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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

IDAHO POWER COMPANY,

Plaintiff,

v.

STATE OF IDAHO; C.L. "BUTCH OTTER,
Governor of the State of Idaho; LAWRENCE G.
WASDEN, Attorney General of the State of
Idaho; IDAHO DEPARTMENT OF WATER

)
) MEMORANDUM IN SUPPORT
) OF MOTION TO STRIKE OR
) ALTERNATIVELY TO DISMISS
) COMPLAINT AND PETITION
) FOR DECLARATORY AND
) INJUNCTIVE RELIEF

RESOURCES; and DAVID TUTHILL, Director,)
Idaho Department of Water Resources,)
)
Defendants.)
_____)

Idaho Power Company's Complaint and Petition for Declaratory and Injunctive Relief of May 11, 2007 ("Complaint") arises from a dispute between the State of Idaho and the company over legal ownership of certain water rights under the trust arrangement of the Swan Falls Agreement ("Agreement"). As the Complaint demonstrates, Idaho Power Company ("Idaho Power") contends that ownership is a question of contractual interpretation that hinges principally on whether the parties to the Agreement were mistaken in believing that a defined quantity of "trust water" was available when the Agreement was signed. The Defendants (hereinafter, "State") however, assert that the legislation enacted to implement the Agreement gave the State legal title to the water rights for flows in excess of the minimums established at Murphy. Idaho Code § 42-203B.¹ Thus, the underlying dispute the Complaint seeks to resolve is first and foremost a disagreement regarding ownership of the water rights in question.

On the same day it filed the Complaint, Idaho Power also filed two related motions and requested expedited hearings on both: a Motion for Stay of Proceedings on Idaho Power Company Water Rights in Basin 2, 36 and 37 or Alternatively to Consolidate Proceedings ("Motion to Stay"), and a Motion for Stay of Proceedings on Basin-Wide Issue No. 13 ("Motion on Basin-Wide Issue 13"). The State's Motion to

¹ Idaho Code § 42-203B provides that the "water rights" listed in the Agreement "shall be held in trust by the state of Idaho, by and through the governor, for the use and benefit of the user of water for power purposes, and of the people of the state of Idaho" to the extent they exceed the minimum flows established at Murphy. "[T]his trust arrangement results in the State of Idaho possessing legal title to all water rights previously claimed by Idaho Power Company above the agreed minimum flows." Journal of the State Senate at 60 ("Statement of Legislative Intent – S 1008") (Feb. 6, 1985) (inserted into the Senate Journal with unanimous consent of the Senate).

Strike or Alternatively to Dismiss the Complaint also seeks an expedited hearing, so that the State's motion and Idaho Power's motions may be heard together. The three motions raise interrelated questions that should be resolved together.

ARGUMENT

The threshold question posed by the Complaint and Idaho Power's motions is one of procedure—specifically, what procedure should the SRBA District Court use to determine the ownership, nature and extent of the water rights at issue. Idaho Power's answer is that even though these issues are already postured for resolution in conventional SRBA subcase proceedings, they should be removed from the purview of Administrative Order 1 ("AO1") and the general adjudication statutes, and decided in what amounts to a private quiet title action.

Such a private action has no place in the SRBA, especially when, as in this case, it also seeks declaratory and injunctive relief against parties over which this Court lacks jurisdiction, and on matters that are beyond the scope of determining the ownership, nature and extent of the water rights in question. For these and other reasons described herein, the Court should strike or dismiss the Complaint and allow the ownership and subordination issues raised therein to continue moving forward in conventional SRBA subcase proceedings, where Idaho Power has raised the same objections and issues.

I. The Complaint Should Be Stricken Because It Is An Unauthorized Attempt To Initiate A Private Civil Action Within A Statutory General Adjudication Proceeding.

Idaho Power filed the Complaint in the "main" SRBA case, case no. 39576. The Idaho Power Complaint does not have a new or different case number, *see* Complaint at 1

(caption), and appears to be an attempt to initiate a private civil proceeding within the SRBA.

The SRBA is not a generic “water court,” however, but a statutory “general adjudication” proceeding overseen by a presiding judge and governed by chapter 14, Title 42 of the Idaho Code. Idaho Code § 42-1401A(5). The only authorized “complaint” or similar initial pleading in the SRBA is the petition that commenced the adjudication. *See* Idaho Code § 42-1406A (“the director of the department of water resources shall petition the district court to commence an adjudication”).² Nothing in AO1 or the general adjudication statutes authorizes a “complaint” or any other attempt to initiate a private civil action within the SRBA.

In short, the “Complaint” is an anomalous and unauthorized pleading, and its legal effect, if any, is unclear. Further, and as discussed below, the Complaint is redundant because Idaho Power can—and has—raised the same claims, issues and objections to the Director’s recommendations for the water rights in question in the Basin 37 subcases. The Complaint should therefore be stricken under AO1, chapter 14, Title 42 of the Idaho Code and Rule 12(f) of the Idaho Rules of Civil Procedure as unauthorized, immaterial and redundant.

II. The Complaint Should Be Dismissed Under I.R.C.P. 12(b).

Alternatively, the Complaint should be dismissed in its entirety under Rule 12(b)(8) because Idaho Power has already raised the same claims and issues alleged in the Complaint in conventional SRBA proceedings. In addition, some or all of the claims in the Complaint should be dismissed under Rule 12(b)(1) for lack of subject matter

² The Director of the Department of Water Resources filed the “Petition” on June 17, 1987.

jurisdiction, under Rule 12(b)(2) for lack of jurisdiction over the Director and IDWR, and/or under 12(b)(6) for failing to state a claim upon which relief can be granted.

A. The Complaint Impermissibly Seeks To Have Determinations Of Water Rights And Objections To The Director's Recommendations Resolved Outside Established SRBA Procedures And Conventional SRBA Proceedings.

1. The Complaint Seeks Water Right Determinations That Conflict With The Director's Recommendations.

The Complaint alleges that on December 28, 2006, IDWR filed a Director's Report for the water rights in Basin 2 that are subject to the Swan Falls Agreement, recommending that "legal title" be decreed in the State of Idaho to all or a portion of the rights under the trust arrangement of the Agreement and its implementing legislation.³ Complaint at 14-15 ¶¶ 39-41. Similarly, the Complaint alleges that on February 14, 2007, IDWR filed Notices of Completed Administrative Proceedings for the Basin 37 water rights, which included Amended Director's Reports recommending that "legal title" be decreed in the State of Idaho under the trust arrangement of the Agreement and its implementing legislation. Complaint at 15 ¶ 42. The Director also reported some of these water rights in Idaho Power's name. See Exhibit A attached hereto (Director's Reports for the Basin 2 water rights and Amended Director's Reports for the Basin 37 water rights).⁴

³ Accordingly, the relevant allegations use the term "Swan Falls Settlement," rather than "Swan Falls Agreement," because the "Settlement" of the Swan Falls controversy was not achieved simply by the "Agreement" itself, but included "subsequent implementing legislation" and various other elements, as the Complaint recognizes. Complaint at 7 ¶ 20.

⁴ This Court may take judicial notice of the Director's recommendations for purposes of the State's Motion to Dismiss. See *Harper v. Harper*, 122 Idaho 535, 537, 835 P.2d 1346, 1348 (Ct. App. 1992) ("On a motion to dismiss for failure to state a claim, a court may only consider those facts appearing in the complaint, supplemented by those facts of which the court may properly take judicial notice"); *Larson v. State*, 91 Idaho 908, 909, 435 P.2d 248, 249 (1967) ("The district court may take judicial notice of its own records, in the case before it.").

The Complaint expressly seeks determinations of “the status and nature” of these same water rights. Complaint at 3 ¶ 3. Further, it squarely challenges the Director’s recommendations for the water rights in Basin 2 and Basin 37 by requesting that legal title to all the water rights be quieted in Idaho Power’s name. Complaint at 22, 26 (“Third Claim for Relief”). The Complaint further attacks the Director’s recommendations by seeking:

- a declaration that the Swan Falls trust—the basis of the Director’s recommendations that legal title be decreed in the State—never came into existence. *See* Complaint at 25, 21 (seeking a declaration that “no valid trust was established under the Swan Falls Settlement”) (“First Claim for Relief”);
- judicial reformation of the Swan Falls Agreement “eliminating any asserted trust.” Complaint at 25, 21 (“Second Claim for Relief”); and
- a declaration that the State’s claim to legal title to the water rights is barred under theories of estoppel, waiver and laches. Complaint at 22-23-26 (“Fourth Claim for Relief”).

The Fifth Claim for Relief necessarily seeks a preliminary determination that Idaho Power holds legal title to the water rights, because it requests a declaration that “Idaho Power’s water rights” are not subordinate to the use of water for ground water recharge. Complaint at 23, 26 (“Fifth Claim for Relief”). This claim also challenges the Director’s recommendation that the rights be subordinate to “subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources

in accordance with State law”⁵ by seeking to qualify the subordination such that it does not apply to ground water recharge uses, even if approved in accordance with State law. See Complaint at 23, 26 (seeking a declaration that the water rights are not subordinate to uses of water for ground water recharge, “through the Swan Falls Settlement or otherwise”).

Thus, the first five claims for relief require determinations of the nature and extent of the water rights that are subject to the Swan Falls Agreement, with particular focus on the questions of who holds legal title and whether the rights were subordinated to all future uses authorized by the State of Idaho. The first five claims for relief also openly challenge the Director’s recommendations for the elements of the water rights.

2. The Issues And Objections Raised In The Complaint Should Be Resolved In Conventional SRBA Proceedings.

The State does not dispute that these questions can and should be resolved in the SRBA. Moreover, while the State does not agree that such determinations necessarily require the SRBA District Court to “comprehensively address in an integrated proceeding issues regarding the meaning and effect of the Swan Falls Agreement,” Motion to Stay at 6, it will be assumed solely for purposes of the State’s motion to dismiss that this Court should decide “the respective rights, duties and responsibilities of the parties under the Swan Falls Settlement” in making title and subordination determinations for the water rights in question. Complaint at 3 ¶ 3.⁶

⁵ Exhibit A (Director’s recommendations for the water rights in question).

⁶ The State’s position is that the question of legal title and the nature and extent of subordination is controlled principally by the statutes enacted to implement the Swan Falls Agreement, not solely by the Agreement itself. Thus, while the State will take the allegations in the Complaint as true for purposes of this memorandum, the State reserves the right to deny and contest all the allegations, claims and requests for relief in the Complaint, should the motion to dismiss be denied.

Even so, the Complaint should be dismissed because it seeks to have water right determinations made, and Idaho Power's objections to the Director's recommendations resolved, in a proceeding that lies outside AO1 and the general adjudication statutes. Such questions should be resolved under established SRBA procedures and in conventional SRBA proceedings, as prescribed by statute and AO1. *See generally* Idaho Code §§ 42-1406—42-1413; AO1. Under these procedures, the starting point is the Director's recommendations for the elements of the partial decree, which are presumptively correct. Idaho Code § 42-1411. The Director's recommendations may be challenged only by standard form "objections" and "responses." AO1 §§ 3-4. The issues to be heard are identified by the notices of claim, the objections, and the responses. Idaho Code § 42-1412(3).

Nothing in AO1 or the applicable statutes authorize the use of a "complaint" or a private quiet title action for the purpose of challenging the Director's recommendations, but this is exactly what Idaho Power seeks to do. It seeks determinations that certain elements of the water rights—ownership, quantity and the trust and subordination remarks—should be decreed differently than the Director has reported them. The Complaint thus seeks to remove a core function of the SRBA from conventional SRBA proceedings.

Allowing a party who is dissatisfied with the Director's recommendations to circumvent SRBA procedures by the simple expedient of filing a "complaint" would defeat the obvious intent of AO1 and the applicable general adjudication statutes, essentially rendering them surplusage. *See Ag Services of America, Inc. v. Kechter ex rel. Kechter*, 137 Idaho 62, 67, 44 P.3d 1117, 1122 (2002) ("We will not construe a statute in

a way that makes mere surplusage of provisions included therein.”). It would also be analogous to allowing a “private water rights adjudication,” which may not be maintained after a general adjudication has commenced. *Devil Creek Ranch, Inc. v. Cedar Mesa Reservoir & Canal Co.*, 126 Idaho 202, 206, 789 P.2d 1135, 1139 (1994); *Walker v. Big Lost River Irr. Dist.*, 124 Idaho 78, 81, 856 P.2d 868, 871 (1993).

For similar reasons, Idaho Power’s attempt to invoke the general civil jurisdiction of a district court as a basis for departing from SRBA procedures should also be rejected. *See* Complaint at 5 (alleging jurisdiction under Idaho Code §§ 1-705, 6-401, 10-1201). The SRBA District Court is not a court of general jurisdiction but rather “is, in effect, a separate division of the district courts and exercises the unique jurisdiction given it by the legislature. As in the case of the magistrate division of the district courts, which exercises jurisdiction as a division of the district courts pursuant to I.C. § 1-2208, the SRBA district court exercises jurisdiction pursuant to I.C. §§ 42-1401 through 42-1423.” *Walker v. Big Lost River Irr. Dist.*, 124 Idaho 78, 81, 856 P.2d 868, 871 (1993).

The SRBA is intended to make a “comprehensive determination of the nature, extent and priority of the rights of all users of surface and ground water” of the Snake River system, Idaho Code § 42-1406A, not to provide an alternative forum for filing civil actions, challenging the State’s administration of water rights, or seeking affirmative relief beyond a determination of the rights to the use of water. *See, e.g.*, Idaho Code § 42-1401B(3) (providing that the Director may not be a party to a general adjudication); *id.* § 42-1401D (providing that judicial review of IDWR administrative actions may not be heard in a general adjudication).

