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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

Case No. 39576

)
) Subcase No. 01-02064
)

) (American Falls Hydropower Storage
) Subcase)
)

) **RESPONSE TO IDAHO POWER**
) **COMPANY'S MOTION TO ALTER**
) **OR AMEND**
)

The State of Idaho, by and through the undersigned deputy attorney general, hereby submits its response to the Idaho Power Company's April 21, 2011 *Motion to Alter or Amend*.

I. DISCUSSION

Idaho Power claimed a right to 300,000 acre feet of power storage in the American Falls Reservoir. On summary judgment, the Court found that Idaho Power's secondary storage right of 255,000 acre feet no longer exists, leaving Idaho Power with a storage contract right to only

45,000 acre feet. There is no allegation in Idaho Power's *Motion to Alter or Amend* that the Court should reconsider its finding that Idaho Power's storage contract is limited to 45,000 acre feet. Instead, Idaho Power seeks to amend statements made by the Court regarding the relationship between the company's storage contract right and the amount of operation and maintenance (O&M) charges the company pays as a spaceholder to the United States Bureau of Reclamation (USBOR). The State takes no position on Idaho Power's narrow request for relief for the following reasons.

First, the fundamental issue decided on summary judgment regarding the quantity of power storage at American Falls is no longer in dispute. The Court found that Idaho Power is entitled to only 45,000 acre feet of power storage, and the company confirmed that it is no longer pursuing its claim to a greater amount: "The Special Master also found that the Company's entitlement to secondary storage capacity under the 1923 Contract was extinguished by the 1976 Spaceholder Contract. The Company is not pursuing that issue further in these proceedings" *Idaho Power Company's Motion to Alter or Amend* at 2 n.1 (Apr. 21, 2011).

Second, the nature and extent of the O&M charges Idaho Power pays—or should pay—as a spaceholder is a private contractual issue between Idaho Power and the USBOR that need not be decided to support the Court's finding that Idaho Power has a right to only 45,000 acre feet of power storage at American Falls.

II. CONCLUSION

The State takes no position on the relief requested in Idaho Power's *Motion to Alter or Amend* regarding the company's contractual obligation to pay O&M charges to the USBOR. The State requests, however, that the Court expressly find that Idaho Power has abandoned its claim to storage contract rights at American Falls in excess of 45,000 acre feet.

DATED this 23rd day of May 2011.

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', is written over a horizontal line.

DAVID I. STANISH
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 23rd day of May 2011, I caused to be served the original and copies of the State of Idaho's **RESPONSE TO IDAHO POWER COMPANY'S MOTION TO ALTER OR AMEND** on the following persons by the methods indicated:

1. Original to:

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2. Copies to:

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