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Attorney for Defendant C.L. "Butch" Otter, Governor of the State of Idaho

**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

Case No. 39576

IDAHO POWER COMPANY,

Plaintiff,

v.

STATE OF IDAHO; C.L. "BUTCH OTTER,
Governor of the State of Idaho; LAWRENCE G.
WASDEN, Attorney General of the State of

)
) Subcase Nos. 37-2128, 37- 2471,
) 37-2472, 37-20709, 37-10710
)

) MOTION TO STRIKE OR
) ALTERNATIVELY TO DISMISS
) "COUNTERCLAIM"
)

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Idaho; IDAHO DEPARTMENT OF WATER)
RESOURCES; and DAVID TUTHILL, Director,)
Idaho Department of Water Resources,)
)
Defendants.)
_____)

Defendants, by and through their undersigned counsel, move under Rules 12(f), 12(b)(1), (2),(4) and/or (5), (6) and (8) of the Idaho Rules of Civil Procedure, Idaho Code §§ 42-1401 through 42-1423 and Administrative Order 1 to strike or in the alternative to dismiss the “Counterclaim” attached to Idaho Power Company’s May 11, 2007 “Standard Form 2 Response to Objection to Amended Director’s Report.”

The State seeks to strike or dismiss the “Counterclaim” because it is not a claim, objection, or response allowed under AO1, and it seeks relief beyond a determination of ownership, nature and extent of the water rights at issue in these subcases. In addition, the “Counterclaim” attempts to assert claims against “defendants” who are not parties to these subcases and who were not served, including parties over which this Court lacks jurisdiction as a matter of law. The “Counterclaim” should also be stricken because it purports to assert claims over which this Court lacks subject matter jurisdiction, and/or for which relief cannot be granted. Lastly, the “Counterclaim” ignores that Idaho Power has filed a virtually identical complaint in the main SRBA case, thereby wasting judicial resources and setting up the possibility of different rulings on the very same issues.

It is the State’s position that the “Counterclaim” has no legal effect other than to identify the bases of Idaho Power Company’s objections to the Amended Director’s Reports in these subcases. The State files this motion at this time only out of an abundance of caution, to foreclose the possibility of a default on the “Counterclaim.”

The State hereby notifies the parties and Court that the State will submit a supporting brief more fully discussing these grounds within 14 days of filing this motion, and that the State will file a notice of hearing on this motion at an appropriate time.

The State does not seek by this motion to prevent Idaho Power Company from identifying issues to be heard pursuant to Idaho Code § 42-1412(3), or to prevent this Court from addressing such issues to the extent it is necessary and appropriate to do so for purposes of making determinations of the elements of the water rights in these subcases in accordance with Administrative Order 1, the applicable statutes, and the applicable decisions of the Idaho Supreme Court. Further, in lieu of striking the “Counterclaim” in its entirety, the State suggests that it may be possible for the Court to enter an order strictly limiting the “Counterclaim” such that its only effect is to identify the issues Idaho Power Company seeks to raise in support of its objections to the Amended Director’s Reports in these subcases for purposes of Idaho Code § 42-1412(3).

DATED this 30TH day of May, 2007.

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Respectfully submitted,

LAWRENCE G. WASDEN
Attorney General

STEVEN L. OLSEN
Deputy Attorney General
Chief, Civil Litigation Division

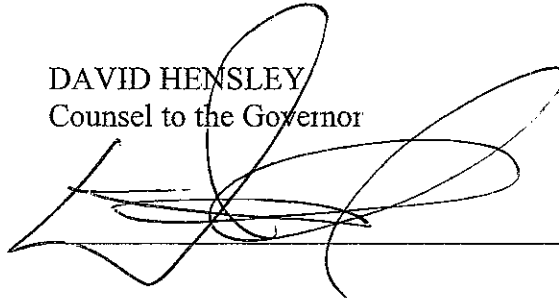
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DAVID HENSLEY
Counsel to the Governor



CERTIFICATE OF MAILING

I certify that on May 30, 2007, I caused the foregoing **Motion To Strike Or Alternatively To Dismiss "Counterclaim"** to be served on the following persons by the method designated:

1. Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707
Facsimile
2. One copy to each entity identified in the ownership section of the water right at the following addresses:

STATE OF IDAHO
700 W. Jefferson, Room 210
P.O. Box 44449
Boise, Idaho 83711-4449
NOT APPLICABLE

IDAHO POWER CO.
P.O. Box 70
Boise, Idaho 83707
U.S. MAIL

James S. Lochhead
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410 17th Street, Suite 2200
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lochhead@bhfs.com
U.S. MAIL & E-Mail

John K. Simpson
Barker Rosholt & Simpson
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Boise, Idaho 83701
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3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

STATEHOUSE MAIL

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

U.S. MAIL

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

HAND DELIVERY

A handwritten signature in cursive script, reading "Michael C. Orr".

Michael C. Orr