This is true even though the SRBA District Court is a part of the District Court for the Fifth Judicial District. *Cf. Wright v. Atwood*, 33 Idaho 455, 461-62, 195 P. 625, 627 (1921) (“The extent and nature of a power depend upon the terms in which it is conferred, and it will not be enlarged because exercised by courts clothed with general jurisdiction”); *see also Union Central Life Ins. Co. v. Albrethsen*, 50 Idaho 196, 206, 294 P. 842, 846 (1930) (similar).

B. Idaho Power Has Already Raised The Ownership And Subordination Issues In Conventional Subcase Proceedings.

Moreover, Idaho Power has raised the same ownership and subordination issues alleged in the Complaint via standard pleadings in conventional SRBA proceedings. Idaho Power filed an “Standard Form 1 Objection to Amended Director’s Report” in the Basin 37 subcases on May 2, 2007, asserting that the rights should be decreed in Idaho Power’s name, and that the explanatory remarks in the “quantity” element and in the “Other Provisions Necessary for the Definition or Administration of this Water Right” should not be included in the decree. *See* Exhibit B attached hereto.⁷ On May 11, 2007, Idaho Power also filed a “Standard Form 2 Response to Objection to Amended Director’s Report” in the Basin 37 subcases, including a 27-page attachment styled a “Counterclaim” that is in all relevant respects a verbatim copy of the Complaint. *See* Exhibit C attached hereto.⁸

The Court may take judicial notice of these filings for purposes of the State’s motion to dismiss. *See Harper v. Harper*, 122 Idaho 535, 537, 835 P.2d 1346, 1348 (Ct.

⁷ Exhibit B is a e-mail service copy of the “Standard Form 1 Objection to Amended Director’s Report” that Idaho Power filed in the Basin 37 subcases in May 2, 2007.

⁸ Exhibit C is a copy of the “Standard Form 2 Response to Objection to Amended Director’s Report” and the attached “Counterclaim” that Idaho Power filed in the Basin 37 subcases on May 10, 2007.

App. 1992) (“On a motion to dismiss for failure to state a claim, a court may only consider those facts appearing in the complaint, supplemented by those facts of which the court may properly take judicial notice”); *Larson v. State*, 91 Idaho 908, 909, 435 P.2d 248, 249 (1967) (“The district court may take judicial notice of its own records, in the case before it.”).

Thus, not only is the Complaint outside the normal SRBA procedure, it is unnecessary. The ownership and subordination issues raised in the Complaint are already postured for resolution in conventional SRBA proceedings.⁹

C. The Ownership And Subordination Issues Can And Should Be Resolved In Conventional Subcase Proceedings.

Conventional SRBA procedure and proceedings are quite adequate to resolve the title and subordination issues, which are not uniquely difficult or intractable. At most, Idaho Power’s concerns contemplate extensive discovery, but that can be managed within SRBA procedural norms.

Indeed, “the Snake River Basin Adjudication was filed in 1987 pursuant to I.C. § 42-1406A, in large part to resolve the legal relationship between the rights of the ground water pumpers on the Snake River Plain and the rights of Idaho Power at its Swan Falls Dam.” *A & B Irr. Dist. v. Idaho Conservation League*, 131 Idaho 411, 422, 958 P.2d 568, 579 (1997). Determining disputed questions of ownership is a principal function of standard SRBA proceedings. *See generally United States v. Pioneer Irrigation District*, ___ Idaho ___, ___ P.3d ___, 2007 WL 703701 (Mar. 9, 2007). It would be contrary to

⁹ While the State has moved to strike or dismiss the “Counterclaim,” the State does not thereby seek to prevent Idaho Power Company from identifying ownership and subordination issues that Idaho Power asserts should be heard in the Basin 37 subcases. *See* Exhibit D attached hereto; *see also* Idaho Code § 42-1412(3) (“The notice of claim, objections, and responses to objections, shall identify the issues to be heard for water rights acquired under state law.”).

the purpose and procedures of the SRBA to have Idaho Power's water right claims resolved in a separate civil proceeding that is entirely outside standard SRBA procedures.

In addition, any issues of fact and law common to the SRBA subcases for the water rights in question can be handled by grouping the subcases or their common issues under case management orders, or through formal consolidation, if necessary. Further, interested parties can move to participate and raise issues they believe are relevant.

Such established SRBA procedures have worked well over the years in a wide variety of factual and legal contexts, and provide the obvious means for resolving the ownership and subordination issues Idaho Power has raised. Idaho Power's suggestion that the Complaint is necessary or appropriate because it provides a procedural "vehicle" that is otherwise lacking in the SRBA, Motion to Stay or Consolidate at 6, is simply incorrect.

D. Idaho Power's Claims Would Require Factual Determinations That Should Not Be Made In A Declaratory Judgment Action.

In addition, while the Complaint nominally alleges a declaratory judgment action, Idaho Power's claims for relief are quintessentially factual. They will require extensive discovery on a host of issues, such as the effects of multi-year ground water withdrawals before, during and after the Swan Falls controversy; the amount of "trust water" in the Snake River system in those time periods; the past and present hydrology of the Snake River basin; IDWR's permitting and administration of water rights since the Swan Falls Agreement; and most likely a number of other matters as well.

Idaho Power's claims thus would be determined by resolving disputed issues of fact, with purely legal interpretation and analysis taking a decidedly secondary role.

Declaratory judgment actions should not be used as vehicles for litigating such issues of disputed fact, however:

While it has been held that a declaratory judgment proceedings may be maintained, although such proceedings involve the determination of a disputed question of fact, it cannot be used where the object of the proceedings is to try such fact as a determinative issue, and a declaratory judgment should be refused where the questions presented should be the subject of judicial investigation in a regular action.

Ennis v. Casey, 72 Idaho 181, 185, 238 P.2d 435, 438 (1951) (citations omitted). Idaho Power's claims are more appropriately litigated in conventional subcase proceedings, which unlike declaratory judgment actions are intended to allow for full development of determinative issues of disputed fact, as previously discussed.¹⁰

In sum, the Complaint would essentially initiate a separate lawsuit that would circumvent SRBA procedures for dealing with objections to the Director's recommendations for the water rights that are subject to the Swan Falls Agreement and the implementing legislation. This would amount to a collateral attack on ongoing subcases and a private action to adjudicate water rights while a general adjudication is pending. The water right determinations Idaho Power seeks can and should be made under established SRBA procedures and in conventional SRBA proceedings. Idaho Power has already raised the Basin 37 subcases the same issues alleged in the Complaint, and there is no reason to believe that these and other standard SRBA practices and procedures will be inadequate for resolving Idaho Power's objections to the Director's recommendations.

¹⁰ While the claims and issues Idaho Power alleges in the Complaint are inherently factual, the State does not concede that the extensive factual development Idaho Power seeks is necessary to resolve the questions of legal title and subordination. The State reserves its position that such questions are properly resolved principally as matters of law.

