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DEPARTMENT OF
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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 No. 00-91013 (91-13)
) (Basin-Wide Issue No. 13)
)
) **STATE OF IDAHO'S MOTION TO**
) **ALTER OR AMEND THE COURT'S**
) **ORDER GRANTING STATE OF**
) **IDAHO'S SECOND AMENDED MOTION**
) **TO INCLUDE SUBORDINATION**
) **LANGUAGE ON WATER RIGHTS**
) **AFFECTED BY THE SWAN FALLS**
) **SETTLEMENT AND MEMORANDUM**
) **IN SUPPORT**

STATE OF IDAHO'S MOTION TO ALTER OR AMEND THE COURT'S ORDER GRANTING STATE
OF IDAHO'S SECOND AMENDED MOTION TO INCLUDE SUBORDINATION LANGUAGE ON
WATER RIGHTS AFFECTED BY THE SWAN FALLS SETTLEMENT AND MEMORANDUM IN
SUPPORT 1

The State of Idaho (“State”), by and through its counsel of record, respectfully moves this Court to amend the list of water rights found in Appendix B attached to the *Order* entered in the above captioned subcase to include 17 water rights which were partially decreed in the SRBA that should have been included on the list but were not. A list of the additional 17 water rights which need to be added is attached hereto as Exhibit 1. The State also requests the *Order* be amended to provide the qualified subordination remark be placed in the “Other Provisions” section of the 17 partial decrees listed in Exhibit 1. This motion is supported by the memorandum set forth below.

DISCUSSION

On March 21, 2011, the State filed its *Second Amended Motion to Include Subordination Language on the Water Rights Affected by the Swan Falls Settlement* (“*Second Amended Motion*”). The *Second Amended Motion* moved this Court to memorialize the subordination benefits conferred by the Swan Falls Settlement by placing a remark on the subject hydropower rights¹ and inserting specific remarks on certain affected water rights claimed in the Snake River Basin Adjudication (“SRBA”).

The State determined that 95% of the water rights which would receive the benefit of subordination under the Swan Falls settlement were senior in priority to the date that the Swan Falls Agreement was signed, October 25, 1984. Rather than inserting a remark on all water rights with a priority date senior to October 25, 1984, the *Second Amended Motion* requested a remark be inserted on the face of the partial decrees of the

¹ The “subject hydropower rights” include water right nos. 02-00100, 02-4000A, 02-1001A, 02-02032A, 02-4000B, 02-4001B, 02-02032B, 02-02036, 02-02056, 02-02065, 02-02064, 02-10135, 02-02060, 02-02059, 02-02001B, 02-02001A, 02-02057, 37-02128, 37-02472, 37-02471, 37-20710, 37-20709, 36-02013, 36-02018, and 36-02026

subject hydropower water rights to the effect that all water rights with priority dates senior to October 25, 1984 enjoy the benefit of unqualified subordination of the hydropower rights that are the subject of the Swan Falls Agreement, *unless otherwise noted on the face of the individual water rights*.

The State argued the italicized language was necessary because the remark was both slightly over and under inclusive. The water rights considered exceptions were attached as Appendix A and B to the *Second Amended Motion*. Appendix A to the *Second Amended Motion* contained a list of 57 water rights with priority dates junior to October 25, 1984 that enjoy the benefit of unqualified subordination under the Swan Falls Settlement. Appendix B to the *Second Amended Motion* contained a list of 154 water rights that, while having priority dates senior to October 25, 1984, were determined to receive only the benefit of qualified subordination. The water rights listed in Appendix B to the *Second Amended Motion* included both water rights which were claimed in the SRBA, as well as water right licenses and permits which were not claimed in the SRBA.

On April 12, 2012, the Court issued a *Procedural Order* that required the State to provide personal service to those water users with water rights listed on Appendix A and B notifying them their water rights were on the list and providing information on how to file a timely objection. The Court received thirty-one objections. After reviewing the information provided by the water users in support of their objections, the Idaho Department of Water Resources (“IDWR”) filed a *Supplemental Director’s Report Regarding Basinwide Issue No. 13 (“706 Report and Recommendation”)*. Water users who disagreed with the *706 Report and Recommendation* were required to file an

objection to that effect. Eventually all objections to the *706 Report and Recommendation* were resolved either by stipulations or Court order.

