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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Idaho Power Company

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	
	)	Subcase Nos. 01-2064, 01-10485, 01-
Case No. 39576	)	10486, 01-10487
	)	
	)	IDAHO POWER COMPANY'S
	)	MOTION TO AMEND OBJECTION
	)	AND TO WITHDRAW CLAIMS
	)	

Idaho Power Company ("Idaho Power"), by and through its undersigned attorneys,
hereby moves the Court for an order permitting Idaho Power to amend its objection in subcase
no. 01-2064, and to withdraw its claims in subcase nos. 01-10485, 01-10486 and 01-10487.

The grounds for this motion are as follows:

1. On or about January 5, 2006, Idaho Power filed three Notices of Claim to a Water
Right, which are now at issue in subcase nos. 01-10485, 01-10486 and 01-10487.

2. The Director's Report issued in Basin 1 recommended that each of the water right claims in subcase nos. 01-10485, 01-10486 and 01-10487 be "Disallowed," for the reason that the water rights were "Recommended as Right No. 1-2064."

3. On or about April 20, 2007, Idaho Power filed its objection in subcase no. 01-2064, which subcase related to the United States' storage water rights claim for American Falls Reservoir, and asserted that the quantity of water right 01-2064 should be "adjusted to take account of Objector Idaho Power Company's claims" under water right claim nos. 01-10485, 01-10486, and 01-10487, which were disallowed by the Director.

4. After further consideration of the Director's Report, water right claim no. 1-2064 and the objections and responses filed that subcase, Idaho Power Company believes that the integrated and comprehensive resolution of all issues related to water right claims nos. 01-10485, 01-10486, and 10-10487 and Idaho Power's interests at American Falls Reservoir can most efficiently be addressed by the amendment of Idaho Power's objection to water right no. 01-2064 and the withdrawal of water right claim nos. 01-10485, 01-10486, and 01-10487.

6. No party will be prejudiced by this amendment.

An amended objection is attached hereto as Exhibit A.

A memorandum in support of this motion, if required, may follow in accordance with the Idaho Rules of Civil Procedure.

Oral argument is requested on this motion.

PRAYER FOR RELIEF

1. That the Court grant Idaho Power's motion to amend its objection in subcase no. 01-2064;

2. That the Court grant Idaho Power's motion to withdraw its water right claims in subcase nos. 01-10485, 01-10486 and 01-10487.

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

Respectfully submitted,

DATED: January 21, 2010

IDAHO POWER COMPANY

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January, 2010, I caused to be served a true and correct copy of the foregoing document entitled **IDAHO POWER COMPANY'S MOTION TO AMEND OBJECTIONS AND TO WITHDRAW CLAIMS** to and delivered per the method indicated below:

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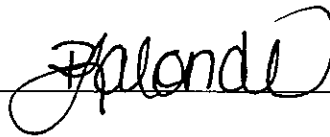


EXHIBIT A

**TO IDAHO POWER COMPANY'S MOTION TO AMEND
OBJECTION TO WITHDRAW CLAIMS**

**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

)
)
)
)
)

A. Subcase No. 01-2064

**STANDARD FORM 1
OBJECTION - AMENDED**

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING:

Name: IDAHO POWER COMPANY
Address: P. O. BOX 70
BOISE, IDAHO 83707
Daytime Phone: (208) 388-2112

Name and Address of Attorney, if any:

James C. Tucker
Idaho Power Company
P. O. 70
Boise, Idaho 83707
Telephone: (208) 388-2112

James S. Lochhead
Michael A. Gheleta
Brownstein Hyatt & Farber, PC
410 17th St., 22nd Floor
Denver, CO 80202
Telephone: (303) 223-1100

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: United States of America, acting through
Regional Director PN Region
U.S. Bureau of Reclamation PN-3100

Address: 1150 N. Curtis Rd., Ste 100
BOISE, IDAHO 837006-1234

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate boxes):

1. ☒ **Name and Address**

Should be: Clarified in the name and address section and/or by a remark consistent with the decision in *United States of America v. Pioneer Irrigation District*, 157 P.3d 590 (ID 2007), and the Memorandum Decision of April 21, 1971 in the Matter of Permit Nos. 01-2041 and 01-2065.

2. ☐ **Source**

Should be:

3. ☒ **Quantity**

Should be: (1) this element should be clarified to reflect the Objector Idaho Power Company's interests in American Fall Reservoir under its contract #s Ilr-733 and Ilr-733S.