The Complaint should be dismissed in its entirety pursuant to Idaho Code §§ 42-1406—42-1413, AO1, and under Rule 12(b)(6) for failure to state a claim for which relief can be granted and under Rule 12(b)(8) because the same issues are pending between the same parties in the Basin 37 subcases—and presumably will also be in the Basin 2. In the alternative, other compelling reasons support the dismissal of certain parties, claims and requests for relief, as discussed below.

III. This Court Lacks Jurisdiction over The Director And IDWR.

The Director of IDWR, David Tuthill, and IDWR itself, should be dismissed from this action under I.R.C.P. 12(b)(2) because the SRBA District Court lacks personal jurisdiction over both the Director and IDWR. Idaho Code § 42-1401B(3) provides that “[t]he director shall not be a party to an adjudication,” and section 42-1401A(4) defines the term “Director” as including IDWR.

Thus, in *Twin Falls Canal Co. v. IDWR*, 127 Idaho 688, 905 P.2d 89 (1995), the Idaho Supreme Court held that the Director and IDWR may not be joined or sued in an declaratory judgment action in the SRBA. *Id.* at 689, 905 P.2d at 90. In this case, Idaho Power has brought a declaratory judgment action in the SRBA against, among others, the Director and IDWR. Under these circumstances, sections 42-1401A, 42-1401B and *Twin Falls Canal Company* are controlling and require the dismissal of the Director and IDWR from this action—and ultimately from the “Counterclaim” in the Basin 37 subcases, as well.¹¹

IV. The Second Claim For Relief Should Be Dismissed Because This Court Lacks Authority To Reform The Swan Falls Agreement.

¹¹ The fact that the Complaint attempts to invoke the general jurisdiction of district courts is not sufficient to make the Director and IDWR parties to the Complaint, for reasons previously discussed.

The second claim for relief expressly seeks judicial “reformation of the Swan Falls Agreement” to eliminate the trust provisions, based on an alleged mutual mistake of fact. Complaint at 25 ¶ B; *see also id.* at 21-22 ¶ 63. It is undisputed, however, that the Swan Falls Agreement was implemented, as originally written, by appropriate legislation. *See* Complaint at 7 ¶ 20 (alleging the existence of “subsequent implementing legislation”). In addition, the Legislature expressly ratified the Agreement by statute, and the same statute declares that the Agreement established the Swan Falls minimum flows and “defin[ed] such rights in excess thereof as being held in trust by the state.” Idaho Code § 42-203B.

Thus, reforming the Swan Falls Agreement as requested by Idaho Power would either have the effect of amending the implementing and ratifying statutes, or rendering critical provisions of those statutes meaningless surplus. Either result is disfavored and beyond the authority of this Court, even under the allegations of the Complaint. Accordingly, the second claim for relief should be dismissed under I.R.C.P. 12(b)(6) for failure to state a claim on which relief may be granted.

V. The Sixth Claim For Relief Should Be Dismissed Because This Court May Not Review IDWR’s Administration Of Water Rights.

The sixth claim for relief seeks declarations that “the State has failed to take reasonable steps in its administration of water right priorities in the Snake River Basin,” Complaint at 23 ¶ 71, and that “the State of Idaho has failed in its administration of water rights priorities in the Snake River Basin to account for multiple year impacts of ground water pumping.” Complaint at 26 ¶ F. The Director and IDWR administer water rights in Idaho, *see generally* Title 42, chapter 2, Idaho Code, and therefore claim six seeks judicial review of such administration.

The Idaho Code provides that challenges to IDWR's administration of water rights may not be heard in a general adjudication proceeding commenced under chapter 14 of Title 42:

Review of an agency action of the department of water resources, which is subject to judicial review or declaratory judgment under the provisions of chapter 52, title 67, Idaho Code, shall not be heard in any water rights adjudication proceeding commenced under this chapter.

Idaho Code § 42-1401D. Thus, the SRBA District Court may not hear challenges to IDWR's administrative actions. *Sagewillow v. IDWR*, 138 Idaho 831, 835, 70 P.3d 669, 673 (2003).

Moreover, in *American Falls Reservoir District No. 2 v. IDWR*, 143 Idaho 862, 154 P.3d 433 (2007), the Idaho Supreme Court made clear that the conjunctive administration issues raised in the Complaint are not to be resolved in the SRBA, but rather by the Director under the Rules for the Conjunctive Management of Surface and Ground Water Resources:

For example, the SRBA court determines the water sources, quantity, priority date, point of diversion, place, period and purpose of use. I.C. §§ 42-1411(2)(a)-(j). . . . Moreover, a partial decree need not contain information on how each water right on a source physically interacts or affects other rights on that same source. . . . Conjunctive administration 'requires knowledge by the IDWR of the relative priorities of the ground and surface water rights, how the various ground and surface water sources are interconnected, and how, when, where and to what extent the diversion and use of water from one source impacts the water flows in that source and other sources.' *A & B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 422, 958 P.2d 568, 579 (1997). That is precisely the reason for the CM Rules and the need for analysis and administration by the Director.

Id. at ____, 154 P.3d at 448. Accordingly, claim six of the Complaint should be dismissed under I.R.C.P. 12(b)(1) for lack of subject matter jurisdiction, and/or failure to state a claim for which relief may be granted, under I.R.C.P. 12(b)(6).

VI. The Seventh Claim For Relief Should Be Dismissed Because This Court Lacks Authority To Provide The Injunctive Relief Sought Therein.

The seventh claim for relief should also be dismissed in its entirety because each of its four different requests for injunctive relief is beyond this Court's authority to provide, as discussed below.

A. The Court Lacks Jurisdiction And Authority To Enter The Injunction Sought In The First Request For Injunctive Relief.

1. The Court Lacks Jurisdiction Over The Director and IDWR.

The first injunctive relief request seeks an order enjoining "the State Defendants"—including IDWR and the Director—"from taking any action affecting the subject water rights on the basis of the State's asserted legal title to such water rights." Complaint at 25 ¶ 81(a). This Court lacks authority to enter such orders against IDWR or the Director because, as previously discussed, they are not and cannot be parties in the SRBA. *Twin Falls Canal Co.*, 127 Idaho at 689, 905 P.2d at 90. Thus, the first request for injunctive relief in claim seven therefore must be dismissed to the extent it applies to the Director and IDWR.

2. The First Request For Injunctive Relief Is Outside The Scope Of Determining The Nature and Extent of the Water Rights in Question.

The first request for injunctive relief is premature in that it apparently assumes that Idaho Power holds legal title to the water rights in question, but this a disputed issue that has not yet been resolved. In the absence of legal determination of who holds title to the water rights, there is no legal basis for the order Idaho Power seeks in the first request for injunctive relief.

Further, while this Court has authority to determine who holds legal title to the water rights, it should not accept Idaho Power's invitation to take the next step and enter

the injunction sought under the first request for injunctive relief. This Court's task is to determine the nature and extent of the rights to the use of the waters of the Snake River system, while the resolution of matters that subsequently hinge on such determinations are left to the district courts. *See, e.g.,* Idaho Code § 42-1401D (providing that claims for review of IDWR actions may not be heard in a general adjudication proceeding).

