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DEPARTMENT OF
WATER RESOURCES

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

Case No. 39576

Subcase No. 01-02064

(American Falls Hydropower Storage Subcase)

MOTION TO ALTER OR AMEND

Comes now, the State of Idaho, by and through the undersigned deputy attorney general, and hereby submits this Motion to Alter or Amend the *Partial Special Master Report and Recommendation*, issued January 20, 2012 (“Partial Recommendation”).

STANDARD OF REVIEW

Administrative Order #1, Section 13 (a) provides for motions to alter or amend a Special

MOTION TO ALTER OR AMEND

Master's Recommendation. This Court has held that, although such motions under AO1 13(a) are not identical to motions to alter and amend pursuant to IRCP 59(e), they are similar, and "[t]he case history on Rule 59(e) IRCP sets the appropriate standard and rational for Paragraph 13, AO1." *Order on Motion to Alter or Amend the Special Master's Recommendation*, Subcase No. 65-20333, issued April 27, 2000, at p.2. I.R.C.P. 59(e) provides a mechanism whereby the court can correct factual or legal errors made during the proceedings. It is designed to function as a "corrective action short of appeal." *Lowe v. Lym*, 103 Idaho 259, 263, 646 P.2d 1030, 1034 (1982).

ARGUMENT

The State's *Motion for Issuance of Special Master's Recommendation as to Elements Related to Hydropower Storage Rights* ("Motion") requested that the Court issue a partial recommendation only as to "elements related to hydropower storage rights" in this subcase. *Motion* at 2. The State's *Motion* was narrowly tailored, and was intended to "narrow the issues remaining in this subcase that may go to trial." *Id.* The *Motion* sought finality as to the discrete issue of hydropower storage while recognizing that other elements of this water right continue to be disputed by the various parties. The ability of the Court to issue a recommendation on some elements of a water right while other elements remain unresolved is afforded by AO1 9(d).

The *Partial Recommendation* states that "when all issues concerning water right 01-2064 are finally determined by the SRBA Court, the partial decree shall include all remarks recommended by the IDWR Director in his December 19, 2006 Director's Report, Reporting Area Basin 01, IDWR Part 2." *Partial Recommendation*, at 5-6. The State is concerned that this language can be construed to effectively eliminate the remaining unresolved issues in the subcase. In addition, the language constrains both the Court and the parties in their efforts to

resolve the remaining issues in this subcase, whether through negotiation or litigation, in that it pre-determines which remarks will be included in the partial decree for this right.

The State requests that the Court amend its Partial Recommendation to reflect that the Recommendation only relates to elements of hydropower storage, in this case, the purpose and period of use elements, and any remarks necessary for the administration of those elements. The State proposes that the Special Master recommend the hydropower elements of the right as follows:

PURPOSE AND PERIOD OF USE:

Power Storage: 1/1 - 12/31	45,000af*
Power from Storage: 1/1 - 12/31	45,000af*

*[include language below]

Storage for power under this right is 2.65% of the active storage capacity of the reservoir, which is approximately 45,000 acre-feet.

CONCLUSION

The State therefore respectfully asks that this Court amend its Partial Recommendation to clarify that it relates only to elements of hydropower storage and to include the precise language of the elements and appropriate remark.

RESPECTFULLY SUBMITTED this 25th day of January, 2012.

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Attorney General

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Chief, Natural Resources Division


SHASTA KILMINSTER-HADLEY
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CERTIFICATE OF SERVICE

I certify that on this 25th day of January, 2012, I caused to be served the original and copies of the State of Idaho's **MOTION TO ALTER OR AMEND** on the following persons by the methods indicated:

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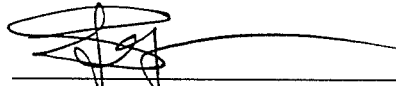
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