCE**

COMES NOW Claimant W & H Limited Liability Company ("W&H"), by and through its attorneys of record, Givens Pursley LLP, and moves the Court for an order: 1) setting a mandatory settlement conference for the above-captioned subcases in Boise, Idaho; 2) requiring each party and their counsel and IDWR to be present; 3) designating a Special Master to serve as a Settlement Moderator; and 4) requiring that each party submit a confidential Settlement Statement to the Settlement Moderator. The grounds for this Motion are as follows:

The above-captioned claims filed by W&H are to water diverted from a drain tributary to the Boise River into the Upper Haas Ditch, which delivers water to W&H's property for irrigation, stockwater and wildlife purposes. Claim 63-32910, as amended, claims 4.6 cfs of water on a year-round basis for wildlife purposes and diversions to storage, together with 0.05

cfs for stockwater and 45 acre-feet of wildlife storage. Claim 63-33354 is a late claim for 0.05 cfs for stockwater that W&H has agreed with the Objector G.O. Investments LLC (“G.O. Investments”) could be recommended and decreed with a remark indicating that the 0.05 cfs claimed for stockwater under 63-33354 is not in addition to the 4.6 cfs/45 acre-feet of water claimed under 63-32910.

The Department’s recommendation for late claim 63-33354 did not make reference to the 45 acre-feet of wildlife storage, though it did include a recommended remark that “[t]his right and Right No. 63-32910 are limited to a total combined diversion rate of 4.6 cfs.” On August 11, 2011, G.O. Investments filed its Objection to the recommendation, stating that “the combined use remark needs to be revised to include 45 AFA limitation with 63-32910.” On August 22, 2011, W&H filed its Response stating that the right should be recommended to include a remark that “[t]his right, in combination with right 63-32910, shall be limited to a diversion rate of 4.6 cfs and a storage volume of 45 afa.” Counsel for IDWR has proposed that since 63-33354 does not have a storage component claimed, but 63-32910 does, the remark for 63-33354 should continue to state that “this right and right no. 63-32910 are limited to a total combined diversion rate of 4.6 cfs,” and 63-32910 should contain the following remark: “This right and right no. 63-33354 are limited to a total combined diversion rate of 4.6 cfs. The storage volume for this right is limited to 45 AF.”

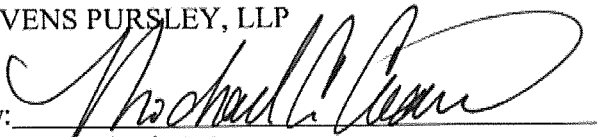
W&H believes the IDWR proposal to be an appropriate way to resolve these subcases. G.O. Investments, through its counsel, has indicated it does not. W&H believes that the only issue preventing conclusion of these subcases is the wording of the combined use remark. Absent an agreement on this issue, it appears that the subcases will need to be reset for trial. W&H desires to avoid the significant time and expense that would be required to now litigate

these subcases that it had every reason to believe were concluded by its Settlement Agreement with G.O. Investments more than a year ago. In that Settlement Agreement, the parties agreed, among other things, that they would “endeavor in good faith to implement this Agreement. . . .”

For the foregoing reasons, W&H respectfully requests that the Court issue an order setting a mandatory settlement conference at which the parties and their counsel and IDWR are required to appear, designating a Special Master to serve as a Settlement Moderator and requiring that the parties submit a confidential Settlement Statement to the Settlement Moderator prior to the settlement conference.¹

DATED this 29th day of February, 2012.

GIVENS PURSLEY, LLP

By: 
Michael C. Creamer
Attorneys for W & H Limited Liability
Company

¹ A copy of an *Order Setting Mandatory Settlement Conference* from another set of subcases is attached to this Motion for the Court’s reference. With this Motion, W&H requests a substantially similar order.

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of February, 2012, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

ORIGINAL FILED

Clerk of Fifth Judicial District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

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

SERVICE

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☐ Express Mail
☐ Hand Delivery
☒ Facsimile (208) 424-8774

Director of IDWR
IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

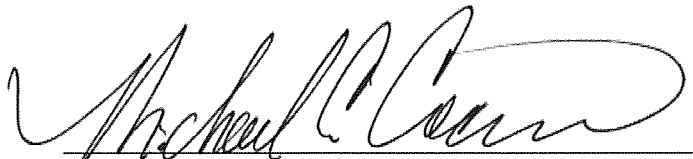
☐ U.S. Mail, postage prepaid
☐ Express Mail
☐ Hand Delivery
☒ Facsimile (208) 287-6700

U.S. Department of Justice
Environment and Natural Resources Division
550 West Fort St., MSC 033
Boise, ID 83724

☒ U.S. Mail, postage prepaid
☐ Express Mail
☐ Hand Delivery
☐ Facsimile

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
700 West Jefferson St., Room 210
P.O. Box 44449
Boise, ID 83711-4449

☒ U.S. Mail, postage prepaid
☐ Express Mail
☐ Hand Delivery
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Givens Pursley, LLP

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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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

ORDER SETTING MANDATORY
SETTLEMENT CONFERENCE

SUBCASE NO.: 37-22155

Also relates to water rights: 37-481B, 37-482G,
37-483B, 37-665K, 37-666J, 37-667N, 37-2625A,
37-2625B, 37-2638, 37-2700, and 37-21463

The court recognizes that formal litigation of subcases in the Snake River Basin Adjudication may impose an economic burden on parties. Settlement conferences often provide an opportunity to settle subcases and avoid a trial. These conferences can help open lines of communication, clarify issues, reveal the strengths and weaknesses of each party's legal position, identify areas of agreement and generate options for a mutually agreeable resolution of the dispute.

Therefore, the subcase listed above has been set for a mandatory settlement conference. Each party and IDWR is required to be present with the individual having full settlement authority on every aspect of the contested subcase. Partnerships, corporations, limited partnerships, unincorporated associations and all governmental entities must have a responsible officer or partner with settlement authority in attendance, in addition to their attorney of record, unless written authority to settle has been given to the attorney and is presented to the Settlement Moderator.

Settlement Statement- Each party to these subcase shall submit a confidential "Settlement Statement" to Settlement Moderator Terrance Dolan on or before **August 5, 2008**. The contents of the settlement statement shall not be disclosed by the Settlement Moderator to the other parties, the Court, or to Special Master Bilyeu except with the express consent of the parties. The settlement statements shall not be filed with the Court or the Special Master and shall be disposed of as

Settlement Moderator Dolan deems appropriate. The settlement statement shall contain the following information:

1. Identify the person(s) in addition to counsel of record, who shall attend the session with settlement authority.
2. Claimant shall disclose the legal and factual bases of its claim. (Please limit this disclosure to 5 pages including attachments)
3. Each Objector shall disclose the legal and factual bases of their Objections. (Please limit each disclosure to 5 pages including attachments)
4. Each party shall summarize the facts that are now settled or resolved and shall summarize those facts that remain in dispute.
5. Parties are encouraged to bring additional documents, maps or other information that may be helpful in the settlement discussions.

**FAILURE TO ATTEND OR ATTENDANCE WITHOUT SETTLEMENT
AUTHORITY MAY RESULT IN THE NON-ATTENDING PARTY BEING BOUND TO
THE AGREEMENT WHICH IS REACHED.**

IT IS ORDERED that this subcase shall proceed with a SETTLEMENT CONFERENCE before Settlement Moderator Terrance Dolan, as follows:

DATE: Monday, August 11, 2008
TIME: 1:00 pm
LOCATION: Idaho Water Center
322 East Front Street,
6th Floor, Conference Room B
Boise, Idaho

Dated: June 7, 2008.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication