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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 No. 01-02064               |
|                | ) |                                    |
| Case No. 39576 | ) | (American Falls Hydropower Storage |
|                | ) | Subcase)                           |
|                | ) |                                    |
|                | ) | <b>MOTION FOR ISSUANCE OF</b>      |
|                | ) | <b>SPECIAL MASTER'S</b>            |
|                | ) | <b>RECOMMENDATION AS TO</b>        |
|                | ) | <b>ELEMENTS RELATED TO</b>         |
|                | ) | <b>HYDROPOWER STORAGE RIGHTS</b>   |
|                | ) |                                    |

The State of Idaho, by and through the undersigned deputy attorney general, hereby moves the Court to issue a Special Master's Recommendation as to elements of Water Right No. 01-02064 that relate to hydropower storage rights.

In March 2011, the Court issued its *Order on Motions for Summary Judgment and Alternative Motion for Declaratory Judgment* ("Order") in this subcase. The Order held that

Idaho Power holds a storage right for 2.65% of primary storage capacity, and that any additional, secondary storage right was extinguished by the 1976 Placeholder Contract. Following the Order, Idaho Power Company and the State filed motions to alter or amend or motions for reconsideration. The issues raised on reconsideration were 1) whether the operation and maintenance (“O & M”) charges paid by Idaho Power Company were properly at issue before this Court, and 2) if the issue of whether the power storage capacity in American Falls is subject to a trust obligation is ripe for decision.

In its *Order on Motion to Alter or Amend and Motion For Reconsideration or, In the Alternative, Motion to Alter or Amend*, dated July 20, 2011 (“Order on Reconsideration”), this Court held that 1) the O&M charges are not properly before the Court and 2) the question of whether the power storage capacity in American Falls reservoir is subject to a trust obligation is “incomplete and not ripe for decision in this proceeding.” *Order on Reconsideration*, at 9. This most recent *Order* effectively resolved all remaining issues relating to hydropower storage rights in American Falls Reservoir. The time in which to appeal the *Order on Reconsideration* is now past.

AO1 9(d) provides that a Special Master may issue a recommendation on a water right claim which has not had full resolution of every element if he or she “certifies to the Presiding Judge that there has been an express determination that there is no just reason for delay for submission to the Presiding Judge.” The State requests that the Court issue a Special Master’s Recommendation in this subcase as to elements related to hydropower storage rights. This will provide the parties finality on the matter and narrow the issues remaining in this subcase that may go to trial. Issuance of a Special Master’s Recommendation on this discrete issue will not frustrate the ongoing settlement discussions between the parties as to other disputed elements of

this water right, but will help clear the field of issues that are no longer in play in this proceeding. Given the remaining issues and the potential for protracted negotiations and litigation thereon, there is no just reason to delay submission of this issue to the District Court. The State therefore respectfully asks that this Court grant its motion and issue a Special Master's Recommendation on the elements of Water right No. 01-02064 that relate to rights for hydropower storage.

RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of September 2011.

LAWRENCE G. WASDEN  
Attorney General

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

  
\_\_\_\_\_  
SHASTA KILMINSTER-HADLEY  
Deputy Attorney General

## CERTIFICATE OF SERVICE

I certify that on this 29<sup>th</sup> day of September 2011, I caused to be served the original and copies of the State of Idaho's **MOTION FOR ISSUANCE OF SPECIAL MASTER'S RESOMMENDATION AS TO ELEMENTS RELATED TO HYDROPOWER STORAGE RIGHTS** on the following persons by the methods indicated:

1. Original to:

CLERK OF THE DISTRICT COURT  
SNAKE RIVER BASIN ADJUDICATION  
253 THIRD AVENUE NORTH  
PO BOX 2707  
TWIN FALLS, ID 83303-2707

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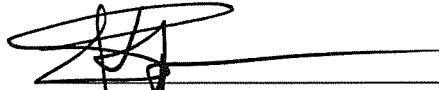
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