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DEPARTMENT OF
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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	)	Subcase No. 31-11845
	)	
	)	STATE OF IDAHO'S MOTION TO ALTER OR
	)	AMEND SPECIAL MASTER'S MEMORANDUM
Case No. 39576	)	DECISION AND ORDER RE: COSTS AND
	)	ATTORNEYS FEES
	)	
	)	

The State of Idaho, by and through the undersigned deputy attorney general, moves this Court for an order altering or amending the Special Master's *Memorandum Decision and Order Re: Costs and Attorneys Fees* (hereinafter, "*Memorandum Decision*") in the above-entitled subcase. This motion is intended to address two separate issues. First, this motion requests correction of a clerical error in the *Memorandum Decision* regarding the amount of costs granted by the Court. Second, this motion requests the Court to reconsider its conclusion that the expert fees should not be awarded because the case was not exceptional within the meaning of I.R.C.P.

54. The grounds for this motion are as follows:

1. On December 31, 2008, this Court entered its *Memorandum Decision* in the above-entitled subcase.

2. The SRBA District Court issued its Docket Sheet for December 2008 on January 8, 2009. The *Memorandum Decision* did not appear on the SRBA Docket Sheet for December 2008.

3. Pursuant to AO1 § 13(a), any party to the adjudication may move the Court to alter or amend a Special Master's recommendation within 21 days from the date that it appears on the Docket Sheet. Since this *Memorandum Decision* has not appeared on the Docket Sheet, the time frame for filing a *Motion to Alter or Amend* in this matter has not expired. Thus, the *State of Idaho's Motion to Alter or Amend Special Master's Memorandum Decision and Order Re: Costs and Attorneys Fees* is timely.

4. The Court awarded costs in the amount of \$442.50 for the costs for witness Dr. Dale Stukenholtz. *Memorandum Decision* at 8.

5. The Court awarded costs in the amount of \$2,012.10 for deposition reporting and transcribing. *Memorandum Decision* at 9.

6. The Court summarized its award of costs in its order as the amount of \$2,054.60. *Memorandum Decision* at 12. The sum of the amounts awarded in paragraphs 4 and 5 is \$2,454.60 and not the amount of \$2,054.60 as described in the *Memorandum Decision* at 12.

7. I.R.C.P. 54(d)(1)(D) authorizes the district court to award "[a]dditional items of cost . . . upon a showing that said costs were necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against the adverse party." The Court concluded in its *Memorandum Decision* that the costs were not "exceptional." Most

respectively, the State disagrees and requests the Court to reconsider this conclusion for the reasons stated in its *Brief in Support of State of Idaho's Motion to Alter or Amend Special Master's Memorandum Decision and Order Re: Costs and Attorneys Fees*.

8. More specifically, the State of Idaho requests the Court to reconsider its determination that the costs in this matter were not exceptional and to award the State of Idaho its out-of-pocket expert witness fee expenses in the amount of \$99,848.43.

Oral argument is requested on this matter.

This motion is supported by the *Brief in Support of State of Idaho's Motion to Alter or Amend Special Master's Memorandum Decision and Order Re: Costs and Attorneys Fees* and the *Affidavit of David I. Stanish Dated January 30, 2009* filed on this same date.

PRAYER FOR RELIEF

1. That the Court enter an order altering and amending the Special Master's Report and Recommendation in the above-entitled subcase to reflect the following:

- A. To award the amount of \$2,454.60 as a matter of right under I.R.C.P. 54(d)(1)(C).
- B. To award the amount of ____ as discretionary costs under I.R.C.P. 54(d)(1)(D).

2. That the Court enter an order awarding the State of Idaho its out-of-pocket expert witness fee expenses in the amount of \$99,848.43.

3. That the Court grant such other and further relief as the Court deems just and proper.

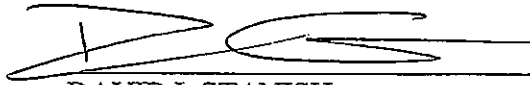
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DATED this January 30, 2009.

LAWRENCE G. WASDEN
Attorney General

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

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

DAVID I. STANISH
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on January 30, 2009 I caused to be served the original and/or copy of this STATE OF IDAHO'S MOTION TO ALTER OR AMEND SPECIAL MASTER'S MEMORANDUM DECISION AND ORDER RE: COSTS AND ATTORNEYS FEES on each of the following persons by the indicated method.

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

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- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to

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

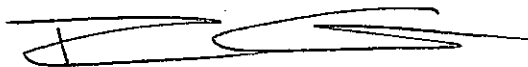
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Claimant Ben Jernberg
Claimant Idaho Properties, LLC
Represented by:
Roger D. Ling
Michael P. Tribe
LING ROBINSON & WALKER
PO Box 396
Rupert, ID 83350

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DAVID I. STANISH
Deputy Attorney General