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Attorneys for Objectors/Claimants,
Ben D. Jernberg and Idaho Properties, LLC

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

Case No. 39576

**MOTION IN LIMINE AND
REQUEST FOR EXPEDITED HEARING**

COME NOW the Objectors/Claimants, Ben Jernberg and Idaho Properties, LLC (hereinafter "Jernberg"), in the above-entitled action by and through their attorneys Roger D. Ling and Michael P. Tribe of the firm Ling, Robinson & Walker, and move this Court for an order prohibiting the State of Idaho from offering any evidence by their expert witnesses Dr. J. Wayne Burkhardt regarding the vegetation located on the Jernberg property that postdates when Jernberg's property was examined or the Commencement of the Snake River Basin Adjudication.

That such evidence should be prohibited as to both oral testimony and such portions of the expert report that discuss the prohibited subject.

In addition, the testimony and expert report of Dr. Glen H. Logan should be similarly prohibited as the opinions expressed in the report and the expected trial testimony are based upon the current conditions of the property rather than the conditions as they existed when the Idaho Department of Water Resources originally licensed the claim.

MOTION IN LIMINE

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3 This Motion is brought at the outset of the trial to prevent the interruption of the
4 State's presentation of their case and is therefore appropriately taken prior to the commencement
5 of the trial based on the inclusion of the two expert reports in the State of Idaho's List of
6 Witnesses and the State of Idaho's Trial Brief filed with the Court on November 22, 2006.

7 Pursuant to Idaho Rules of Evidence 402 and 403, Jernberg specifically seeks to
8 prohibit the portions of the expert reports of Dr. J. Wayne Burkhardt and Glen H. Logan that deal
9 with the conditions of the property after the commencement of the Snake River Basin
10 Adjudication in 1987. Objectors/Claimants maintain that 1986, which is the date the Idaho
11 Department of Water Resources undertook its beneficial use field exam of the Jernberg property,
12 is the most accurate snapshot of the use of water on the disputed acres. Evidence of the
13 conditions of the place of use after such date should be limited because such evidence is not
14 relevant to the determination of historical use of water on the Jernberg property and because the
15 probative value of the expert reports would be substantially outweighed by the danger of unfair
16 prejudice, confusion of the issues and a general waste of time.

17 DATED this 28th day of November, 2006.

18 LING, ROBINSON & WALKER

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21 By: Michael P. Tribe
22 Michael P. Tribe
23 Attorneys for Claimants/Objectors
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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of November, 2006, I caused to be served a true and correct copy of the foregoing *Motion in Limine* by the method indicated below, and addressed to the following:

David J. Barber
David I. Stanish
Deputies Attorney General
State of Idaho
P. O. Box 44449
Boise, Idaho 83711-4449

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☐ Hand Delivery
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Director of IDWR
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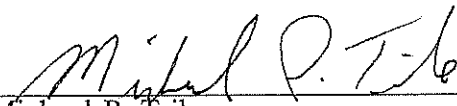
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Michael P. Tribe