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Department of Water Resources
Adjudication Bureau

LAWRENCE G. WASDEN
Attorney General

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

DAVID I. STANISH (ISB #7310)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

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. 01-02064
	)	
	)	STATE OF IDAHO'S MOTION TO
	)	AMEND OBJECTION
Case No. 39576	)	
	)	
	)	
	)	
	)	

The State of Idaho, by and through the undersigned deputy attorney general, hereby moves the Court for an order allowing the State of Idaho to amend its *Objection* submitted in the above-entitled subcase and to file the amended objection attached hereto as Exhibit A.

The grounds for this motion are as follows:

1. On or about April 20, 2007, the State of Idaho filed its *Objection* to the American Falls Reservoir storage right, 01-02064, objecting to the following water right elements:

a. Priority Date;

- b. Purpose of Use; and
- c. Other Provisions Necessary.

2. After further investigation into the 80-plus-year history of the American Falls project, the State of Idaho has discovered evidence that further informs the State's *Objection* and that provides additional bases for objection to the hydropower aspects of water right no. 01-02064.

3. On November 4, 2008, a scheduling conference is set in the above-entitled subcase, whereby the parties are: (i) to identify the issues to be determined in the American Falls subcases; and (2) to fashion a trial schedule accordingly.

4. By filing this motion before the November 4, 2008 scheduling conference, the parties will be given notice of those additional elements to which the State intends to object to. The parties can therefore incorporate those potential issues into any proposed scheduling order.

5. This subcase is in a relatively early stage of proceedings. Thus, no party will be prejudiced where no party has initiated discovery and no comprehensive trial schedule has been adopted.

6. Complete identification, development, and resolution of all issues related to the largest storage right on the Upper Snake River is best served by amendment of the State's objection.

7. An amended Standard Form 1 Objection is attached hereto as Exhibit A.

8. A memorandum in support of this motion shall follow in accordance with the Idaho Rules of Civil Procedure.

9. Oral argument is requested on this motion.

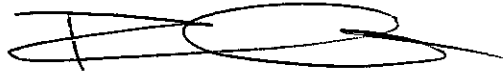
PRAYER FOR RELIEF

1. That the Court grant the State of Idaho's Motion to Amend Objection;
2. That the Court allow the filing of the amended Standard Form 1 Objection attached hereto; and
3. That the Court grant such other or further relief as it deems proper.

RESPECTFULLY SUBMITTED this 28th day of October, 2008.

LAWRENCE G. WASDEN
Attorney General

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

A handwritten signature in black ink, appearing to read "David I. Stanish", written over a horizontal line.

DAVID I. STANISH
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 28th day of October, 2008, I caused to be served the original and copies of the **STATE OF IDAHO'S MOTION TO AMEND OBJECTION** on the following persons by the methods indicated:

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 DOLAN
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

MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY
Represented by:
BARKER, ROSHOLT & SIMPSON LLP
113 MAIN AVE W, STE 303
PO BOX 485
TWIN FALLS, ID 83303-0485

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 733-0700
- ☐ Statehouse Mail

IDAHO POWER COMPANY
Represented by:
JAMES C TUCKER
IDAHO POWER CO
PO BOX 70
BOISE, ID 83707

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 388-6935
- ☐ Statehouse Mail

IDAHO POWER COMPANY
Represented by:
MICHAEL A GHELETA
BROWNSTEIN HYATT ET AL
410 17TH STREET, SUITE 2200
DENVER, CO 80202

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 233-1111
- ☐ Statehouse Mail

ABERDEEN AMERICAN FALLS GWD
BINGHAM GWD
BONNEVILLE JEFFERSON GWD
CAREY VALLEY GWD
IGWA INC
JEFFERSON CLARK GWD
MADISON GWD
MAGIC VALLEY GWD
NORTH SNAKE GWD

Represented by:
RANDALL C BUDGE
201 E CENTER, STE A2
PO BOX 1391
POCATELLO, ID 83204-1391

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 232-6109
- ☐ Statehouse Mail

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT
FALLS IRRIGATION DISTRICT

Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 436-6804
- ☐ Statehouse Mail

USDI BUREAU OF RECLAMATION
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 334-9375
- ☐ Statehouse Mail

MINIDOKA IRRIGATION DISTRICT

Represented by:
W KENT FLETCHER
1200 OVERLAND AVE
PO BOX 248
BURLEY, ID 83318

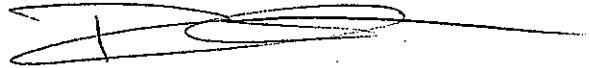
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- ☐ Federal Express
- ☐ Facsimile: (208) 878-2548
- ☐ Statehouse Mail

IDWR DOCUMENT DEPOSITORY
PO BOX 83720
BOISE, ID 83720-0098

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

UNITED STATES OF AMERICA
REGIONAL DIRECTOR PN REGION
BUREAU OF RECLAMATION PN-3100
1150 N CURTIS RD STE 100
BOISE, ID 83706-1234

