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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

Case No. 39576

Subcase Nos.: 27-12006

MOTION TO FILE LATE OBJECTION

Natural Guardian Limited Partnership, by and through counsel of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby files this *Motion to File Late Objection* to the above numbered subcase. The motion is necessary as described below.

Water Right No. 27-12006 was recommended by the Idaho Department of Water Resources with a priority date of April 1, 1873. It was also recommended with the season of use of 04/01 – 11/01.

Water Right No. 27-12006 is a portion of a water right that was originally decreed in a prior private decree known as the “Stevens Decree,” with a July 1, 1873 priority date.¹ While extent of beneficial use documented in a prior decree is not necessarily binding on IDWR in its

¹ A copy of the Stevens Decree can be found in the water right back file on IDWR’s website for Water Right No. 27-12006.

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recommendation of water rights (*State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 947 P.2d 409 (1997)), it does appear that the priority dates decreed in a prior decree are binding pursuant to the doctrine of *res judicata*. If not, then the other water rights that were split from the original parent right to Water Right No. 27-12006 (the parent right is 27-1006) would be junior in priority to Water Right No. 27-12006 because they possess the prior-decreed priority date of July 1, 1873. Absent a change to the recommendation for Water Right No. 27-12006, the result would be prejudicial to these other water users. This issue was brought to the attention of Natural Guardian's counsel by IDWR agent Michael Holliday, who asked that this motion be filed to correct this issue.

In addition, it was likewise discovered that Water Right No. 27-12006 was recommended with a season of use of 04/01 – 11/01. The standard season of use for the area in which this water right is located is 04/01 – 10/31. As a housekeeping matter while also addressing the priority date issue, the season of use should be changed to comport with IDWR's standard season of use. Otherwise, this water right will possess an extra day of use, which could be prejudicial to storage water right holders. We therefore object to this element of the water right as well, and request the court to amend its recommendation so that the season of use is accurately reflected.

As set forth above, two elements of the recommendation for Water Right No. 27-12006 should be corrected. We note that this water right is still in a recommended status, and is located in Basin 27, where there are ongoing discussions relative to objections made by the Shoshone-Bannock tribes and the United States. We do not anticipate that there will be any objections to the changes proposed pursuant to this motion, and therefore, request that the court grant the motion.

CERTIFICATE OF MAILING

I certify that on this 10 day of November, 2011, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
David Negri
Environmental and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

United States of America
Peter C. Monson, U.S. Dept. of Justice
999 18th Street, Suite 945
Denver, CO 80202-2439

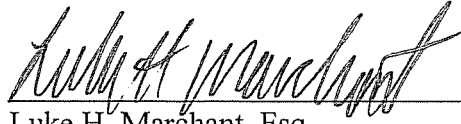
Shoshone-Bannock Tribes
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Luke H. Marchant, Esq.

HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Date this 10 day of November, 2011.

A handwritten signature in cursive script, appearing to read "Luke H. Marchant", written over a horizontal line.

Luke H. Marchant, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C