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DEPARTMENT OF
WATER RESOURCES

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Attorney for the State of Idaho

**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	)	
	)	Subcase Nos. 03-00006, 03-00007, and
	)	03-00008
	)	
Case 39576	)	
	)	MOTION TO SET ASIDE AND AMEND
	)	PARTIAL DECREES
	)	
	)	

The Idaho Water Resource Board ("IWRB") moves the Court pursuant to rules 11 and 14(d) of SRBA Administrative Order 1 ("AO1") and rules 7(b)(1) and 60(b) of the Idaho Rules of Civil Procedure for an order setting aside and amending partial decrees 03-00006, 03-00007, and 03-00008.

The IWRB requests that the following elements of partial decree 03-00006 be amended to read as follows:

Point of Diversion: Weiser Gaging Station, located at T11N R05W S31 NWSE
Lot 2 within Washington County.

Place of Use: Place of use is within the reaches of the Snake River above and
below the point of measurement of the minimum stream flow
right.

In addition, the IWRB requests that the following provision be added to the “other provisions
necessary for definition or administration of this water right” element of partial decree 03-00006:

This water right shall not be administered or enforced against any water rights
diverting from the waters of the Snake River or surface or ground water tributary
to the Snake River upstream from the Murphy Gage, (T01S, R01W, S35, NWSE,
Boise Meridian, on the right bank approximately 4.2 miles downstream from
Swan Falls Power Plant).

Finally, the IWRB requests deletion of the following sentence from the “purpose and period of
use” element of partial decree 03-00006:

Use of water under this right shall be non-consumptive.

The IWRB requests that the following elements of partial decree 03-00007 be amended
to read as follows:

Quantity: 5,000.000 CFS

The average daily flows are to be maintained 95 per cent of the time, in
accordance with the Snake River Policy of the Idaho State Water Plan.

Place of Use: Place of use is within the reaches of the Snake River above and below the
point of measurement of the minimum stream flow right.

The IWRB requests that the following provision be added to the “other provisions necessary for
definition or administration of this water right” element of partial decree 03-00007:

This water right shall not be administered or enforced against any water rights
diverting from the waters of the Snake River or surface or ground water tributary
to the Snake River upstream from Hells Canyon Dam (River Mile 247.6).

Finally, the IWRB requests deletion of the following sentence from the “priority date” element
of partial decree 03-00007:

Water right confirmed by legislative adoption of the State Water Plan, Policy 5A in 1992.

The IWRB requests that the following elements of partial decree 03-00008 be amended to read as follows:

Quantity: 13,000 CFS

The average daily flows are to be maintained 95 per cent of the time, in accordance with the Snake River Policy of the Idaho State Water Plan.

Place of Use: Place of use is within the reaches of the Snake River above and below the point of measurement of the minimum stream flow right.

The IWRB requests that the following provision be added to the “other provisions necessary for definition or administration of this water right” element of partial decree 03-00008:

This water right shall not be administered or enforced against any water rights diverting from the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Johnson Bar (River Mile 229.9), and any water rights diverting waters of the Salmon River or surface or ground water tributary to the Salmon River.

Finally, the IWRB requests deletion of the following sentence from the “priority date” element of partial decree 03-00008:

Water right confirmed by legislative adoption of the State Water Plan, Policy 5A in 1992.

The grounds for this motion are set forth in the IWRB’s Memorandum in Support of Motion to Set Aside and Amend Partial Decrees 03-00006, 03-00007 and 03-00008. The form of each proposed partial decree is set forth in attachments 1-3.

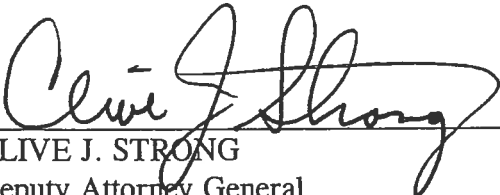
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DATED this 15th day of July 2011.

LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July 2011, I caused a true and correct copy of the foregoing MOTION TO SET ASIDE AND AMEND PARTIAL DECREES to be filed with the Court and served on the following parties by the indicated methods:

CLERK OF THE SRBA COURT
253 THIRD AVENUE NORTH
P.O. BOX 2707
TWIN FALLS, IDAHO 83303-2707

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Statehouse Mail
- ☐ Overnight Mail
- ☐ Facsimile:

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
322 E FRONT ST
PO BOX 83720
BOISE, ID 83720-0098

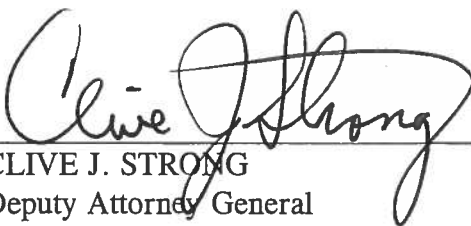
- ☐ U.S. Mail
- ☐ Hand Delivery
- ☒ Statehouse Mail
- ☐ Overnight Mail
- ☐ Facsimile:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☒ Statehouse Mail
- ☐ Overnight Mail
- ☐ Facsimile:

UNITED STATES DEPT OF JUSTICE
ENVIRONMENT & NAT'L RES. DIV.
550 WEST FORT STREET MSC 033
BOISE ID 83724

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Statehouse Mail
- ☐ Overnight Mail
- ☐ Facsimile:



CLIVE J. STRONG
Deputy Attorney General

Proposed Partial Decree for Water Right 03-00006

ATTACHMENT 1

TO

MOTION TO SET ASIDE AND AMEND PARTIAL
DECREES

ATTACHMENT 1

In Re SRBA) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 03-00006

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

The quantity of this right is the average daily flow measured by the Weiser gaaging station.

POINT OF
DIVERSION: Weiser Gaging Station, located at T11N R05W S31 NWSE Lot 2 within WASHINGTON
County.

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MINIMUM STREAM FLOW	1/01 12/31	4.750.000 CFS

Place of use is within the reaches of the Snake River above and below the point of measurement of the minimum stream flow right.

This water right shall not be administered or enforced against any water rights diverting from the waters of the Snake River or surface or ground water tributary to the Snake River upstream from the Murphy Gage (T01S, R01W, S35, NWSE, Boise Meridian, on the right bank approximately 4.2 miles downstream from Swan Falls Power Plant).

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication

Proposed Partial Decree for Water Right 03-00007

ATTACHMENT 2

TO

MOTION TO SET ASIDE AND AMEND PARTIAL
DECREEES

ATTACHMENT 2

In Re SRBA) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 03-00007

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

The average daily flows are to be maintained 95 per cent of the time, in accordance with the Snake River Policy of the Idaho State Water Plan.

Johnsons Bar gaging station located on the left bank of the Snake River at river mile 229.9.

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MINIMUM STREAM FLOW	1/01 12/31	5,000.000 CFS

Place of use is within the reaches of the Snake River above and below the point of measurement of the minimum stream flow right.

This water right shall not be administered or enforced against any water rights diverting from the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Hells Canyon Dam, (River Mile 247.5).

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication

Proposed Partial Decree for Water Right 03-00008

ATTACHMENT 3

TO

MOTION TO SET ASIDE AND AMEND PARTIAL
DECREEES

ATTACHMENT 3

In Re SRBA) PARTIAL DECREE PURSUANT TO
)
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 03-00008

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

PRIORITY DATE: 07/01/1985

Lime Point gaging station located at river mile 172.

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MINIMUM STREAM FLOW	1/01 12/31	13,000.000 CFS

Place of use is within the reaches of the Snake River above and below the point of measurement of the minimum steam flow right.

This water right shall not be administered or enforced against any water rights diverting from the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Johnson Bar (River Mile 229.9), and any water rights diverting waters of the Salmon River or surface or ground water tributary to the Salmon River.

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RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication