

6-8

RECEIVED

JUN 13 2011

DEPARTMENT OF
WATER RESOURCES

James C. Tucker
Senior Attorney
IDAHO POWER COMPANY
1221 West Idaho Street
Boise, ID 83702-5627
(208) 388-2112 – Telephone
(208) 388-6935 – Facsimile
jtucker2@idahopower.com

Adam T. DeVoe, Esq.
David G. Scott, Esq.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
(303) 223-1100 – Telephone
(303) 223-1111 – Facsimile
adevoe@bhfs.com; dscott@bhfs.com

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	)	
	)	
Case No. 39576	)	Subcase 01-2064
	)	(American Falls Reservoir Hydropower Storage)
	)	
	)	
	)	IDAHO POWER COMPANY'S
	)	REPLY TO UNITED STATES

COMES NOW Idaho Power Company ("Idaho Power" or the "Company"), by and
through its undersigned attorneys, and hereby submits this *Reply to the United States' Response*
to Idaho Power Company's Motion to Alter or Amend in the above-captioned subcase.

STATEMENT OF POSITION

The United States' Response to the Company's Motion to Alter or Amend appears to misconstrue the Company's purpose for filing the Motion. The Company is not asking the Special Master to amend its conclusions of law relative to the Company's secondary storage right. Instead, the Company is asking the Court to reconsider its references in dicta to the amount the Company pays for the Operation and Maintenance ("O&M") of the American Falls Reservoir.

To be perfectly clear, the Company fully intends to pursue damages and injunctive relief against the United States in federal court for the Company's O&M overpayments, and it would be unjust for this Court's opinion to be misconstrued in federal court to have reached a legal conclusion relative to the Company's contractual O&M payments. The purpose of the Company's Motion, in addition to asking the Special Master to address evidentiary inconsistencies in the Order, is to ask the Special Master to clarify that the Order did not reach a legal conclusion as to the propriety of the Company's O&M payments.

DISCUSSION

Idaho Power filed a motion to alter or amend the Special Master's Order of March 31, 2011 because the Order contains incorrect dicta concerning the amount the Company is charged for the O&M of the American Falls Reservoir. Specifically, the Court stated

As the United States pointed out, there is no firm evidence of a connection between Idaho Power's O&M payments and its storage rights. Neither is there evidence why Idaho Power agreed to continue paying the same percentage when its secondary storage right ended with the 1976 Placeholder Contract.

Order at 24.

In fact, the Company has presented evidence linking the amount of the Company's O&M payments to the amount of water the Company believed it held in the Reservoir, and explaining

that the Company continued paying over 7% of the Reservoir's O&M payments because it believed it maintained a secondary storage right after the 1976 Contract was enacted. For these factual reasons alone the Order should be amended.

Putting the evidentiary question aside, however, the Company's purpose in filing the Motion is straight forward. The Company is not asking the Court to alter its Conclusions of Law. Instead, the Company is asking the Court to acknowledge that it was not making a determination on the contractual relationship that the Company has with the United States for Operation and Maintenance charges, and to amend the Order accordingly. The issue that was before this Court was whether or not the Company maintained a secondary storage right in American Falls. This Court was not asked to make a contractual determination as to whether the Company's O&M charges should be decreased or whether the Company has been paying too much for O&M since 1976.

The Company asks the Court to, at the very least, amend its Order to clarify that the Court takes no position on the amount the Company should be paying for O&M as an American Falls Spaceholder.

"

"

"

"

"

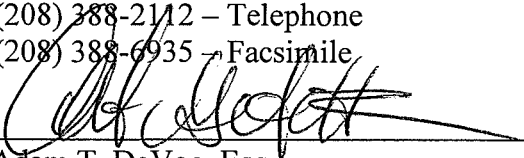
"

DATED this 8th day of June, 2011.

IDAHO POWER COMPANY

James C. Tucker, ISB No. 2038
Senior Attorney
IDAHO POWER COMPANY
1221 West Idaho Street
Boise, ID 83702-5627
(208) 388-2112 – Telephone
(208) 388-6935 – Facsimile

By: _____


Adam T. DeVoe, Esq.
David G. Scott, Esq.
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
(303) 223-1100 – Telephone
(303) 223-1111 - Facsimile

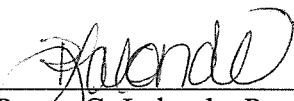
Attorneys for Idaho Power Company

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2011, I caused the foregoing document entitled **IDAHO POWER COMPANY'S REPLY TO THE UNITED STATES** to be filed with the Court and served per the method indicated below upon the following:

Clerk of the District Court Snake River Basin Adjudication 253 Third Avenue North PO Box 2707 Twin Falls, ID 83303-2707	☒ Facsimile Filed: 208.736.2121
IDWR Document Depository PO Box 83720 Boise, ID 83720-0098	☒ U.S. Mail, postage prepaid
United States Department of Justice Environment and Natural Resources Division 550 West Fort Street, MSC 033 Boise, ID 83724	☒ U.S. Mail, postage prepaid
Clive Strong David Stanish Office of the Attorney General Natural Resources Division 700 West State Street Joe R. Williams Building, Second Floor P.O. Box 83720 Boise, Idaho 83720-0010	☒ E-Mail: clive.strong@ag.idaho.gov david.stanish@ag.idaho.gov
David Gehlert David Jarvis United States Department of Justice Environment & Nat'l Resources Div 1961 Stout Street, 8 th Floor Denver, CO 80294	☒ E-Mail david.gehlert@usdoj.gov david.jarvis2@usdoj.gov
Gloria Baimbridge – Project Manager U.S. Dept. of Justice – ENRD c/o U.S. Attorney's Office, Dist. of Idaho Washington Group Plaza IV 800 Park Blvd. Suite 600 Boise, ID 83712-9415	☒ E-Mail Gloria.Baimbridge@usdoj.gov

Randy Budge Candice M. Hugh Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center, Suite A2 PO Box 1391 Pocatello, ID 83204-1391	☒ E-Mail rcb@racinelaw.net cmm@racinelaw.net
Roger D. Ling 615 H Street, P.O. Box 396 Rupert, ID 83350-0396	☒ E-Mail rdl@idlawfirm.com
Travis Thompson John Simpson Barker Rosholt & Simpson LLP 113 Main Avenue W, Suite 303 PO Box 485 Twin Falls, ID 83301	☒ E-Mail tlt@idahowaters.com jks@idahowaters.com
Tom Arkoosh P.O. Box 32 Gooding, ID 83330	☒ E-Mail tarkoosh@capitolawgroup.net
Jerry R. Rigby Rigby, Andrus & Rigby, Chartered 25 North Second East Rexburg, Idaho 83440	☒ E-Mail jerry.rigby@gmail.com
W. Kent Fletcher 1200 Overland Avenue, PO Box 248 Burley, ID	☒ E-Mail wkf@pmt.org



Penny G. Lalonde, Paralegal