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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 CSRBA
Case No. 49576

Water Right Subcase Nos.:91-7624,
91-7636, 91-7729, 92-10891,93-7433,
94-8621, 94-9133 and 95-16527

**MEMORANDUM IN SUPPORT OF
UNOPPOSED MOTION TO CHANGE
SETTLEMENT CONFERENCE VENUE AND
REMOVE LIMITATION ON PARTICIPATION**

**I.
INTRODUCTION**

Following an Initial Hearing held on April 1, 2015, the Special Master issued an
Amended Order Setting Deadline, Settlement Conferences and Second Scheduling Conference
(Amended Order) on April 9, 2015.

In the Amended Order, the Special Master provided:

Due to the logistics of settlement negotiations, there will be a limitation on the number of participants. Each attorney or law firm may bring up to (3) clients, unless there is a showing that additional participants should attend whose interest are not represented because of substantially different issues than other participants. A request for additional participants shall be filed no later than April 20, 2015.

Pursuant to the Amended Order, the 234 Objectors and Respondents represented by the undersigned counsel filed a motion herewith requesting that the venue for the May 8 settlement conference be moved and that the limitation on participants be removed.

In addition, counsel for the Movants has contacted counsel for the other parties in these subcases regarding their position on this motion. The following counsel have indicated support for the motion on behalf of their clients: Nancy Wolff, Michael Lawrence, and Chris Bromley. Clive Strong, on behalf of the State, Bruce Bernard, on behalf of the Forest Service, and Albert Barker, do not object to the motion.

II. ARGUMENT

For the reasons set forth below, the 234 Objectors and Respondents represented by the undersigned counsel respectfully request that the venue for the May 8 settlement conference be changed and that the Amended Order's limitation on participation be removed.

1. An Alternative Meeting Location has been Secured.

The limitation on participation at the May 8 scheduling conference stems in large part from the fact that the venue previously secured for the settlement conference can only accommodate 40 people. The Idaho Department of Environmental Quality location in Coeur d'Alene was identified by the State of Idaho as a meeting site and was ultimately included in the Court's Amended Order.

Since the Amended Order was issued, an alternative meeting location has been identified and secured by the State of Idaho, which can better accommodate the parties. This alternative location is the Red Lion Templins Hotel, 414 East First Avenue, Post Falls. This location will also be utilized for the federal-tribal claims consolidated subcase no. 91-07755 settlement conference on May 7, for which Special Master Booth is also serving as the Settlement Moderator. As a result, this location will be more convenient for all parties involved in both the May 7 and 8 settlement discussions.

With the previous size constraint having been removed by the availability of this new venue, there is no need to continue to limit participation to three clients per attorney, thereby limiting the ability of the parties to attend with full settlement authority.

2. Participation by Parties with Full Settlement Authority is Required.

The State adjudication statutes, specifically Idaho Code Section 42-1412(4), directs that "[t]he court shall before any trial. . .order a settlement conference to determine whether the matter can be settled." CSRBA Administrative Order 1 (AO1) also provides that the Presiding Judge or Special Master may order a Subcase to mediation. AO1, Section 17(a). The conduct of settlement conferences is directly addressed by the Idaho Rules of Civil Procedure (IRCP), which provide the district court with the power to order such conferences prior to trial. *In Re SRBA Case No. 39576*, 128 Idaho 246, 259, 912 P.2d 614, 627 (1995).

In turn, the Idaho Rules of Civil Procedure provide the following regarding attendance at mediation sessions: "The attorney(s) who will be primarily responsible for handling the actual trial of the matter, and all parties, or insurers, if applicable, with authority to settle, shall attend the session(s), unless otherwise excused by the mediator upon a showing of good cause." IRCP Rule 16(k)(10) (emphasis added).

Consistent with this rule, AO1 provides: "Unless otherwise ordered by the Court, each Party is required to be present, together with the individual(s) possessing full settlement authority on every aspect of the contested Subcase, and participate in the settlement conference." AO1, Section 17(a) (emphasis added).

Those parties with settlement authority not only have a right, but also an obligation, to attend the May 8 settlement conference. By limiting participation at the May 8 settlement conference, and excluding certain parties from attending, the Court would be preventing the parties from complying with these provisions. While the Court or mediator has authority to excuse parties from attending, that should be done at the request of the party asking to be excused, and then only upon a showing of good cause. This is particularly true given the alternative venue that has been secured by the State.

