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DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
700 West Jefferson Street Room 210
P.O. Box 44449
Boise, ID 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

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	)	AMENDED 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:

Quantity: 4,750 CFS Average Daily Flow

Point of Diversion: T11N R05W S31 NWSE Lot 2 within Washington County.

Place of Use: Satisfaction of flow for this right is determined at the Weiser Gaging Station, described below.

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

The Weiser Gaging Station is located at T11N, R05W, S31, NWSE, Lot 2, within Washington County.

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 Average Daily Flow

Point of Diversion: T24N R02W S3 NENW Lot 3 Within IDAHO County

Place of Use: Satisfaction of flow for this right is determined at the Johnson Bar Gaging Station, described below.

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:

The Johnson Bar Gaging Station is located in Oregon across the Snake River from T24N, R02W, S03, NENW, Lot 3 within Idaho County near river mile 230.

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 Average Daily Flow

Point of Diversion: T31N R05W S10 NENE Lot 1 Within NEZ PERCE County

Place of Use: Satisfaction of flow for this right is determined at Lime Point, described below.

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

Lime Point is located in T31N, R05W, S10, NENE, Lot 1 within Nez Perce County at river mile 172.

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.

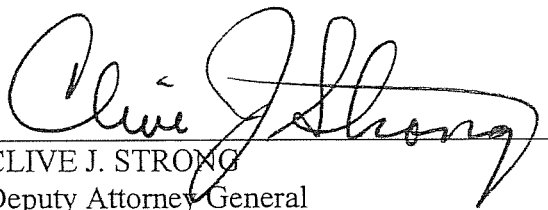
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DATED this 4th day of August 2011.

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 4th day of August 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: (208)736-2121

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

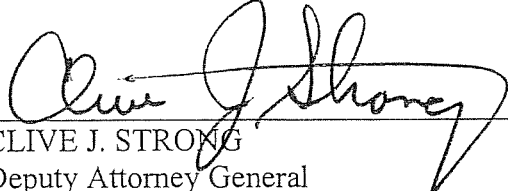
- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Statehouse Mail
- ☐ Overnight Mail
- ☒ Facsimile: (208) 287-6700

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
DECREEES

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
QUANTITY:	4,750.000 CFS	AVERAGE DAILY FLOW
PRIORITY DATE:	12/29/1976	

PURPOSE AND
PERIOD OF USE:

Satisfaction of flow for this right is determined at the Weiser Gaging Station, described below.

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 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)
)
) Water Right 03-00007

NAME AND ADDRESS: STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
322 E FRONT ST
PO BOX 83720
BOISE ID 83720-0098

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

QUANTITY: 5,000.000 CFS AVERAGE DAILY FLOW

PRIORITY DATE: 07/01/1978

POINT OF
DIVERSION: T24N R02W S03 NENW Lot 3 within IDAHO County.

PURPOSE AND
PERIOD OF USE:

<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:

Satisfaction of flow for this right is determined at the Johnson Bar Gaging
Station, described below.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The Johnson Bar Gaging Station is located in Oregon across the Snake River from
T2N, R02W, S03, NENW, Lot 3 within Idaho County near river mile 230.

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 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)
)
) PARTIAL DECREE PURSUANT TO
 I.R.C.P. 54(b) FOR
 Water Right 03-00008

NAME AND ADDRESS: STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
322 E FRONT ST
PO BOX 83720
BOISE ID 83720-0098

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER
QUANTITY: 13,000.000 CFS AVERAGE DAILY FLOW

PRIORITY DATE: 07/01/1985

POINT OF
DIVERSION:
 T31N R05W S10 NENE Lot 1 Within NEZ PERCE County

PURPOSE AND
PERIOD OF USE:

<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:

Satisfaction of flow for this right is determined at Lime Point, described below.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

Lime Point is located in T31N, R05W, S10, NENE, Lot 1 within Nez Perce County at river mile 172.

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.

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