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DEPARTMENT OF
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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 PROTECTIVE ORDER**
) **AND MOTION TO LIFT STAY OF**
) **BRIEFING SCHEDULE**
)

The State of Idaho, by and through the undersigned deputy attorney general, hereby moves the Court for a protective order against all further discovery related to the issues pending on summary judgment. Furthermore, the State moves the Court for an order lifting the stay on the briefing in the Minidoka Power Rights subcases and requiring briefs on the pending motions

for summary judgment to be filed no later than the following:

October 13, 2009 Deadline for response briefs

October 27, 2009 Deadline for reply briefs

The grounds for this motion are as follows:

1. I.R.C.P. 26(c) provides that the Court may issue a protective order against discovery "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense"

2. I.R.C.P. 56(f) provides that the Court may continue summary judgment proceedings for further discovery where an opposing party shows that the party "cannot for reasons stated present by affidavit facts essential to justify the party's opposition"

3. Pursuant to the *2nd Amended Trial Schedule*, briefs in response to the State and the United States' pending motions for summary judgment were due on September 25, 2009.

4. On September 23, 2009, the Court issued an order staying the response brief deadline pending an October 6, 2009 status conference.

5. The State has reason to believe that certain parties will request at the October 6, 2009 status conference an additional extension of the response brief deadline in order to conduct additional discovery.

6. There is good cause for a protective order against further discovery on those issues pending on summary judgment as follows:

- a. The pending motions were filed in accordance with the trial schedule agreed-to by the parties and ordered by the Court;
- b. Parties opposing the motions have had substantial notice of the summary judgment deadlines and were free to conduct discovery accordingly;

- c. Those certain parties which now seek to continue the summary judgment deadlines have failed to comply with the requirements of I.R.C.P. 56(f), which sets forth the procedures and standards by which a party may be excused from meeting its summary judgment response deadlines;
- d. Those certain parties which now seek to continue the summary judgment deadlines have also failed to avail themselves of the opportunity to conduct any discovery in these subcases despite having substantial notice of the summary judgment deadlines; and
- e. The pending motions for summary judgment are ripe for resolution and should not be frustrated by untimely and immaterial discovery.

The grounds for this motion are further set forth in, and supported by, the accompanying *Memorandum in Support of Motion for Protective Order and Motion to Lift Stay of Briefing Schedule* and the *Affidavit of David I. Stanish*.

Pending the accompanying *Motion for Expedited Hearing*, oral argument on this motion shall take place on October 6, 2009 at 11:00 a.m.

PRAYER FOR RELIEF

1. That the Court enter a protective order against all further discovery related to the issues pending on summary judgment;
2. That the Court enter an order lifting the stay on the briefing in the Minidoka Power Rights subcases and setting the following briefing deadlines for the pending motions for summary judgment:

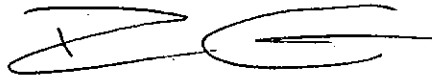
October 13, 2009	Deadline for response briefs
October 27, 2009	Deadline for reply briefs

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

RESPECTFULLY SUBMITTED this 1st day of October 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 1st day of October 2009, I caused to be served the original and copies of the **MOTION FOR PROTECTIVE ORDER AND MOTION TO LIFT STAY OF BRIEFING SCHEDULE** 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
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