(2) The following remark should be included under this element: "This water right includes the right of storage, regulation, downstream delivery and refill under the priority date of this water right to satisfy the United States' contracts."

4. ☐ **Priority Date**

Should be:

5. ☐ **Point(s) of Diversion**

Should be:

6. ☐ **Instream Flow Beginning and Ending Point**

Should be:

7. ☒ **Purpose(s) of Use**

Should be:

Irrigation storage should be 1,655,000 AFY

Irrigation from storage should be 1,655,000 AFY

Power storage should be 300,000 AFY

Power from storage should be 300,000 AFY

The following remark under this element should be amended to provide:

The exercise of this water right is subject to the obligation of the United States to comply with the terms and conditions contained in contract nos. Ilr-733 and Ilr-733S between the United States Bureau of Reclamation and Idaho Power Company.

The following remark should be added under this element as being necessary for the administration or definition of this water right:

The 45,000 acre-feet of primary reservoir storage held by Idaho Power Company in American Falls Reservoir under its contracts, including contract nos. Ilr-733 and Ilr-733S, is for power use at Idaho Power's hydroelectric projects downstream from American Falls Reservoir.

8. ☐ **Period of Year**
Should be:

9. ☐ **Place of Use**
Should be:

10. ☐ **I object because:**

☐ This water right should not exist

☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

Element # 1 (Name and Address), Element # 3 (Quantity) and # 7 (Purpose of Use) –

The Idaho Power Company has been involved in the development and use of water from the American Falls dam and reservoir project since its inception in the early 1920's. Under the contract dated June 15, 1923, symbol Ilr-733, which remains in effect today ("1923 Contract") and the contract dated March 31, 1976, symbol Ilr-733S (the 1976 Spaceholder Contract), the United States granted to Idaho Power, and Idaho Power reserved, storage capacity and a water right in the Reservoir of 45,000 acre-feet of active or primary storage for hydropower use. Under the 1923 Contract, the United States granted to Idaho Power, and Idaho Power reserved, secondary storage capacity "when such capacity is not then required and not being used by the owners of irrigation rights to the use of such capacity," and a water right for the use of up to 255,000 acre-feet of water during the period October 1-June 15, for the purpose of storing and regulating water in, and delivering water through, the Reservoir during such period so as to meet specified flows for hydropower use at Idaho Power's hydroelectric projects downstream from American Falls Reservoir, subject to specified terms and conditions. This contract obligation remains in effect.

Pursuant to this contractual relationship with the United States, in March of 1921, Idaho Power filed state water right applications which resulted in certain water right permits (Permit Nos. 01-2065 and 01-2041) being issued by Idaho Department of Reclamation (now the Idaho

Department of Water Resources/IDWR). By Memorandum Decision dated April 21, 1971, the Director of IDWR found that "the rights established by Idaho Power Company, by reason of permit Nos. 01-2041 and 01-2065, have been merged with rights granted to the United States of America and that by reason of contracts and agreements entered into between the Company and the United States of America, Bureau of Reclamation, those rights are held in trust for use by the Company under the water rights of the United States at American Falls Reservoir." The Director further found that "since the Company's rights to water at American Falls Dam and Reservoir are already covered by reason of Licenses issued to the United States of America, under Permit Nos. R-269 and 4168 and contracts between the Company and the United States of America, that Permit Nos. 01-2041 and 01-2065 are duplicate and should be cancelled."

In addition, the Idaho Supreme Court, in *United States of America v. Pioneer Irrigation District*, 157 P.3d 590 (ID 2007), held that "federal law defers to state law in determining the rights to water in the reclamation projects," and ordered remark language concerning ownership of the water rights associated with a Bureau of Reclamation project. The holding in *Pioneer* is equally applicable in this case.

VERIFICATION

State of COLORADO)
) ss.
County of Denver)

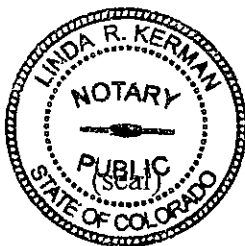
MICHAEL A. GHELETA, duly sworn, upon oath, deposes and says:

That the Idaho Power Company is filing this objection, that I am the attorney for the objecting party, as defined by I.C. §§ 42-1401A(6) and (7), and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Michael Ghobara
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: January 21, 2010

Linda R. Yarnall



My Commission Expires June 24, 2011

Notary Public for: Colorado
Residing at:
My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January, 2010, I caused to be served a true and correct copy of the foregoing document entitled **AMENDED OBJECTION** to and delivered per the method indicated below:

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