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DEPARTMENT OF
WATER RESOURCES

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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 THE STATE OF IDAHO

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

STATEMENT OF POSITION

The State of Idaho (the "State") "takes no position on the relief requested in Idaho Power Company's Motion to Alter or Amend," State's Resp. at 2. The State correctly points out that

[T]he 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.

In essence, this is the point the Company sought to raise with the Court in its Motion to Alter or Amend. The Special Master's Conclusions of Law address whether or not the Company holds a secondary storage right in the American Falls Reservoir. The Order did not reach a Conclusion of Law as to whether the Company has been, and is being, overcharged for O&M as an American Falls Spaceholder. Since the Company fully intends to pursue damages and injunctive relief in federal court for the overpayments, it asks the Special Master to amend the Order to, at a minimum, clarify that the Court was not asked to, and did not, rule on the propriety of the amount the Company pays for O&M as an American Falls Reservoir Spaceholder.

DISCUSSION

The issue before the Court in this proceeding was whether the Company maintained a contractual right to secondary storage capacity in the American Falls Reservoir. In making its argument that it maintained such a right, the Company referenced its over-7% proportional O&M fee as evidence that it did, indeed, still have a secondary storage capacity right in the Reservoir.

In its Conclusions of Law, the Court determined that the secondary storage right was "extinguished" in 1976. Order at 27. While the Special Master referenced the Company's O&M argument, and the United States' response, in its discussion of the issues it considered in reaching this conclusion, Order at 24, the Special Master did not reach a conclusion as to whether the Company's O&M payments are inconsistent with its storage space given that it currently holds

45,000 acre-feet of storage space in the Reservoir. Order at 27. It is this dicta that is of concern to the Company.

In raising the O&M issue, it was not the intention of the Company to comprehensively argue that its O&M payments should be lower, it was instead the Company's intention to present an additional reason to the Court why the Company believed it still maintained its secondary storage right. The Company fully intends to argue in federal court that, given this Court's ruling on the secondary storage issue, it is indeed paying more than its share of O&M for the American Falls Reservoir and it has done so since 1976. As such, it is important for this Court to acknowledge, at the very least, that it did not make a legal determination as to whether the Company's O&M payments should be reduced when it discussed the Company's O&M argument in the Order.

The Company asks the Court to Amend the Order accordingly to make this point clear so that the Special Master's statements are not misconstrued in federal court.

Additionally, the Company points out that in its Response, the State asks the Court to "expressly find that Idaho Power Company has abandoned its claim to storage contract rights at American Falls in excess of 45,000 acre-feet." *Id.* The Company asks the Court to reject this request for the same reasons the Company raised in its Response to the State's Motion to Alter or Amend.

It is imperative that the Court make no statement that could be interpreted as a legal bar to the Company obtaining additional storage space in the Reservoir in the future, or to using irrigation releases for power generation pursuant to the Falling Water Contract. While the Company understands the State's request, there is no reason to tie the Company to a specific acre-foot limit in the Reservoir, or to suggest that only a limited amount of storage space in the

Reservoir is available for power generation.

CONCLUSION

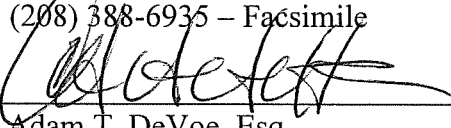
The Company urges the Special Master to revise the Order in the manner presented in the Company's Motion to Alter or Amend, and also urges the Special Master to reject the State's call for the inclusion of specific acre-foot limits applicable to the Company or to stored water available for power generation in the Order.

DATED this 8th day of June, 2011.

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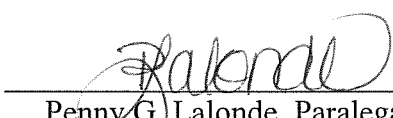
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2011, I caused the foregoing document entitled **IDAHO POWER COMPANY'S REPLY TO THE STATE OF IDAHO** 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
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