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JUN 28 2012

DEPARTMENT OF
WATER RESOURCES

Attorneys for the State of Idaho

REPLY ON REQUEST FOR
CLARIFICATION OF ORDER ON
AMICUS MOTIONS

Reply On Request For Clarification Of Order On Amicus Motions - 1

1. Amici flout this Special Master's *Order* in stating they "will file a reply to the State of Idaho's Response to Motion for Leave to File Amicus." *Amici Response* at

2. This Special Master "**denied**" Amici's request to file just such a reply. *Order On Amicus Motions* (Jun. 22, 2012) ("*Order*"), at 2 (bold in original). The motion this Special Master denied in the *Order* had expressly sought "leave to file reply to State's response." *Motion to Vacate and Reset Hearing on Motion for Leave to File Amicus Brief: State of Idaho's Motion Concerning "Refill" of Bureau of Reclamation Storage Rights and Motion for Leave to File Reply to State's Response* (Jun. 21, 2012) (underlining added).

2. Amici do not intend to simply inform the Court of their allegedly unique interests but to oppose the State's summary judgment motion on the merits, *Amici Response* at 2 ("the Amici are entitled to reply to the State's substantive arguments"), and to augment the summary judgment record. *See id.* (citing the need for "a properly developed record").

3. The briefing schedule will be disrupted and the State will be prejudiced if Amici are allowed to make these further filings. The State is entitled to the final brief on its summary judgment motion, and that brief is due in only three days. Allowing the Amici to re-open the summary judgment record and file a substantive opposition at this late hour will deprive the State of its right to have the final brief on its own motion and a complete record.

4. Amici's contention they cannot protect their "decreed storage rights" without making more filings lacks credibility. Amici have had their day in court: the Basin 63 and Basin 65 storage rights were previously decreed in the SRBA, and Amici's

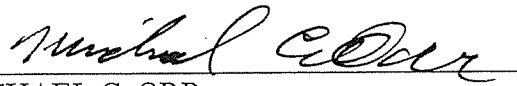
interests in those rights are fully protectable outside the SRBA, such as in administrative proceedings before the Department and on judicial review. Even if the Presiding Judge were to deny the petition to designate Basin-Wide Issue No. 17, such a ruling would only mean the Amici's claim lacked merit to begin with.

5. Amici have made it unmistakably clear they have no intention of participating simply as a "friend of the Court" and taking the case as they found it. They intend to litigate the State's summary judgment motion as if they were full parties, adverse to the State. They also intend to widen the scope of the summary judgment issues and expand the summary judgment record to support their substantive arguments. It is far too late in the day for this. Even a party granted full party status as an intervenor of right at this hour would not be allowed to so disrupt the proceedings, and Amici certainly should not be allowed to do so in their much more limited role. *See* I.A.R. 8; *see also Reichert v. State ex rel. McCulloch*, ___ P.3d ___, 2012 (Mont.) (May 18, 2012), 2012 WL 1795135, *6 ("amici curiae are not parties and cannot assume the functions of parties, nor create, extend or enlarge issues") (internal quotation marks and citation omitted).

The State respectfully requests that this Special Master clarify that the *Order* prohibited Amici from making any filings after the *Order* was issued.

Respectfully submitted this 27th day of June, 2012.

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Deputy Attorney General
Chief, Natural Resources Division


MICHAEL C. ORR
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June 2012, I caused the foregoing **REPLY ON REQUEST FOR CLARIFICATION OF ORDER ON AMICUS MOTIONS** to be filed with the Court and true and correct copies served on the following parties 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: (208) 736-2121
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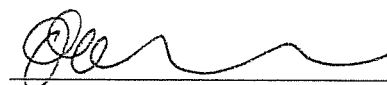
2. Copies to:

Special Master Terrence A. Dolan Case Administrator Diana Delaney 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: (208) 736-2121 ☒ E-Mail: tdolan@idcourts.net ☒ E-Mail: ddelaney@idcourts.net
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American Falls Spaceholders New Sweden Irrigation Dist. Represented by: Jerry R. Rigby 25 N. 2 nd E. P.O. Box 250 Rexburg, ID 83440-0250	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: jrigby@rex-law.com
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ATTACHMENT A

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(American Falls Subcases)

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