In addition, there are no allegations in the Complaint suggesting that the State defendants will fail to honor any of this Court's decisions or decrees. It would be improper and premature to enter the order sought in the first request for injunctive relief based on what appears to be an assumption that one or more of the State defendants would ignore the Court's determination of who holds legal title to the water rights. *See, e.g., See Roberts v. Board of Trustees, Pocatello, School District No. 25*, 134 Idaho 890, 894, 11 P.3d 1108, 1112 (2000) ("As a general rule, there is a presumption of regularity in the performance of official duties by public officers.").

3. The First Request For Injunctive Relief Is Impermissibly Overbroad.

The first request for injunctive relief seeks a sweeping order "enjoining the State defendants from taking any action affecting the subject water rights on the basis of the State's asserted legal title to such water rights." Complaint at 25 ¶ 81(a). This request is overbroad as a matter of law because it would even bar the State from pursuing its claims and arguments in SRBA proceedings, seeking a re-hearing or re-consideration of an decision in this Court, or an appeal. *See Drew v. Sorensen*, 133 Idaho 534, 542, 989 P.2d 276, 284 (1999) (injunction may not be so "overly broad" as to deprive a party of the "right of access to the courts to raise legitimate challenges.").

B. The Court Lacks Jurisdiction To Grant The Second And Fourth Requests For Injunctive Relief.

The second and fourth injunction requests seek, respectively, relief “ordering IDWR to re-evaluate water availability, and take appropriate action,” and “ordering IDWR to take reasonable steps in the administration of water rights in the Snake River Basin.” Complaint at 25 ¶ 81(b), (d); *id.* at 26 ¶ G(b), (d). As previously discussed, this Court lacks authority to enter such orders against IDWR or the Director because, as previously discussed, they are not and cannot be parties in the SRBA. *Twin Falls Canal Co.*, 127 Idaho at 689, 905 P.2d at 90. The second and fourth requests for injunctive relief must be dismissed in their entirety for lack of personal jurisdiction under I.R.C.P. 12(b)(2).

C. The Court Lacks Authority To Grant The Third Injunction Request.

The third request for injunctive relief seeks an order requiring the Attorney General “to repeal Idaho Attorney General Opinion 06-2 on the basis that it is erroneous as a matter of law and a breach of the Swan Falls Settlement.” Complaint at 25 ¶ 81(c). This request is premature and beyond this Court’s authority, because, as discussed above with respect to the first request for injunctive relief: (1) there has not yet been a determination that Idaho Power holds legal title to the water rights; (2) even if this Court makes such a determination, the injunction sought is beyond the scope of the SRBA and must be sought from a district court of general jurisdiction; and (3) it is improper to assume that an injunction would be necessary before the Attorney General would honor a judicial determination that Idaho Power holds legal title to the water rights.

The third request for injunctive relief is also problematic in that it seeks the “repeal” of an Attorney General opinion on a question of law, which the Attorney General is obligated to provide when, as was the case with the opinion in question, a

member of the legislature requests such an opinion. Idaho Code § 67-1401(6). Nothing in the Idaho Code, Idaho Rules of Civil Procedure or AO1 authorizes the SRBA District Court—or any district court of the State—to order the “repeal” or withdrawal of such a statutorily-authorized opinion. Indeed, the notion that a Court might require the Attorney General—an elected constitutional officer—to “repeal” such an opinion raises significant separation of power concerns.¹²

Moreover, an Attorney General’s opinion is just that—an opinion. The Attorney General is obligated by statute to provide his or her interpretation of the law in certain circumstances. Such an interpretation is not legally binding and does not inflict legally cognizable harm, even if a court ultimately determines that the opinion is erroneous.

Finally, an Attorney General opinion is an exercise of discretion, and while a court may require the Attorney General to exercise his discretion in appropriate circumstances, it cannot control the way in which he exercises the discretion by requiring the opinion to be withdrawn or to reach certain conclusions. *See Oklahoma City News Broadcasters Ass’n, Inc. v. Nigh*, 683 P.2d 72, 77 (Okla. 1984) (declining to order withdrawal of an Attorney General opinion), *superseded by statute on different grounds*; *Draper v. State*, 621 P.2d 1142, 1146-47 (Okla. 1980) (similar).

CONCLUSION

For the reasons set forth herein, the State requests that the Court strike or dismiss the Complaint in its entirety. Idaho Power’s objections to the Director’s recommendations for the water rights that are subject to the Swan Falls Agreement are

¹² The State does not dispute that a district court of general jurisdiction could declare the Attorney General’s opinion incorrect as a matter of law. It is quite a different thing, however, for a Court to order the “repeal” of such an opinion.

already at issue in the Basin 37 subcases, and should be resolved under prescribed SRBA procedure and in conventional SRBA proceedings.

DATED this 30th day of May, 2007.

Respectfully submitted,

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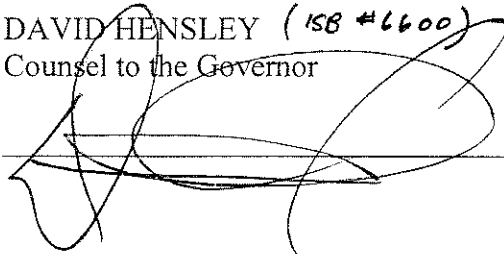
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Certificate of Mailing for Expedited Hearings

I HEREBY CERTIFY that on this 30TH day of May 2007, I caused to be served a true and correct copy of the foregoing **Memorandum in Support of Motion to Dismiss Complaint and Petition for Declaratory and Injunctive Relief and Request for Expedited Hearing** to the following parties by U.S. Mail:

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Attorneys for Defendants

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Counsel to the Governor

Attorney for Defendant C.L. "Butch" Otter, Governor of the State of Idaho

**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

IDAHO POWER COMPANY,

Plaintiff,

v.

STATE OF IDAHO; C.L. "BUTCH OTTER,
Governor of the State of Idaho; LAWRENCE G.
WASDEN, Attorney General of the State of
Idaho; IDAHO DEPARTMENT OF WATER

)
)
) MOTION TO STRIKE OR
) ALTERNATIVELY TO DISMISS
) COMPLAINT AND PETITION
) FOR DECLARATORY AND
) INJUNCTIVE RELIEF
) AND
) REQUEST FOR EXPEDITED
) HEARING

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JUN - 1 2007
DEPARTMENT OF
WATER RESOURCES

Idaho; IDAHO DEPARTMENT OF WATER)
 RESOURCES; and DAVID TUTHILL, Director,)
 Idaho Department of Water Resources,)
)
 Defendants.)
 _____)

Defendants, by and through their undersigned counsel, move under Rules 12(f), 12(b)(1), (2), (6) and (8) of the Idaho Rules of Civil Procedure, Idaho Code §§ 42-1401 through 42-1423 and Administrative Order 1 to strike or in the alternative to dismiss the Complaint and Petition for Declaratory and Injunctive Relief filed by Idaho Power Company on May 10, 2007 ("Complaint).

