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DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
DAVID I. STANISH (ISB #7310)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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. 31-11845
	)	
	)	STATE OF IDAHO'S MOTION TO SHORTEN TIME,
	)	TO COMPEL DISCOVERY, AND FOR AN
Case No. 39576	)	EXPEDITED HEARING
	)	
	)	
	)	

The State of Idaho, by and through the undersigned deputy attorneys general, hereby moves the Court for an order to shorten time regarding response to Request for Production No. 13, to compel discovery in the above-entitled matter, and for an expedited hearing. The grounds for this motion are as follows:

1. The State served the *State of Idaho's First Set of Discovery Requests to Ben Jernberg and Idaho Properties, LLC* on August 9, 2006. Request for Production No. 13 therein requested the following:

Entry on lands of **Claimant Jernberg** and **Claimant Idaho Properties** is requested for the following purposes: (1) conducting soil tests, (2) making measurements of the ditch delivery system, (3) examining forage and plant species present, and (4) conducting other scientific investigations incidental thereto. The proposed date of entry would commence on or about August 21, 2006 and would continue through September 29, 2006. The soil tests would include the excavation of pits with a backhoe. The depth of the pit would not generally exceed six feet. A soil scientist would examine the soil horizons in each soil pit, would conduct certain tests to determine alkalinity and other properties of the soil, and may extract a sample from each soil horizon. The soil pits would be filled in following completion of the soil tests. The number of soil pits cannot be determined precisely without a surface examination of the **PPU**. The minimum number of pits is probably fifteen (15), and the maximum number of pits would not exceed forty (40).

The State of Idaho understands that a grain crop is being raised in the southwest corner of the **PPU**. The timing of the State of Idaho's visit is such that the State of Idaho expects that the grain crop will be harvested from the **PPU**. The State of Idaho will not dig any soil pits in a grain field that has not been harvested. If the grain crop is harvested, the State of Idaho expects to dig some soil pits in the existing grain field. The State of Idaho will make every effort to minimize any adverse impacts from its excavation of soil pits on the **PPU**.

Request for Production No. 13 is contained on pages twelve and thirteen of these discovery requests. A true and correct copy of pages twelve and thirteen of these discovery requests is attached to the *Affidavit of David J. Barber Dated August 14, 2006*.

2. A response to these discovery requests is due on or before September 9, 2006.
3. The *Order Granting Motion to Vacate Trial Date and Third Amended Trial Schedule* sets the date of October 31, 2006 as the deadline to complete discovery and submit expert reports. The State of Idaho intends to serve its expert reports on Claimant Ben Jernberg and Claimant Idaho Properties, LLC by September 29, 2006. The reason for this submittal before October 31, 2006 is to provide Claimant Jernberg and Claimant Idaho Properties LLC an

opportunity to review the expert reports, to determine whether to take any depositions and to take any necessary depositions by the deadline of October 31, 2006. If the State of Idaho is going to meet this schedule, work must begin on the field work before September 9, 2006, the date when discovery responses are due under the rules. Accordingly, this motion requests that the time be shortened to the date of August 15, 2006 for a substantive response to Request for Production No. 13. Presently, the State of Idaho has its experts scheduled to begin field work on August 21, 2006.

4. The State of Idaho attempted to negotiate a resolution of this discovery issue with counsel for Claimant Jernberg and Claimant Idaho Properties, LLC. The last discussion that the State of Idaho had with counsel for Claimant Jernberg and Claimant Idaho Properties, LLC indicated that they opposed the soils work. The State of Idaho advised counsel for Claimant Jernberg and Claimant Idaho Properties, LLC that it would have to file this motion because of the short time frame for completion of the expert reports. *Affidavit of David J. Barber Dated August 14, 2006*, at 2.

5. This motion is supported by the enclosed *Affidavit of David J. Barber Dated August 14, 2006* and by the *Brief in Support of State of Idaho's Motion to Shorten Time, to Compel Discovery and for an Expedited Hearing*.

6. Oral argument is requested on this motion.

PRAYER FOR RELIEF

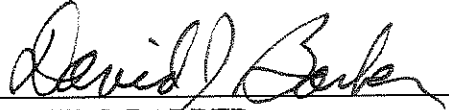
1. That the Court grant the State of Idaho's motion to shorten time for response to Request for Production No. 13.

2. That the Court compel entry on the place of use for water right no. 31-11845 in accordance with the request stated in Request for Production No. 13.

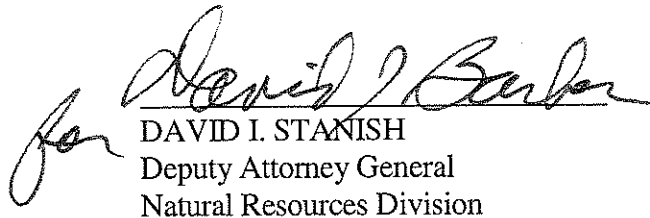
3. That the Court grant such other or further relief as it deems proper.

RESPECTFULLY SUBMITTED this 14th day of August 2006.

LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division



for DAVID I. STANISH
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I certify that on the 14th day of August 2006, I caused to be served the original and/or copy of this STATE OF IDAHO'S MOTION TO SHORTEN TIME, TO COMPEL DISCOVERY, AND FOR AN EXPEDITED HEARING on each of the following persons by the indicated method.

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

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

2. Copies to

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☐ Statehouse Mail

Claimant Ben Jernberg
Claimant Idaho Properties, LLC
Represented by:
Roger D. Ling
Michael P. Tribe
LING ROBINSON & WALKER
PO Box 396
Rupert, ID 83350

- ☐ U.S. Mail, postage prepaid
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- ☒ Facsimile: (208) 436-6804
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Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

Not Applicable


DAVID J. BARBER
Deputy Attorney General