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Department of Water Resources
Adjudication Bureau

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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	)	MOTION TO VACATE AND RESET ORDER SETTING
	)	SUBCASES FOR TRIAL AND PRETRIAL SCHEDULING
	)	ORDER
	)	
Case No. 39576	)	SUBCASE Nos. 01-10248, 27-11560.
	)	
_____	)	

DESCRIPTIVE SUMMARY

This is a motion of Kim Bodily, pursuant to Rule 16(b) of the Idaho Rules of Civil Procedure, requesting the court to vacate its current pretrial schedule and trial date for the ownership issue with respect to water right subcases 01-10248 and 27-11560.

MOTION

COMES NOW Kim Bodily and hereby moves the court under Rule 16(b) of the Idaho Rules of Civil Procedure and the court's March 21, 1995, Order Setting Subcases for Trial and Pretrial Scheduling Order, to vacate its Order Setting Subcases for Trial and Pretrial Scheduling Order dated

March 21, 1995. This motion is supported by the Affidavit of Richard A. Simms filed herewith and on the following grounds:

1. Kim Bodily is a secondary school teacher with no education in the law in general or the unsettled requirements of the various statutes setting forth the procedures to be followed in the Snake River Basin Adjudication.
2. Kim Bodily entered these proceedings pro se.
3. Kim Bodily prepared his objections pro se.
4. Kim Bodily was not represented by counsel until March 5, 1995.
5. Prior to filing his objections to the Proposed Partial Final Consent Decree, Kim Bodily was told by the Idaho Department of Water Resources that he could not file a claim on his own with respect to his water rights in the Fort Hall Irrigation Project because the United States had already filed a claim on his behalf.
6. Based on the advice of the Idaho Department of Water Resources, confirmed by statements of the United States and the Shoshone-Bannock Tribes, Kim Bodily, acting pro se, did not file a claim to the water rights in question; relying on the representation of the Idaho Department of Water Resources, the United States, and the Shoshone-Bannock Tribes, he had no reason to do so.
7. In his objection to the Partial Final Decree, Kim Bodily disagreed with the name and address of the "owner" of the water right, the name of which was listed as the Shoshone-Bannock Tribes.
8. As a matter of law, the Shoshone-Bannock Tribes do not "own" the water rights in question.
9. Kim Bodily stated in his objections that he had purchased the water rights from the United States.

10. The Idaho Department of Water Resources is required by statute to respond to objections to its determinations, and any other party to the SRBA may respond. Neither the United States, the State of Idaho, nor the Shoshone-Bannock Tribes responded to Kim Bodily's objections.
11. The custodian of the records of transactions between the nonIndian owners of lands in the Fort Hall Irrigation Project to which, by federal statute, the water rights are appurtenant, and the Secretary of the Interior, was historically the General Land Office in Blackfoot, Idaho.
12. At some unknown time, the relevant records of the General Land Office were physically transferred to the Bureau of Indian Affairs, Fort Hall Agency.
13. It has been reported that some of the historical records were lost or destroyed.
14. The Enabling Act for the Fort Hall Irrigation Project provides only for the sale and conveyance of the water rights appurtenant to the nonIndian lands in the Project to the nonIndian users upon timely payment of applicable construction costs pursuant to contract.
15. The Enabling Act for the Fort Hall Irrigation Project, as well as supplementary legislation relating to the Project, make no provision for "water delivery contracts" between the Secretary of the Interior and the nonIndian users of waters delivered through Project works.
16. Kim Bodily's predecessor-in-interest and the Secretary of the Interior executed the initial contract for sale of the water rights appurtenant to his Project lands.
17. Payments consummating the purchase of the water rights appurtenant to Kim Bodily's predecessor-in-interest's lands were timely made, and all other terms of the sales contract were timely complied with.
18. Kim Bodily's predecessor-in-interest and the Secretary of the Interior entered into a supplemental

contract for the purchase of the water rights appurtenant to his Project lands.

19. Payments consummating the purchase of the water rights appurtenant to Kim Bodily's predecessor-in-interest's lands were timely made, and all other terms of the sales contract were timely complied with.

20. Neither Kim Bodily nor the Fort Hall Agency, the new custodian of the General Land Office records, has been able to locate the original water conveyance contract relating to Kim Bodily's land.

21. Kim Bodily and his counsel as of March 5, 1995, have continued to attempt to locate a copy of the original contract between his predecessor-in-interest and the Secretary of the Interior.

22. The United States has failed to properly maintain the files of the General Land Office relating to the custody of the contracts of sale of the nonIndian water rights as between the Secretary of the Interior and the nonIndian users.

23. In order to reconstruct, in part, the transactions between the nonIndian users in the Fort Hall Irrigation Project and the Secretary of the Interior, Kim Bodily has been forced to retain an historian with expertise in the field of these transactions.

24. Under the circumstances, Kim Bodily cannot meet the trial deadline originally set for the Fort Hall Water Users, who have been dismissed from this case.

25. Time is needed to attempt to further discover the material documents and to depose the new custodian of the General Land Office files.

26. Given the requisite discovery, it is unlikely that this matter would have to go to trial.

27. Based on additional discovery, including admissions of facts which appear to be undisputable, this matter could be resolved by summary judgment as a matter of law.

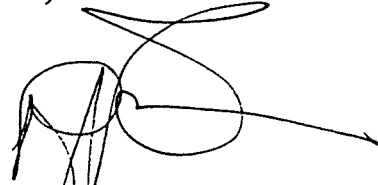
WHEREFORE, the Kim Bodily moves that the trial setting be vacated, additional discovery be allowed for a period of 60 days, or a period of time deemed equitable by the court, and that trial be reset within five days after the expiration of the discovery period if Kim Bodily has not moved for summary judgment on the issue of ownership.

DATED this 31st day of May, 1995.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

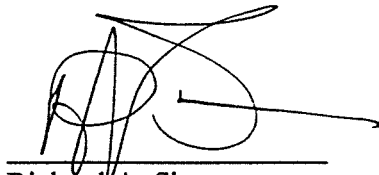
I hereby certify that on this 31st day of May, 1995, I caused true and correct copies of the foregoing MOTION TO VACATE AND RESET ORDER SETTING SUBCASES FOR TRIAL AND PRETRIAL SCHEDULING ORDER by placing the same with the United States mail, first class postage prepaid, addressed as follows:

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