3. The Parties are without Adequate Settlement Authority under the Amended Order.

The undersigned counsel represent 234 separate Objectors and Respondents in these subcases. These 234 parties are grouped as follows: (1) 160 Objectors (Alan Littlejohn et al), also known as members of the North West Property Owners Alliance (NWPOA); (2) 54 Objectors and 7 Respondents (Bernard & Dawn Weber et al), also known as members of the North Idaho Water Rights Alliance (NIWRA); (3) 12 Objectors (Bruce Cyr et al), also known as members of the Coeur d'Alene Lakeshore Property Owners Association (CLPOA); and (4) Respondent Rathdrum Power LLC (Rathdrum Power). While not in conflict with one another, each of these groups and entities is separate from the others, has its own set of interests and issues, and has its own governance and decision-making authority.

In order to operate with adequate settlement authority, as required by the above-referenced legal authority, the parties have informed counsel that they require the following

number of client representatives to be in attendance at the May 8 settlement conference:

(1) NWPOA - 3 participants; (2) NIWRA - 3 participants; (3) CLPOA - 3 participants; and (4) Rathdrum Power - 1 participant. This is a total of 10 individuals to participate in the settlement conference with the two undersigned counsel. The current Amended Order does not allow this level of participation and, therefore, does not allow the parties to participate with adequate settlement authority, as required by the IRCP and AO1.

In addition, these four client groups and entities have polled the client Objectors and Respondents and determined that approximately 40 additional parties desire to attend the May 8 settlement conference to observe the proceedings and, as warranted, provide input to the above-referenced client representatives and counsel. However, only the 10 above-mentioned client representatives, and counsel, would actively participate in the settlement discussions (i.e., be “at the table”).

Undersigned counsel has contacted counsel for the other parties in this matter regarding their client attendance needs. At the current time, Givens Pursley anticipates attendance by five (5) clients, as does Morris and Wolff.

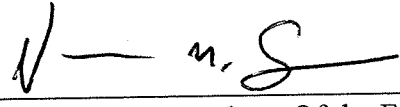
Under the current Amended Order, this level of attendance and participation is not allowed, thereby defeating the very purpose of the settlement conference, which is to fully and adequately explore the possibility of settling these subcases, without the need for lengthy and expensive litigation.

III. CONCLUSION

For the reasons set forth above, the 234 Objectors and Respondents, also known collectively as Rathdrum Power and members of NWPOA, NIWRA, and CLPOA, represented by the undersigned counsel, respectfully request that the Court change the settlement conference venue and remove the limitation on client participation prior to the May 8 settlement conference.

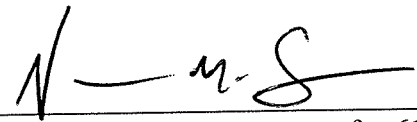
DATED this 20 day of April, 2015.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Norman M. Semanko – Of the Firm
Attorneys for 234 Objectors and
Respondents (Rathdrum Power, LLC and
members of the North West Property
Owners Alliance, North Idaho Water
Rights Alliance, and Coeur d'Alene
Lakeshore Property Owners Association)

DATED this 20 day of April, 2015.

BENEWAH COUNTY PROSECUTOR'S OFFICE

for By 
Douglas P. Payne – Attorney for 61
Objectors and Respondents (members of
the North Idaho Water Rights Alliance)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of April, 2015, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO CHANGE SETTLEMENT CONFERENCE VENUE AND REMOVE LIMITATION ON PARTICIPATION** to be served by the method indicated below, and addressed to the following:

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Natural Resources Division Chief Office of the Attorney General STATE OF IDAHO P.O. Box 83720 Boise, ID 83720-0010	☒ U.S. Mail, Postage Prepaid () Hand Delivered () Overnight Mail () Facsimile
UNITED STATES DEPARTMENT OF JUSTICE Environment & Natural Resources MSC 033 550 West Fort Street Boise, ID 83724	☒ U.S. Mail, Postage Prepaid () Hand Delivered () Overnight Mail () Facsimile
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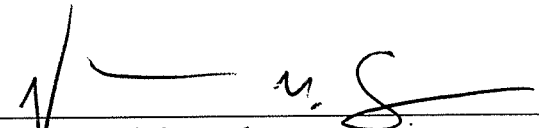
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Norman M. Semanko

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Administrative Assistant to Norman M. Semanko
Date: April 20, 2015
Re: CSRBA Case No. 49576
Water Right Subcase Nos: 91-7624, 91-7636, 91-
7729, 92-10891, 93-7433, 94-8621, 94-9133 and 95-
16527
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To:	Twin Falls County Clerk	Fifth Judicial District	(208) 736-4155	(208) 736-4025

Message:

Attached is our Memorandum in Support of Unopposed Motion to Change Settlement Conference Venue and Remove Limitation on Participation. As this filing is by fax and pursuant to CSRBA Administration Order 1, I will retain the fax confirmation sheet as proof of filing and will send the Court today via U.S. Mail, the copies of the Memorandum for the Subcases listed above. Please call me at 385-5434 if you have any questions. Thank you!