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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. 01-02064, 01-02064A,
) 01-02064B, 01-02064C, 01-02064D,
) 01-02064E, 01-02064F, 01-02064L,
) 01-10042, 01-10042A, 01-10042B,
) 01-10053A, and 01-10190
) (American Falls Subcases)
)

) Subcase Nos. 01-02068, 01-02068D,
) 01-02068E, 01-02068F, 01-02068M,
) 01-02068Y, 01-10043, 01-10043A,
) 01-10043E, 01-10191, and 01-10389
) (Palisades Subcases)
)

) **STATE OF IDAHO'S MOTION FOR**
) **PARTIAL SUMMARY JUDGMENT**
)

The State of Idaho, by and through its counsel of record, and pursuant to Rule 56 of the Idaho Rules of Civil Procedure, hereby moves for partial summary judgment as follows:

1. The Idaho Supreme Court's decision in *United States v. Pioneer Irr. Dist.*, 144 Idaho 106, 157 P.3d 600 (2007), is controlling authority for purposes of determining the ownership interest the City of Pocatello may have in storage water right no. 01-2068 (Palisades Reservoir).
2. The partial decrees for storage water rights nos. 01-2064 (American Falls Reservoir) and 01-2068 (Palisades Reservoir) should not include any reference to *Burley Irrigation Dist. v. Eagle* (Idaho 5th Jud. Dist., Jul. 10, 1968) and/or *Aberdeen-Springfield Canal Co. v. Eagle* (Idaho 7th Jud. Dist., Mar. 12, 1969), and/or to the stipulations and/or supplemental decrees entered therein.
3. The following "refill" remark should be included in the partial decrees for storage water rights nos. 01-2064 (American Falls Reservoir) and 01-2068 (Palisades Reservoir) because it is necessary to define and/or efficiently administer the rights:

This right is filled for a given irrigation season when the total quantity of water that has accumulated to storage under this right equals the decreed quantity. Additional water may be stored under this right but such additional storage is incidental and subordinate to all existing and future water rights.

These issues are not new. They were raised by the Director's reports, objections and responses filed in 2007,¹ and have been the subject of extensive discovery and litigation, as well as this Court's rulings and the parties' negotiations, in the four and a half years since then. These issues are central to the current proceedings and remain in

¹ See, e.g., Director's Reports in Subcases Nos. 01-2064 & 01-2068 (remarks referring to the "Eagle Decrees"); United States Bureau of Reclamation's Standard Form 1 Objections filed in Subcases Nos. 01-2064 & 01-2068 (Apr. 19, 2007) (objecting to remarks referencing the "Eagle Decrees" and the lack of a "refill" remark); Minidoka Irrigation District's Standard Form 1 Objections filed in Subcases Nos. 01-2064 & 01-2068 (Apr. 19, 2007) (objecting to lack of a "refill" remark); Standard Form 1 Objection of Twin Falls Canal Company, Milner Irrigation District and North Side Canal Company filed in Subcase No. 01-2064 (Apr. 19, 2007) (objecting to "Remarks"); Standard Form 1 Objection of Milner Irrigation District and North Side Canal Company filed in Subcase No. 01-2068 (Apr. 19, 2007) (objecting to "Remarks"); City of Pocatello's Standard Form 1 Objection filed in Subcase No. 01-2068 (Apr. 19, 2007) (objecting to the ownership element).

dispute despite protracted negotiations.² The parties' positions, the factual record, and the law of the case have been sufficiently developed that the summary judgment issues raised above are postured for immediate resolution as a matter of law. At this stage of the litigation they are threshold matters that must be addressed to establish an orderly and efficient path for developing and resolving any remaining points of dispute.³

Summary judgment is “not . . . a disfavored procedural shortcut,” but rather one of the “principal tools” for isolating insufficient claims or defenses, and preventing the “unwarranted consumption of public and private resources” that results from allowing such issues to continue forward. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). The Idaho Civil Rules authorize a party to move for summary judgment “at any time” after 20 days following service, I.R.C.P. 56(a)-(b), and provide “[t]he judgment sought shall be rendered forthwith” if there is no genuine issue of material fact and the moving party is entitled to summary judgment as a matter of law. I.R.C.P. 56(c). The non-moving party may move under I.R.C.P. 56(f) for more time to respond to a pending summary judgment motion, but the rule requires “that party must articulate what additional discovery is necessary and how it is relevant to responding to the pending motion. I.R.C.P. 56(f).” *Jenkins v. Boise Cascade Corp.* 141 Idaho 233, 239, 108 P.3d 380, 386 (2005). In the

² Some parties to these subcases have signed a stipulation to resolve certain issues and have authorized its filing with this Court. This motion does not address or implicate the issues in the stipulation and would not preclude or prevent filing of the stipulation.

³ The Surface Water Coalition, the Ground Water Districts, and the State filed statements of the issues remaining in these subcases on January 19, 2012, pursuant to this Court's *Order Setting Status/Scheduling Conference* of December 15, 2011. The remaining issues identified in these “statements” included the “Eagle Decrees” and storage “refill.” See *Surface Water Coalition's Statement Of Remaining Issues/Proposed Trial Schedules* (Jan. 19, 2012) (“Eagle Decrees” and “refill”); *Ground Water Districts' Statement Of Issues* (Jan. 19, 2012) (“Eagle Decrees”); *State Of Idaho's Statement Of Remaining Issues* (Jan. 19, 2012) (“refill”). The term “Eagle Decrees” refers to the supplemental decrees entered in *Burley Irrigation Dist. v. Eagle* (Idaho 5th Jud. Dist., Jul. 10, 1968), and *Aberdeen-Springfield Canal Co. v. Eagle* (Idaho 7th Jud. Dist., Mar. 12, 1969). *Memorandum Decision And Order on Challenge*, Subcase Nos. 01-217, 01-218, 01-4024, 02-4025 (Minidoka Power Rights), 01-2068 and 01-4054 (Palisades Power Rights) (Feb. 9, 2011), at 7-9.

absence of such a showing—which must be made by affidavit and is a heavy burden when the case has been pending for four and a half years—the moving party is entitled to have the motion decided “forthwith.” I.R.C.P. 56(c).

The State requests oral argument on this motion and has noticed a hearing for May 17, 2012, at 1:30 p.m. The State requests that the Court set a briefing schedule, and proposes the following:

State’s opening brief and affidavits to be filed no later than March 2;
Response briefs and affidavits to be filed no later than April 6; and
State’s reply to be filed no later than May 3.

Respectfully submitted this 25th day of January, 2012.

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


MICHAEL C. ORR
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 25th day of January, 2012, I caused to the foregoing STATE OF IDAHO'S MOTION FOR PARTIAL SUMMARY JUDGMENT be filed with the Court and copies served on the following 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	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☒ Facsimile: <u>(208) 736-2121</u>
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2. Copies to:

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USDI Bureau Of Reclamation Represented By: US Department Of Justice Environment & Nat'l Resources 550 West Fort Street, MSC O33 Boise, ID 83724	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☐ E-Mail: _____
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State Of Idaho Represented By: Natural Resources Div Chief State Of Idaho Attorney General's Office PO Box 44449 Boise, ID 83711-4449	☐ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☐ E-Mail: ☒ Not applicable
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