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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

)
) Consolidated Subcase No. 00-92023 (92-23)
)
) Subcase Nos. 02-10135, 36-02013,
) 36-02018, 36-02026
)
) **STATE OF IDAHO'S AND IDAHO**
) **POWER COMPANY'S JOINT MOTION**
) **FOR RECONSIDERATION**

The State of Idaho and Idaho Power Company ("Movants"), by and through their counsel of record, and pursuant to Rule 11(a)(2)(B) of the Idaho Rules of Civil Procedure, hereby jointly move this Court for reconsideration of the *Order On Motion For Approval Of Settlement*, entered January 4, 2010 in Consolidated Subcase No. 00-92023 and Subcases Nos. 02-10135, 36-02013, 36-02018 and 36-02026 ("*Order*").

The Movants seek reconsideration of only one aspect of the *Order*. The *Order* required the word "future" to be stricken from, and the phrase "made after October 25, 1984" to be inserted into, Provision 1 of the partial decrees for the water rights to be held in trust by the State of Idaho. *Order* at 20. The Movants seek reconsideration of this part of the *Order*, and request that this Court modify the *Order* to require the phrase "future beneficial uses under water rights" to be stricken, and replaced with the phrase "any other water right." The Movants also request three additional non-substantive changes to conform Provision 1 to this modification. Thus, this motion seeks the following modifications to Provision 1 of the partial decrees for the water rights to be held in trust by the State (as compared to Provision 1 as originally proposed by the Movants in their joint motions of June 25, 2009):

Legal title to this water right is held in trust by the State of Idaho, by and through the Governor, for the benefit of Idaho Power Company as the user of the water for power purposes and for the benefit of the people of the State of Idaho. In addition to the subordination to the water rights defined in paragraph nos. 4 and 5 below, this water right shall be subject to subordination to and depletion by any other water right ~~future beneficial uses under water rights~~ acquired pursuant to applicable state law, unless ~~any such other~~ such other water right is unlawfully exercised or ~~such use~~ depletes or will deplete the average daily flow of the Snake River below 3900 CFS from April 1 to October 31 or below 5600 CFS from November 1 to March 31 as measured at the "Murphy Gaging Station" described below in paragraph no. 2. Average daily flow, as used herein, shall be based upon

actual flow conditions; thus, any fluctuations resulting from the operation of Idaho Power Company facilities shall not be considered in the calculation of such flows. Flows of water purchased, leased, owned or otherwise acquired by Idaho Power Company from sources upstream of its power plants, including above Milner Dam, and conveyed to and past its plants below Milner Dam shall be considered fluctuations resulting from the operation of Idaho Power Company facilities. Fluctuations resulting from Idaho Power Company's operations are the sole exclusion to the rule that all flows actually present at the Murphy Gaging Station constitute actual flow conditions. Flows of water purchased, leased, owned or otherwise acquired by other entities are not considered fluctuations.

Pursuant to Rules 7(b)(3)(C) and (E) of the Idaho Rules of Civil Procedure, the Movants will submit a brief in support of this motion within fourteen (14) days that explains the basis for the modifications requested herein. The Movants request oral argument on this motion.

Respectfully submitted this 15th day of January 2010.

STATE OF IDAHO

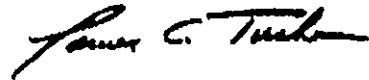


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of January 2010, I caused a true and correct copy of the foregoing STATE OF IDAHO AND IDAHO POWER COMPANY'S JOINT MOTION FOR RECONSIDERATION to be served on the following parties by the indicated methods:

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