The Defendants request an expedited hearing so that this motion may be heard in conjunction with Idaho Power Company's Motion for Stay of Proceedings on Idaho Power Company Water Rights in Basins 2, 36 and 37, or Alternatively Consolidate Proceedings ("Motion to Stay"), and its Motion for Stay of Basin-Wide Issue No. 13 ("Motion on Basin-Wide Issue 13"), both filed on May 11, 2007. Idaho Power Company requested expedited hearings on these motions.

1. Grounds For Motion To Strike or Dismiss

The grounds for this motion are (1) the Complaint is an unauthorized, immaterial and redundant pleading that should be stricken; (2) the Complaint and the private quiet title action it purports to initiate are not authorized in the SRBA under the applicable procedural rules and statutes; (2) the underlying claims raised by the Complaint have already at issue in conventional subcase proceedings; (3) this Court lacks authority to judicially reform the Swan Falls Agreement to eliminate the "trust" provisions; (4) the Director of the Department of Water Resources and the Department of Water Resources

cannot be parties in the SRBA; and (5) this Court lacks authority and jurisdiction to grant the declaratory and injunctive relief sought. These grounds are discussed further in the supporting memorandum filed herewith.

2. Grounds For Expedited Hearing

Idaho Power Company's motions of May 11, 2007, expressly rely on the Complaint as a basis for asserting that the SRBA District Court should stay conventional SRBA proceedings on Idaho Power Company's water right claims, and stay the proceedings on Basin-Wide Issue No. 13. Idaho Power's motions assume that the issues the company seeks to have resolved in the adjudication of its water right claims can be adequately framed and raised only via the Complaint, not by conventional SRBA proceedings.

For instance, the Motion to Stay asserts that subcase proceedings in Basins 2 and 37 on Idaho Power's water rights claims should be stayed because the Complaint "comprehensively frames the issues raised by the Swan Falls Agreement which Idaho Power believes must be determined by the SRBA Court in conjunction with the Court's adjudication of its water rights," and provides "a vehicle to proceed with resolution of these issues." Motion to Stay at 3, 6. *See also* Motion on Basin-Wide Issue 13 ("Idaho Power maintains that substantive issues concerning the meaning and effect of the Swan Falls Agreement should be resolved in the SRBA proceeding initiated by Idaho Power's Complaint and Petition, rather than as part of Basin-Wide Issue No. 13 which appears to be limited to narrower procedural issues.")

The State's Motion to Dismiss argues, among other things, that the Complaint and the SRBA proceeding it seeks to initiate are not permitted under the applicable

procedural rules and statutes, that the issues Idaho Power has raised in the Complaint can be resolved via conventional SRBA subcases proceedings, and that Idaho Power has in fact already raised these issues in the Basin 37 subcases. The matters raised by the State's Motion to Dismiss are thus intertwined with those raised by Idaho Power's motions, and all three motions should be heard together to ensure that all the relevant factual and legal factors are considered.

The State therefore respectfully requests an expedited hearing on its Motion to Dismiss, such that it will be heard on the same date and in conjunction with the hearing on Idaho Power Company's Motion for Stay and Motion on Basin-Wide Issue 13.

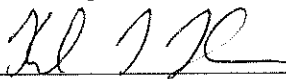
DATED this 30th day of May, 2007.

Respectfully submitted,

LAWRENCE G. WASDEN
Attorney General

STEVEN L. OLSEN
Deputy Attorney General
Chief, Civil Litigation Division

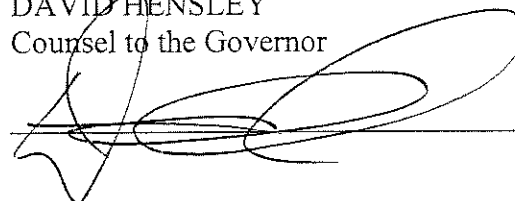
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DAVID HENSLEY
Counsel to the Governor



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JUN - 1 2007

DEPARTMENT OF
WATER RESOURCES

EXHIBIT A

**Director's Reports
for the Basin 2 Water Rights**

**Amended Director's Reports
for the Basin 37 Water Rights**

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31'41", Longitude 114° 01'06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-2001A

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 1,700.000 CFS

1,700 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition and Administration of this Water Right."

PRIORITY DATE: 05/11/1908

POINT OF

DIVERSION: T07S R13E S2 SWSW Lot 8 Within TWIN FALLS County
T07S R13E S2 SESW Lot 7 Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	01/01 12/31	1,700.000 CFS
Power generation is at the Lower Salmon Falls Power Plant.		

PLACE OF USE: POWER in GOODING County

T07S R13E S02 Lot 7 SESW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31'41", Longitude 114° 01'06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

12/28/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-2001B

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

QUANTITY: 1,300.000 CFS

1,300 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition and Administration of this Water Right."

PRIORITY DATE: 07/02/1908

POINT OF
DIVERSION: T07S R13E S2 SWSW Lot 8 Within TWIN FALLS County
T07S R13E S2 SESW Lot 7 Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	01/01 12/31	1,300.000 CFS
Power generation is at the Lower Salmon Falls Power Plant.		

PLACE OF USE: POWER in GOODING County
T07S R13E S02 Lot 7 SESW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31' 41", Longitude 114° 01' 06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphv, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31'41", Longitude 114° 01'06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-2032B

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 2,950.000 CFS

2,950 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho from April 1 to October 31, and 2,800 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho from November 1 to March 31.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition and Administration of this Water Right."

PRIORITY DATE: 07/29/1919

POINT OF
DIVERSION: T02S R01E S18 SESWSE Lot 10 Within OWYHEE County
T02S R01E S18 NWSESE Lot 11 Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	11/01 03/31	2,800.000 CFS
	04/01 10/31	2,950.000 CFS

Power generation is at the Swan Falls Power Plant.

PLACE OF USE: POWER in ADA County
T02S R01E S18 Lot 11 SESE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESSE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31' 41", Longitude 114° 01' 06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

Pursuant to the Idaho Supreme Court decision in Idaho Power Company v. State, by and through Department of Water Resources, 104 Idaho 575 (1983) the Company's hydropower water rights at Swan Falls were limited to 8400 cfs. Therefore, the diversion rate for this right was reduced from the 4000 cfs that was originally licensed to 2950 cfs.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-2036

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 1,000.000 CFS

1,000 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition and Administration of this Water Right."

PRIORITY DATE: 08/09/1920

POINT OF

DIVERSION: T09S R18E S31 NESW Lot 8 Within TWIN FALLS County
T09S R18E S31 NWSW Lot 9 Within JEROME County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	01/01 12/31	1,000.000 CFS
Power generation is at the Shoshone Falls Power Plant.		

PLACE OF USE: POWER in JEROME County

T09S R17E S36 Lot 15 NESE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESSE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31' 41", Longitude 114° 01' 06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

12/28/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-2056

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 1,050.000 CFS

1,050 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition and Administration of this Water Right."

PRIORITY DATE: 04/02/1929

POINT OF

DIVERSION: T10S R18E S4 NENW Lot 3 Within TWIN FALLS County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

POWER

01/01 12/31

1,050.000 CFS

Power generation is at the Twin Falls Power Plant.

PLACE OF USE: POWER in TWIN FALLS County

T10S R18E S04 Lot 3 NENW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31' 41", Longitude 114° 01' 06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Point of diversion is also within Jerome County.

12/28/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-2057

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 6,500.000 CFS

6,500 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition and Administration of this Water Right."

PRIORITY DATE: 04/02/1929

POINT OF

DIVERSION: T08S R13E S2 NWNE Lot 1 Within GOODING County
T08S R13E S2 NWNE Lot 2 Within TWIN FALLS County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	01/01 12/31	6,500.000 CFS
Power generation is at the Upper Salmon Falls Power Plant.		

PLACE OF USE: POWER in TWIN FALLS County

T08S R13E S02 Lot 4 NWNW T08S R13E S03 Lot 1 NENE
T08S R13E S03 Lot 3 NWNW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31' 41", Longitude 114° 01' 06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

12/28/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-2059

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 250.000 CFS

250 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition and Administration of this Water Right."

PRIORITY DATE: 03/20/1935

POINT OF

DIVERSION:

T07S R13E S2 SWSW Lot 8 Within TWIN FALLS County

T07S R13E S2 SESW Lot 7 Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	01/01 12/31	250.000 CFS
Power generation is at the Lower Salmon Falls Power Plant.		

PLACE OF USE: POWER in GOODING County

T07S R13E S02 Lot 7 SWSW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31' 41", Longitude 114° 01' 06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

12/28/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-2060

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203E.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 14,000.000 CFS

14,000 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition and Administration of this Water Right."

PRIORITY DATE: 08/08/1946

POINT OF

DIVERSION: T07S R13E S2 SWSW Lot 8 Within TWIN FALLS County
T07S R13E S2 SESW Lot 7 Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	01/01 12/31	14,000.000 CFS
Power generation is at the Lower Salmon Falls Power Plant.		

PLACE OF USE: POWER in GOODING County

T07S R13E S02 Lot 7 SESW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31'41", Longitude 114° 01'06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-2064

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 12,000.000 CFS

12,000 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition and Administration of this Water Right."

PRIORITY DATE: 09/04/1947

POINT OF

DIVERSION: T06S R12E S7 SWNESE Lot 5 Within GOODING County
T06S R12E S7 SWNESE Lot 10 Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	01/01 12/31	12,000.000 CFS
Power generation is at the Bliss Dam Power Plant.		

PLACE OF USE: POWER in GOODING County

T06S R12E S07 Lot 5

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31' 41", Longitude 114° 01' 06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

12/28/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-2065

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 3,000.000 CFS

3,000 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition and Administration of this Water Right."

PRIORITY DATE: 12/11/1947

POINT OF

DIVERSION: T06S R12E S7 SWNESE Lot 5 Within GOODING County
T06S R12E S7 SWNESE Lot 10 Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	01/01 12/31	3,000.000 CFS
Power generation is at the Bliss Dam Power Plant.		

PLACE OF USE: POWER in GOODING County

T06S R12E S07 Lot 5 NESE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1980) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31'41", Longitude 114° 01'06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31'41", Longitude 114° 01'06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

12/28/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-4000B

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

QUANTITY: 90.000 CFS

90 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition and Administration of this Water Right."

PRIORITY DATE: 01/17/1900

POINT OF
DIVERSION: T02S R01E S18 SESWSE Lot 10 Within OWYHEE County
T02S R01E S18 NWSESE Lot 11 Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	04/01 10/31	90.000 CFS
Power generation is at the Swan Falls Power Plant.		

PLACE OF USE: POWER in ADA County
T02S R01E S18 Lot 11 SESE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31' 41", Longitude 114° 01' 06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31'41", Longitude 114° 01'06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-4001B

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 1,460.000 CFS

1,460 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition and Administration of this Water Right."

PRIORITY DATE: 04/17/1900

POINT OF

DIVERSION: T02S R01E S18 SESWSE Lot 10 Within OWYHEE County

T02S R01E S18 NWSESE Lot 11 Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	04/01 10/31	1,460.000 CFS
Power generation is at the Swan Falls Power Plant.		

PLACE OF USE: POWER in ADA County

T02S R01E S18 Lot 11 SESE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor, the attorney general and the Idaho Power Company on October 25, 1984 (Swan Falls Agreement) and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

6. For purposes of administration of Water Rights Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The required minimum daily flows at the Milner gauging station shall remain as zero CFS for purposes of administration. The Milner gauging station is located at Latitude 42° 31' 41", Longitude 114° 01' 06" (revised), (NAD83), in SW1/4 NE1/4 of Section 29 in Township 10 South, Range 21 East, Boise Meridian, Twin Falls County Hydrologic Unit 17040212, on left bank 200 ft downstream from the highway bridge at Milner, 0.4 miles downstream from Milner Dam, and at mile 638.7.

7. As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, the Company limited its power water rights on the Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on the Snake River.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

COPY

RECEIVED

FEB 21 2007

DEPARTMENT OF
WATER RESOURCES

FILED
2007 FEB 20 10 10 42

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

Water Right: 37-2128, 37-2471
37-2472, 37-20709 and 37-20710

NOTICE OF COMPLETED
ADMINISTRATIVE
PROCEEDING

IDWR has completed the following administrative proceeding:

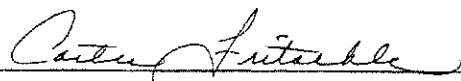
- ☐ Address change
- ☒ Substitution of Party
- ☐ Split of water right ☒ Change in ownership
- ☐ IC § 42-222
- ☐ Point of diversion ☐ Place of use
- ☐ Period of use ☐ Nature of use
- ☐ Split of water right ☐ Change in ownership

☒ Other: Due to the change of ownership, additional conditions under the Quantity element were added clarifying the ownership of the quantity of water. The change of ownership also split claims 02-2032, 02-4000 and 02-4001 into A and B portions, which were reported in the Basin 02 Director's Report filed on December 29, 2006. Paragraphs 1, 2 and 5 under "Other provisions necessary for definition or administration of this water right" have been modified to replace 02-2032, 02-4000 and 02-4001 with 02-2032A, 02-2032B, 02-4000A, 02-4000B, 02-4001A and 02-4001B.

IDWR certifies that it has completed its investigation into the changes to the elements of the water right(s) listed above as set forth in the attached *Amended Director's Report(s)* for said water right(s). No other changes have been made to the elements of these water right(s) except as set forth above.

IDWR has served copies of the *Notice of Completed Administrative Proceeding* and *Amended Director's Report(s)* on the claimant(s), prior claimant(s) and all parties in the subcases affected, if any, as reflected on the attached certificate of mailing.

