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DEPARTMENT OF
WATER RESOURCES

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Counsel for 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

)
) Subcase Nos. 01-00217, 01-00218,
) 01-04024, and 01-04025
) (Minidoka Power Rights)

)
) Subcase Nos. 01-02068 and 01-04054
) (Palisades Power Rights)

)
) **MOTION FOR PARTIAL SUMMARY**
) **JUDGMENT**
)
)
)

I. MINIDOKA POWER RIGHTS
NOS. 01-00217, 01-00218, 01-04024, AND 01-04025

The State of Idaho, by and through the undersigned deputy attorney general, hereby moves the Court, pursuant to Idaho Rule of Civil Procedure 56, for entry of a summary judgment order finding that the substitution of the following remarks for the "historic practices

hydropower remark”¹ and the “winter power operation remark”² set forth in the Director’s Recommendations for the Minidoka power rights shall resolve all objections and/or responses related to the “historic practices hydropower remark” and the “winter power operation remark”:

A. WATER RIGHT NOS. 01-00217 AND 01-00218

Priority Date

While the United States has the privilege to use 2,700 cfs for the development of power under water right nos. 01-00217 and 01-00218, it will be the objective of the United States in the operation of the Minidoka powerplant to limit the exercise of water right nos. 01-00217 and 01-00218 for power production at the Minidoka powerplant whenever operation of the Minidoka powerplant to the full extent of these water rights for power production would result in loss of water otherwise storable in the reservoir system. Accordingly, except as it is determined by the Secretary that additional water may be passed through Minidoka Dam without the loss of water that could be stored in the reservoir system, the United States will limit the release of water through the Minidoka Dam. To the extent that it is practicable to do so, the Watermaster and the Water District 1 Advisory Committee will be informed in advance of any plans for the release of water in excess of the foregoing limitation. “Reservoir system” shall mean all Federal reservoirs on the Snake River and its tributaries down to and including Lake Walcott.

Other Provisions Necessary

This decree does not alter, amend, or modify the contracts entered into between various federal contractors and the United States Bureau of Reclamation, as amended, in connection with the Palisades project and the Minidoka project, which contracts remain binding among the parties thereto.

B. WATER RIGHT NOS. 01-04024 AND 01-04025

Priority Date

This right may be exercised if it is determined by the Secretary that additional water may be passed through Minidoka Dam, in excess of that authorized under right nos. 01-00217 and 01-00218, without the loss of water that could be stored

¹ Priority Date: “The appropriator shall exercise this right in a manner that recognizes the historic practice that the use of water for power generation is incidental to the rights of others to the use of water for other purposes. The appropriator shall not make a delivery call for hydropower generation except as against junior hydropower rights.”

² Other Provisions Necessary: “The delivery of water to this right may be subject to the provisions for winter power operation at the Minidoka power plant as recognized in the Burley Irrigation Dist. v. Eagle, Supplemental Decree (Idaho 5th Jud. Dist., July 10, 1968) and Aberdeen-Springfield Canal Co. v. Eagle, Supplemental Decree (Idaho 7th Jud. Dist., March 12, 1969).”

in the reservoir system. "Reservoir system" shall mean all Federal reservoirs on the Snake River and its tributaries down to and including Lake Walcott.

This right carries no entitlement to make a delivery call for hydropower generation except as against junior hydropower rights.

Other Provisions Necessary

This decree does not alter, amend, or modify the contracts entered into between various federal contractors and the United States Bureau of Reclamation, as amended, in connection with the Palisades project and the Minidoka project, which contracts remain binding among the parties thereto.

II. PALISADES POWER RIGHTS NOS. 01-02068 AND 01-04054

The State of Idaho, by and through the undersigned deputy attorney general, hereby moves the Court, pursuant to Idaho Rule of Civil Procedure 56, for entry of a summary judgment order finding that the substitution of the following remarks for the "historic practices hydropower remark" set forth in the Director's Recommendations for the Palisades power rights shall resolve all objections and/or responses related to the "historic practices hydropower remark":

A. WATER RIGHT NO. 01-02068

Priority Date

The United States, after consultation with the Watermaster and the Water District 1 Advisory Committee, may release stored water from Jackson Lake and Palisades reservoirs for the maintenance of power production at Palisades Dam powerplant and may store such water in American Falls Reservoir. The release of such water will be confined, however, when it appears to the Secretary that American Falls, Palisades, and Jackson Lake reservoirs will fail to fill, to not more than 1,000 cfs for minimum firm power production and that amount which can be stored in American Falls Reservoir; and no such release shall be made that will preclude the later delivery of water, by exchange or otherwise, to the upper valley entities entitled thereto. "Upper valley entities" shall mean those reservoir spaceholders diverting from the Snake River and its tributaries above American Falls Dam.

