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DEPARTMENT OF
WATER RESOURCES

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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 Nos. 27-11269, 27-11271 & 27-11273
	)	
	)	
	)	
Case No. 39576	)	STATE OF IDAHO'S MEMORANDUM IN
	)	RESPONSE TO CLAIMANT'S MOTION TO
	)	ALTER OR AMEND
	)	
	)	

The State of Idaho, ("State"), by and through the undersigned deputy attorney general, herby files this memorandum in response to the *Motion to Alter or Amend the Special Master's Recommendation* filed by Bear Lake Grazing Company ("Bear Lake") seeking an Order altering or amending the April 11, 2011 Special Master's Report in the above-referenced subcases.

On January 20, 2011, the United States of American Bureau of Indian Affairs ("BIA") withdrew its objections to the above-referenced subcases. Shortly thereafter, on January 31, 2011, the Shoshone-Bannock Tribes ("Tribes") withdrew their objections. Aside from the objections filed by the BIA and the Tribes, there were no remaining outstanding objections to STATE OF IDAHO'S MEMORANDUM IN RESPONSE TO CLAIMANT'S MOTION TO ALTER OR AMEND

these subcases. Accordingly, Special Master Bilyeu issued her Special Master Reports as originally recommended by the Idaho Department of Water Resources.

While there is no criteria or standard of review for a motion to alter or amend a special master's report and recommendation in Administrative Order 1, the SRBA Court has held that Rule 60(b), IRCP provides the proper standing governing motions seeking relief from judgments or orders of the court though such relief is only granted in certain situations. Rule 60(b), IRCP states:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application or (6) any other reason justifying relieve from the operation of the judgment.

While Rule 60(b), IRCP is instructive as to standard of review, it is not helpful in understanding the basis of the Bear Lake's motion. The *Motion to Alter or Amend the Special Master's Recommendation* filed by Bear Lakes does not address any of the criteria stated above. The Motion simply states that Bear Lakes moves the Court pursuant to Administrative Order #1, Rule 13(a) to include the quantity and place of use originally claimed.

The Motion to Alter or Amend is perplexing because Bear Lake never objected to the quantity or place of use elements of any of these water rights. At best, the Motion to Alter or Amend appears for all intensive purposes to be a very untimely Motion to File Late Objections, as this is the first instance in nearly six years that issues with these elements of the subject water rights have been raised by Bear Lake Grazing. If this is indeed the case, the Motion to Alter or

Amend is an attempt to circumvent the Court's application of the criteria of IRCP Rule 55(c) for late objections and the requirement that the proponent must show both "good cause" for untimeliness and the existence of a "meritorious position".

The Director's Report for Basin 27 was filed by IDWR on November 11, 2005. Objections to the Director's Report were due on March 17, 2006. The BIA and Tribes did file timely objections to these water rights and initial hearings were held on July 25, 2006. Nearly five years of litigation, settlement discussions and negotiations have gone by, but Bear Lake chose not to raise these concerns until the Special Master's Reports were issued. A history of Bear Lakes failure to participate or use due diligence with regard to their water rights can be found in the Judge Wildman's *Order Denying Motion to File Late Notice of Claim* issued on March 29, 2011, in Subcase No. 27-12216.

Furthermore, all three of these water rights are a part of the Motion for Accounting and Motion for Enforcement of the Fort Hall Consent Decree (27-11375). Changes to the quantity of these water rights could disturb the resolution of those matters as they move forward.

The Motion to Alter or Amend is not proper and it has no basis in fact or law. Filing a Motion to Alter or Amend after the issuance of a Special Master's Report and Recommendation in lieu of an objection to a recommended water right is a practice that has the potential to turn the efficient process of the SRBA on its head. The Motion to Alter or Amend should be denied without hearing and the State of Idaho should be reimbursed its attorney fees and costs incurred for defending against the Motion to Alter or Amend pursuant to IRCP 54(d)(1).

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RESPECTFULLY SUBMITTED this 5th day of August, 2011.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO


SHASTA KILMINSTER-HADLEY
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I certify that on this 5th day of August 2011, I caused to be served the original and copies of the STATE OF IDAHO'S MEMORANDUM IN RESPONSE TO CLAIMANT'S MOTION TO ALTER OR AMEND on the following persons by the indicated method:

Original to: Clerk of the District Court Snake River Basin Adjudication 253 Third Avenue North PO Box 2707 Twin Falls, ID 83303-2707	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☒ Facsimile: (208) 736-2121 ☐ Statehouse Mail
Copies to Shoshone-Bannock Tribes Represented by: Jeanette Wolfley Special Counsel Shoshone-Bannock Tribe 202 N. Arthur Pocatello, ID 83202	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☐ Statehouse Mail
Bear Lake Grazing, Inc. Represented by: Jerry R. Rigby 25 N. 2 nd E. PO Box 250 Rexburg, ID 83440-0250	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☐ Statehouse Mail
United States of America Represented by: US Department of Justice Environment & Natl' Resources 550 West Fort Street, MSC 033 Boise, ID 83724	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☐ Statehouse Mail
Director Of IDWR PO Box 83720 Boise, ID 83720-0098	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☒ Statehouse Mail


Shasta Kilminster-Hadley