On December 19, 2011, the State filed its *Reply Brief* in support of its *Second Amended Motion*. The State attached a revised Appendix B which contained 42 water rights, as opposed to the 154 water rights listed in the State's *Second Amended Motion*. The revised Appendix B constituted those water rights out of the original 154 that were claimed in the SRBA. In its *Reply Brief* the State requested this Court place a qualified subordination remark on the Appendix B water rights.²

Since issuance of the *Order*, the State has discovered that 17 water rights were claimed in the SRBA but were not included in the revised Appendix B filed with the State's *Reply Brief*. The 17 water rights listed in attached Exhibit 1 were included in the original 154 water rights listed in Appendix B to the *Second Amended Motion*, but were inadvertently excluded from the list of Appendix B rights that were claimed in the SRBA. These 17 water rights have in fact been partially decreed in the SRBA, and are under this Court's jurisdiction. As they were among the 154 rights listed in the original Appendix B to the *Second Amended Notice*, all of the 17 water right holders received personal notice of their inclusion on Appendix B and were given the opportunity to object.³ Consequently, amending Appendix B to the Court's *Order* to include these 17 water rights will not require additional notice or opportunity to object. Nonetheless, the State

² The State also included a revised Appendix A. The State requested the Court place remarks on the subject hydropower rights and the Appendix A water rights.

³ Two water rights numbers listed in Exhibit 1, 35-14178 and 35-14179, were not listed in Appendix B attached to the *State's Second Amended Motion*. These two rights were split from the parent right 35-8657A. The parent right was listed in Appendix B to the *State's Second Amended Motion* and received notice of its inclusion on the list and an opportunity to object.

has included all 17 water right owners listed in Exhibit 1 on the service list for this motion to ensure they receive notice of the requested modification of Appendix B.

CONCLUSION

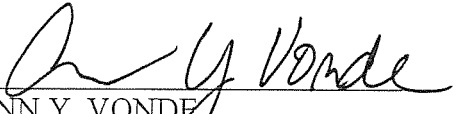
The State requests this Court issue an order amending Appendix B which was attached to the *Order* to add the 17 water rights listed in attached Exhibit 1. The State further requests the *Order* be amended to provide the following subordination remark be placed in the "Other Provisions" section of the partial decrees of the 17 water rights which are attached hereto as Exhibit 1:

This water right enjoys the benefit of subordination of hydropower water right nos. 02-00100, 02-4000A, 02-1001A, 02-02032A, 02-4000B, 02-4001B, 02-02032B, 02-02036, 02-02056, 02-02065, 02-02064, 02-10135, 02-02060, 02-02059, 02-02001B, 02-02001A, 02-02057, 37-02128, 37-02472, 37-02471, 37-20710, 37-20709, 36-02013, 36-02018, and 36-02026 only so long as the average daily flows as measured at the Murphy Gaging station meet or exceed the minimum stream flows established by state action.

Respectfully submitted this 24th day of July 2012.

LAWRENCE WASDEN
Attorney General

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


ANN Y. VONDE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of July 2012, I caused a true and correct copy of the foregoing STATE OF IDAHO'S MOTION TO ALTER OR AMEND THE COURT'S ORDER GRANTING STATE OF IDAHO'S SECOND AMENDED MOTION TO INCLUDE SUBORDINATION LANGUAGE ON WATER RIGHTS AFFECTED BY THE SWAN FALLS SETTLEMENT to be filed with the Court and served on the following parties by the indicated methods:

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Idaho Power Company
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☒ E-mail: JamesTucker@idahopower.com

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Arco ID 83213

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905 N 3600 E
Menan ID 83434

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Spring Creek Ranch Inc.
3352 E 750 N
Menan ID 83434

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☐ Facsimile:

Double V LLC.
Ray Vander Vegt
1587 E 3100 S
Wendell ID 83355

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☐ Overnight Mail
☐ Facsimile:

Ardel and Judy Wickel
1084 E 300 N
Declo ID 83323

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Boot Jack Dairy Partnership
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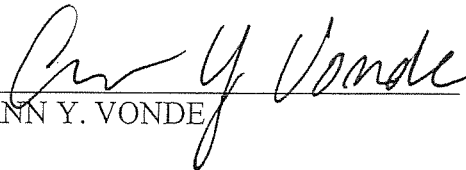
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ANN Y. VONDE

**Additional
Appendix B
Water Rights
Claimed in the
SRBA**

WR Number
34-7226C
34-7226D
35-8657B
35-14178
35-14179
36-8047D
36-8047E
36-8047F
36-16420
36-16421
37-7893A
37-20395
37-20396
47-7435A
57-7184A
57-7184B
61-7399