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DEPARTMENT OF
WATER RESOURCES

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Counsel 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 No. 01-02064
	)	
Case No. 39576	)	(American Falls Hydropower Storage
	)	Subcase)
	)	
	)	REPLY
	)	
	)	
	)	
	)	

Comes now, the State of Idaho, by and through the undersigned deputy attorney general, and hereby submits this Reply to *Idaho Power Company's Response* ("Response").

The State's pending *Motion for Issuance of Special Master's Recommendation as to the Elements Related to Hydropower Storage* ("Motion") requests that the Court issue a Special Master's Recommendation in this subcase as to elements related to hydropower storage rights, in

REPLY BRIEF

order to provide the parties finality on the matter and narrow the issues remaining for trial. On October 14, 2011, Idaho Power Company filed its Response to the State's Motion, in which it stated that it does not oppose the Motion, so long as the resultant partial Recommendation is worded "carefully and precisely so as to avoid any confusion as to how the partial Recommendation affects the issues raised by the Company in this Response and in previous briefs in this litigation." Response at 5. The particular concerns expressed by the Company are that the partial Recommendation 1) not limit the Company's ability to increase its contractual rights to storage space in American Falls Reservoir in the future, 2) not affect the Company's contractual rights to generate power under the existing "Falling Water" contract, and 3) not address Operation and Maintenance issues, which are outside the scope of the SRBA Court's jurisdiction.

Potential future acquisition of storage rights for hydropower is clearly outside of the scope of this proceeding and therefore should not be addressed in the partial recommendation of the Company's existing rights. The Company's ability to acquire additional storage water water in American Falls Reservoir is governed by federal law. Likewise, the contractual right of the Company to generate power with "falling water" is also not before the Court and should not be addressed in the partial recommendation.¹ The Company's ability to generate power with falling water is governed by its federal contract with the Bureau of Reclamation. Finally, the State agrees that a partial Recommendation as to hydropower storage rights does not address Operation and Maintenance issues. The Special Master has already ruled on the issue of the Operations and Maintenance issues, holding that they are not properly before the Court and are not ripe for discussion in this proceeding. Order on Reconsideration at 9.

¹ The State disagrees with Idaho Power's contention that "currently all of the water in the Reservoir is available for power generation pursuant to the "Falling Water" contract..." Response at 5. However, the interpretation of the provisions of that contract are not properly before the Court in this proceeding.

The State respectfully asks that this Court grant its motion and issue a Special Master's Recommendation on the elements of Water right No. 01-2064 that relate to rights for hydropower storage.

RESPECTFULLY SUBMITTED this 30th day of November 2011.

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CERTIFICATE OF SERVICE

I certify that on this 30th day of November 2011, I caused to be served the original and copies of the State of Idaho's **REPLY BRIEF** on the following persons by the methods indicated:

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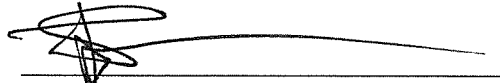
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