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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	)	
	)	Subcase No. 27-11375
	)	
Case No. 39576	)	STATE OF IDAHO'S REPLY
	)	
_____	)	

The State of Idaho, by and through its counsel of record, hereby submits this reply to responses to its pending Motion to Alter or Amend.

The Shoshone-Bannock Tribes and the United States assert in their response that the State's Motion is improper under I.R.C.P. 59(e), because the Memorandum Decision is interlocutory in nature and does not qualify as a judgment. The State disagrees.

Since the Idaho Rules of Civil Procedure do not provide for a motion for reconsideration of a grant of summary judgment, such a motion may be properly treated

as a motion to alter or amend the judgment. *Willis v. Larsen*, 110 Idaho 818, 821, 718 P.2d 1256, 1259 (Ct. App. 1986). A petition to reconsider a memorandum decision was properly treated as a motion to alter or amend judgment. *Obray v. Mitchell*, 98 Idaho 533, 538, 567 P.2d 1284, 1289 (1977). The purpose of a motion to alter or amend is to provide a corrective mechanism short of appeal. *Lowe v. Lym*, 103 Idaho 259, 262, 646 P.2d 1030, 1033 (Ct. App. 1982). Rule 59(e) was designed to allow the trial court to correct errors of fact and law which had occurred in its proceedings, thereby providing a mechanism for circumventing appeal, and the purposes of the respective rules indicate that resort should be made to this rule if the time limitation for such relief has not expired when the motion is served. *First Sec. Bank v. Neibaur*, 98 Idaho 598, 603, 570 P.2d 276, 281 (1977).

The State's Motion observes that the Court's holding as to equitable adjustment in its Memorandum Decision and Order ("Order"), is potentially misleading because, although the Court's analysis within the body of the brief clearly states that equitable adjustment is *not limited to* supplementation of the Tribes surface water rights with storage and ground water, the stated holding on page one of the Order states that the parties did not intend that the equitable adjustment be in the form of such supplementation. The State is requesting that the Court clarify its Order—a corrective mechanism short of appeal—to eliminate future controversy as to its holding.

Given the lack of an appropriate alternative by which to request the clarification desired, the State styled its Motion as a motion to alter or amend in keeping with the case law cited above. The Motion was timely filed under Rule 59(e) and is in keeping with

the nature and purpose of that Rule. The State therefore requests that the Court hear and grant its Motion.

Respectfully submitted this 22nd day of July, 2011.

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A handwritten signature in black ink, appearing to read 'SHASTA KILMINSTER-HADLEY', written over a horizontal line.

SHASTA KILMINSTER-HADLEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July 2011, I caused a true and correct copy of the foregoing STATE OF IDAHO'S REPLY to be filed with the Court and served on the following parties by the indicated methods:

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