Other Provisions Necessary

This decree does not alter, amend, or modify the contracts entered into between various federal contractors and the United States Bureau of Reclamation, as amended, in connection with the Palisades project and the Minidoka project, which contracts remain binding among the parties thereto.

B. WATER RIGHT NO. 01-04054

Priority Date

This right may be exercised if it is determined by the Secretary that additional water may be passed through Palisades Dam, in excess of that authorized under water right no. 01-02068, without the loss of water that could be stored in the reservoir system. "Reservoir system" shall mean all Federal reservoirs on the Snake River and its tributaries down to and including Lake Walcott.

Other Provisions Necessary

This decree does not alter, amend, or modify the contracts entered into between various federal contractors and the United States Bureau of Reclamation, as amended, in connection with the Palisades project and the Minidoka project, which contracts remain binding among the parties thereto.

The grounds for this partial summary judgment motion are set out in the *Memorandum in Support of the State of Idaho's Motion for Partial Summary Judgment*.

This motion is supported by the *Affidavit of David I. Stanish in Support of the State of Idaho's Motion for Partial Summary Judgment* and the *Affidavit of Anthony Olenichak*.

Oral argument on this motion will take place on November 12, 2009 at 1:30pm.

PRAYER FOR RELIEF

1. That the Court enter a summary judgment order finding that the substitution of remarks set forth above shall resolve all objections and/or responses related to the "historic practices hydropower remark" and the "winter power operation remark" in the Minidoka power right subcases;

2. That the Court enter a summary judgment order finding that the substitution of remarks set forth above shall resolve all objections and/or responses related to the "historic practices hydropower remark" in the Palisades power right subcases; and

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

RESPECTFULLY SUBMITTED this 17th day of August 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. Stanish", written over a horizontal line.

DAVID I. STANISH
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 17th day of August 2009, I caused to be served the original and copies of the **MOTION FOR PARTIAL SUMMARY JUDGMENT** 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
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☐ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to:

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IDAHO POWER CO
PO BOX 70
BOISE, ID 83707

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☐ Federal Express
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☐ Statehouse Mail

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

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AMERICAN FALLS RESERVOIR
Represented by:
C THOMAS ARKOOSH
301 MAIN ST
PO BOX 32
GOODING, ID 83330

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BINGHAM GWD
BONNEVILLE JEFFERSON GWD
CAREY VALLEY GWD
IGWA INC
JEFFERSON CLARK GWD
MADISON GWD
MAGIC VALLEY GWD
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RANDALL C BUDGE
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PO BOX 1391
POCATELLO, ID 83204-1391

CITY OF POCATELLO

Represented by:
JOSEPHINE P BEEMAN
409 W JEFFERSON ST
BOISE, ID 83702

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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

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MILNER IRRIGATION DIST
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
JOHN SIMPSON
113 MAIN AVE W, STE 303
PO BOX 485
TWIN FALLS, ID 83303-0485

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MINIDOKA IRRIGATION DISTRICT

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

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NEW SWEDEN IRRIGATION DISTICT
FREMONT-MADISON IRR DIST

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

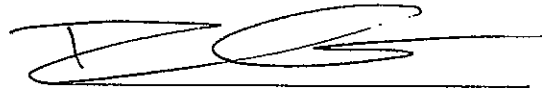
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UNITED STATES OF AMERICA
REGIONAL DIRECTOR PN REGION
BUREAU OF RECLAMATION PN-3100
1150 N CURTIS RD STE 100
BOISE, ID 83706-1234

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BOISE, ID 83720-0098

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DAVID I. STANISH
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