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DISTRICT COURT - SRBA
TWIN FALLS CO. IDAHO
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2009 OCT 19 PM 1 44

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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. 00-92002GP, 02-00200,
) 02-00201, 02-00223 and 02-00224
)

) **STATE OF IDAHO'S MOTION FOR**
) **PARTIAL SUMMARY JUDGMENT**
) **RE: MILNER ZERO MINIMUM**
) **FLOW**
)

Pursuant to Rule 56 of the Idaho Rules of Civil Procedure and Idaho Code §§ 42-1411 and 42-1412, the State of Idaho, by and through the Idaho Water Resource Board ("State"), hereby moves this Court for partial summary judgment on the following two issues:

(1) That the first sentence of General Provision No. 4 in the Director's recommendations for the Basin 02 General Provisions (subcase 00-92002GP) should be clarified to read as follows:

The flow of the Snake River at Milner Dam may be reduced to zero, and water rights using water downstream from Milner Dam have no right to call for the delivery, or seek the administration, of the flow of the Snake River or surface and ground water tributary to the Snake River upstream from Milner Dam.

(2) That the following condition should be included in the "Other Provisions Necessary for Definition/Administration of this Water Right" section of the partial decree for water right 02-0200:

The flow of the Snake River at Milner Dam may be reduced to zero, and water rights using water downstream from Milner Dam have no right to call for the delivery, or seek the administration, of the flow of the Snake River or surface and ground water tributary to the Snake River upstream from Milner Dam.

The grounds for this motion are set forth in the supporting memorandum and affidavit filed herewith. The State requests oral argument on this motion.

Respectfully submitted this 16TH day of OCTOBER 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16TH day of OCTOBER 2009, I caused a true and correct copy of the foregoing STATE OF IDAHO'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: MILNER ZERO MINIMUM FLOW to be filed with the Court and served on the following parties by the indicated methods:

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