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Department of Water Resources
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**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

Subcase No. 63-27475

**MOTION TO SUPPLEMENT
MEMORANDUM OF COSTS AND
REQUEST FOR ATTORNEY FEES**

**MOTION TO ALTER OR AMEND
SPECIAL MASTER'S
RECOMMENDATION**

Janicek Properties, LLC ("Janicek"), by and through its counsel Givens Pursley LLP and pursuant to Idaho Rule of Civil Procedure 15(d) and Section 13 of SRBA AO1, hereby moves the court to permit its *Supplemental Memorandum of Costs and Request for Attorney Fees* and to alter or amend the Special Master's Recommendation regarding Janicek's cost and attorney fees award.

**MOTION TO SUPPLEMENT MEMORANDUM
OF COSTS AND REQUEST FOR ATTORNEY FEES**

Rule 15(d) states, in pertinent part:

Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

Janicek filed its original *Memorandum of Costs and Request for Attorney Fees* and supporting affidavit on August 28, 2008. With one exception,¹ the costs and fees discussed therein included only those costs and fees incurred through that date. Since then, Janicek has incurred additional costs and fees for legal work conducted to litigate its entitlement to costs and fees.² This additional legal work constitutes transactions, occurrences, and/or events which are properly set forth in a supplemental pleading under Rule 15(d). Accordingly, Janicek requests the Court permit its *Supplemental Memorandum of Costs and Request for Attorney Fees* filed contemporaneously herewith.

**MOTION TO ALTER OR AMEND
SPECIAL MASTER'S RECOMMENDATION**

Section 13(a) of SRBA AO1 allows parties to file a Motion to Alter or Amend a Special Master's Recommendation. To the extent necessary to recognize Janicek's right to fees and costs in addition to those awarded in the *Special Master's Report and Recommendation Re: Janicek's Request for Attorney Fees* dated December 22, 2008 ("Report and Recommendation"),

¹ The exception is that the cost of photocopying service copies of Janicek's original *Memorandum of Costs and Request for Attorney Fees* and supporting affidavit on August 28, 2008 were not included because the cost had not accrued in time.

² On page 14 of its October 15, 2008 *Response to NMID's and United States' Objections to Memorandum of Costs and Request for Attorney Fees*, Janicek notified the Court and the parties that it would make a supplemental request for its costs and fees incurred in defending its costs and fees request.

Janicek hereby requests that the Court alter or amend the Report and Recommendation to include 50% of Janicek's costs and attorney fees incurred on or after August 28, 2008 that were not included in the Special Master's calculations.

In his Report and Recommendation, the Special Master found that Janicek is entitled to an award of 50% of its costs and 50% of its attorney fees incurred after May 7, 2008 that are attributable to legal work done in connection with claiming fees and costs. (Report and Recommendation at 7, 10.) Janicek is entitled to 50% of costs and attorney fees incurred on or after August 28, 2008 on the same grounds identified by the Special Master in his Report and Recommendation. Such costs and fees are set forth in the contemporaneously filed *Supplemental Memorandum of Costs and Request for Attorney Fees* and supporting affidavit

DATED this 8TH day of January, 2009.

Respectfully submitted,

GIVENS PURSLEY LLP

By



Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8TH of January, 2009, the foregoing was filed, served, or copied as follows:

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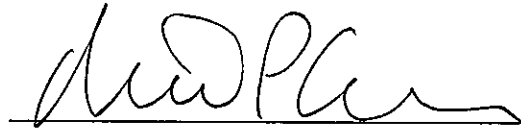
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