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



DAVID I. STANISH
Deputy Attorney General

Exhibit A

AMENDED OBJECTION

**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

A. Subcase Number: 01-02064
(Insert water right number)

**STANDARD FORM 1
OBJECTION**

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: State of Idaho
Address: 700 W. Jefferson, Statehouse Room 207
P.O. Box 83720
Boise, Idaho 83720-0010
Phone: (208) 334-2400

Name and Address of Attorney, if any:

Attorney Name: LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID I. STANISH (ISB # 7310)
Deputy Attorney General
Attorney Address: Office of the Attorney General
700 W. Jefferson, Room 210
P.O. Box 83720
Boise, Idaho 83720-0010
Attorney Phone No. (208) 334-2400

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: United States of America
Address: Bureau of Reclamation PN-3100
1150 N Curtis Rd Ste 100
Boise, ID 83706-1234

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: Total quantity of a reservoir's storage right(s) is limited to reservoir capacity. Quantity of storage in American Falls Reservoir that may be scheduled for release for hydropower production is limited by Pub. L. 93-206, 87 Stat. 904 (Dec. 28, 1973) and Pub. L. 94-164, 89 Stat. 970 (Dec. 23, 1975), and has otherwise been further limited, waived, or abandoned by federal and state law, federal contracts, federal licenses, and equitable doctrines including but not limited to the following: adverse possession, estoppel, waiver, laches, etc.
4. ☒ **Priority Date**
Should be: Subordination language based on historic practice needs clarification
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: Reference to contracts between United States and Idaho Power Company needs clarification
8. ☐ **Period of Year**
Should be: _____

9. ☐ **Place of Use**
Should be: _____
10. ☒ **Other Provisions Necessary**
Should be: Ownership language needs clarification in light of the Idaho
Supreme Court's decision in United States v. Pioneer
Irrigation District, SRBA subcase no. 91-00063 and as
expressly provided in federal spaceholder contracts.
11. **I object because:**
- ☐ This water right Should not exist.
- ☐ This water right was not recommended, but Should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

3. Quantity

Total quantity of a reservoir's storage right(s) is limited to reservoir capacity. Quantity of storage in American Falls Reservoir that may be scheduled for release for hydropower production is limited by Pub. L. 93-206, 87 Stat. 904 (Dec. 28, 1973) and Pub. L. 94-164, 89 Stat. 970 (Dec. 23, 1975), and has otherwise been further limited, waived, or abandoned by federal and state law, federal contracts, federal licenses, and equitable doctrines including but not limited to the following: adverse possession, estoppel, waiver, laches, etc.

4. Priority Date

The scope of subordination based upon historic practice needs clarification. Use of storage in American Falls Reservoir for hydropower production, except for the 2.6471% of capacity provided for in federal contract no. Ilr-733S, is subordinated by Pub. L. 93-206, 87 Stat. 904 (Dec. 28, 1973) and Pub. L. 94-164, 89 Stat. 970 (Dec. 23, 1975), and has otherwise been further limited, waived, or abandoned by federal and state law, federal contracts, federal licenses, and equitable doctrines including but not limited to the following: adverse possession, estoppel, waiver, laches, etc.

7. Purpose of Use

The "purpose and period of use" portion of the recommended water right references two specific contracts entered into between the United States and the Idaho Power Company (Ilr-733

and Ilr-801). Additional contracts exist that may also affect the use of this water as well. Language should be inserted indicating that the two contracts specifically mentioned are not the limit of the contractual relationships that may exist affecting this water right.

10. Other Provisions Necessary

The title ownership language should be amended consistent with the holding set forth in the Idaho Supreme Court's decision in *United States v. Pioneer Irrigation District*, Subcase no. 91-00063 (Mar. 9, 2007) and as expressly provided in federal spaceholder contracts.

F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

DAVID I. STANISH, Deputy Attorney General, duly sworn, upon oath, deposes and says:

That the State of Idaho in its proprietary capacity is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, which is a party/claimant in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

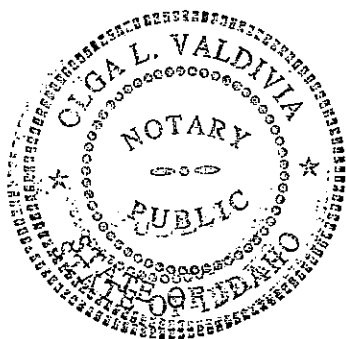
LAWRENCE G. WARDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID I. STANISH
Deputy Attorney General



By Attorney signing in representative capacity

Subscribed and sworn to before me on: _____

(Insert Date)



Notary Public for IDAHO

Residing at: BOISE, ID

My commission expires: 2/9/2012