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OCT 17 2006
DEPARTMENT OF
WATER RESOURCES

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
	)	
	)	THE STATE OF IDAHO'S MOTION FOR SITE VISIT
	)	BY THE SPECIAL MASTER
Case No. 39576	)	
	)	
	)	
	)	
_____	)	

The State of Idaho, by and through the undersigned deputy attorney general, hereby moves the Court for an order setting a date and time upon which the Special Master will visit the real property at issue in the above-entitled matter. The grounds for this motion are as follows:

1. "[I]t is generally recognized that on a trial of a cause by the court sitting without a jury, the court has discretionary power to inspect the premises during the course of the trial in order to evaluate and apply the evidence submitted." *Lobdell v. State Bd. of Highway Directors*, 89 Idaho 559, 567, 407 P.2d 135, 139 (1965). "A view or inspection of the character under consideration is permissible for the purpose of enabling the court properly to understand the

evidence, and properly to apply it. A view may be considered as bearing on the credibility of the witnesses who appeared at the trial.” *Id.* at 568, 407 P.2d at 140 (quoting 89 C.J.S. *Trial* § 588).

2. The condition of the Claimants’ land and the water delivery system thereon are directly relevant to the issues in this case. Claimants are asserting a water right in the amount of 8.83 cfs to be used to irrigate 658 acres of uncultivated pastureland in Jefferson County, Idaho. In order for the Court to properly understand the evidence that the State of Idaho intends to offer in support of its argument that such an application should not be considered a “beneficial use” of such water under Idaho law, it is critical that the Court personally examine the land and the ditch delivery system constructed thereon.

PRAYER FOR RELIEF

1. That the Court enters an order setting a date and time upon which the Special Master will visit the real property at issue in this case.
2. That the Court grants such other or further relief that it deems appropriate and proper.
3. That the State of Idaho requests an opportunity for oral argument.

Dated this 13th day of October, 2006.

LAWRENCE G. WASDEN
Attorney General

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



DAVID I. STANISH
Deputy Attorney General
Natural Resources Section

CERTIFICATE OF MAILING

I certify that on this 13th day of October, 2006, I caused to be served the original and copies of this THE STATE OF IDAHO'S MOTION FOR SITE VISIT BY THE SPECIAL MASTER on the following persons by the indicated methods:

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

Special Master Brigitte Bilyeu
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

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☐ Facsimile: _____
☐ Statehouse Mail

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

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Not Applicable



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