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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	) Consolidated Subcase: 37-02499 <i>et al.</i>
	)
Case No. 39576	) ORDER RE: SUBMITTAL OF
	) PROPOSED LANGUAGE IN REGARDS
_____	) TO SWAN FALLS AGREEMENT

This matter came pursuant to the Court's own motion regarding whether to designate a Basin-Wide Issue. The motion was as a result of objections filed to 346 water right recommendations in Basin 37, Part 1 (Ground Water) seeking to have a provision regarding the "Swan Falls Agreement"¹ either included in individual partial decrees for water rights affected by the Swan Falls Agreement or alternatively decreed as a general provision. The objections were brought over concerns regarding the general principle that partial decrees entered in the SRBA general adjudication supercede prior decrees², albeit in this case neither the Swan Falls Agreement or the Swan Falls Contract were merged into either of the Consent Judgments. The Court brought the motion because of the potential Basin-Wide application of the issue and in an effort to resolve the issue prior to the issuance of future director's reports.

After hearing argument and suggestions from the parties the Court ordered and does order the following individuals; Ms. Josephine Beeman, counsel for NSGWD, Mr. James Tucker, counsel for Idaho Power Co., Mr. David Barber, counsel for the State of Idaho, and Mr. Jerry Rigby, counsel for various participating canal companies and Mr.

¹ Includes the October 24, 1984, Swan Falls Agreement, the October 25, 1984, the Swan Falls Contract, a Consent Judgment entered in *Idaho Power Co. v. State of Idaho et al.*, Ada County District Court Case No. 62237 (Mar. 9, 1990) and a Consent Judgment entered in *Idaho Power Co. v. State of Idaho et al.*, Ada County District Court Case No. 81375 (Feb. 16, 1990).

² See e.g. *State v. Hagerman Water Right Owners*, 130 Idaho 736, 947 P.2d 409 (1997).

David Tuthill, Adjudication Bureau Chief for IDWR, to meet telephonically or in person at least three times within the next 90 days, less if a proposal is reached, for the purpose of drafting proposed language to be included those partial decrees held by Idaho Power that are subject to the Swan Falls Agreement that would satisfy the concerns raised by the parties at the February 18, 2002, hearing. IDWR will coordinate the meetings. These individuals shall prepare and file said proposed language by May 19, 2003. Thereafter the Court will issue an order regarding further proceedings on the matter.

Dated: February 24, 2003

A handwritten signature in dark ink, appearing to read "R. Burdick", is written over a horizontal line.

ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the this **ORDER RE: SUBMITTAL OF PROPOSED LANGUAGE IN REGARDS TO SWAN FALLS AGREEMENT FILED ON 2-24-2002** was mailed on January 24, 2003, with sufficient first-class postage to the following:

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