DATED: 2-14-07


Signature of IDWR Representative

CERTIFICATE OF MAILING

I certify that on February 15 2007, I delivered the original and copies of this form, including all attachments, to the following persons, postage prepaid if required and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

Clive Strong
Office of the Attorney General
P.O. Box 44449
Boise, ID 83711-4449

United States Dept of Justice
Environment & Natural Resource Div
550 W. Fort St. MSC 033
Boise, ID 83724

3. Copies to all parties to the subcase:

State of Idaho
Statehouse
P.O. Box 83720
Boise, ID 83720

Idaho Power Co.
James C. Tucker
P.O. Box 70
Boise, ID 83707

John K. Simpson
Barker Rosholt & Simpson LLP
1010 W Jefferson Ste. 102
P.O. Box 2139
Boise, ID 83701-2139

Idaho Power Co.
Adam T. Devoe
James S. Lochhead
Brownstein Hyatt & Farber, P.C.
410 17th St., 22nd Floor
Denver, CO 80202

City of Pocatello
Gary & Helen DeMoss
Josephine P. Beeman
409 W. Jefferson St.
Boise, ID 83702



Signature of person mailing this document

1

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.
2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.
3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.
4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.
5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor and the Idaho Power Company on October 25, 1985 and ratified by the Idaho Legislature by Idaho Code §42-203B(5).

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Power generation is at the Lower Malad Gorge Power Plant.

02/14/2007

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-2471

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: COVE CREEK TRIBUTARY: MALAD RIVER
MALAD RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 900.000 CFS

900 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition or Administration of this Water Right."

PRIORITY DATE: 05/14/1946

POINT OF DIVERSION:

T06S R13E S25 SWSW Within GOODING County
T06S R13E S25 SWSW Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	1/01 12/31	900.000 CFS

PLACE OF USE: POWER in GOODING County

T06S R13E S35 NENW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.
2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.
3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.
4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.
5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor and the Idaho Power Company on October 25, 1985 and ratified by the Idaho Legislature by Idaho Code §42-203B(5).

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Power generation is at the Upper Malad Gorge Power Plant.

02/14/2007

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-2472

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: MALAD RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 650.000 CFS

650 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition or Administration of this Water Right."

PRIORITY DATE: 05/14/1946

POINT OF DIVERSION:

T06S R13E S35 NENW Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	1/01 12/31	650.000 CFS

PLACE OF USE: POWER in ELMORE County

T06S R13E S27 Lot 2 SWSW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.
2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.
3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.
4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.
5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor and the Idaho Power Company on October 25, 1985 and ratified by the Idaho Legislature by Idaho Code §42-203B(5).

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Power generation is at the Lower Malad Gorge Power Plant.

02/14/2007

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-20709

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: COVE CREEK
MALAD RIVER

TRIBUTARY: MALAD RIVER
TRIBUTARY: SNAKE RIVER

QUANTITY: 100.000 CFS

100 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition or Administration of this Water Right."

PRIORITY DATE: 06/14/1948

POINT OF
DIVERSION:

T06S R13E S25 SWSW Within GOODING County
T06S R13E S25 SWSW Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	01/01 12/31	100.000 CFS

PLACE OF USE: POWER in GOODING County

T06S R13E S35 NENW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor and the Idaho Power Company on October 25, 1985 and ratified by the Idaho Legislature by Idaho Code §42-203B(5).

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Power generation is at the Upper Malad Gorge Power Plant.

02/14/2007

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-20710

NAME AND ADDRESS: Legal Title
STATE OF IDAHO
STATEHOUSE
PO BOX 83720
BOISE ID 83720

Although the name of the State of Idaho appears in the Name and Address section of this partial decree, legal title is held in trust by the State of Idaho, for the use and benefit of the user of the water, Idaho Power Company, for power purposes and the people of the State of Idaho, pursuant to the Swan Falls Agreement and Idaho Code §42-203B.

Equitable title
IDAHO POWER CO
PO BOX 70
BOISE ID 83707

Equitable title
STATE OF IDAHO, in and for the people of the State of Idaho
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: MALAD RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 150.000 CFS

150 CFS is held in trust for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho.

The quantity of this right is further defined below in "Other Provisions Necessary for Definition or Administration of this Water Right."

PRIORITY DATE: 05/24/1950

POINT OF
DIVERSION:

T06S R13E S35 NENW Within GOODING County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

POWER

01/01 12/31

150.000 CFS

PLACE OF USE: POWER in GOODING County

T06S R13E S27 Lot 2 SESW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 CFS from April 1 to October 31, and 5600 CFS from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.
2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.
3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.
4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.
5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor and the Idaho Power Company on October 25, 1985 and ratified by the Idaho Legislature by Idaho Code §42-203B(5).

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Power generation is at the Lower Malad Gorge Power Plant.

RECEIVED
JUN - 1 2007
DEPARTMENT OF
WATER RESOURCES

EXHIBIT B

**“Standard Form 1 Objection to Amended
Director’s Report”**

**(filed by Idaho Power Company
on May 11, 2007, in the Basin 37 subcases)**

**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	)	A. Subcase No. 37-2128, 37-2471, 37-2472,
	)	37-20709 and 37-20710
Case No. 39576	)	STANDARD FORM 1
	)	OBJECTION TO AMENDED
	)	DIRECTOR'S REPORT

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING:

Name: IDAHO POWER COMPANY
Address: P. O. BOX 70
BOISE, IDAHO 83707
Daytime Phone: (208) 388-2112

Name and Address of Attorney, if any:

John K. Simpson Barker, Rosholt & Simpson, LLP P.O. Box 2139 Boise, ID 83701 Telephone: (208) 336-0700	James S. Lochhead Michael A. Gheleta Adam T. DeVoe Brownstein Hyatt Farber Schreck, P.C. 410 17 th St., Suite 2200 Denver, CO 80202 Telephone: (303) 223-1100
--	--

C. CLAIMANT OF WATER RIGHT AS LISTED IN AMENDED DIRECTOR'S REPORT:

Equitable Title: IDAHO POWER COMPANY P. O. BOX 70 BOISE, IDAHO 83707	Legal Title: STATE OF IDAHO STATEHOUSE P.O. BOX 83720 BOISE, ID 83720
---	---

Equitable Title:
STATE OF IDAHO, IN AND FOR THE
PEOPLE OF THE STATE OF IDAHO
P. O. BOX 83720
BOISE, ID 83720

D. I object to the following elements as recommended in the Amended Director's Report.
(Please check the appropriate boxes):

1. ☒ **Name and Address**
Should be: **Idaho Power Company, as claimed**
2. ☐ **Source**
Should be:
3. ☒ **Quantity**
Should be: **Should not include explanatory remarks.**
4. ☐ **Priority Date**
Should be:
5. ☐ **Point(s) of Diversion**
Should be:
6. ☐ **Instream Flow Beginning and Ending Point**
Should be:
7. ☐ **Purpose(s) of Use**
Should be:
8. ☐ **Period of Year**
Should be:
9. ☐ **Place of Use**
Should be:
10. ☒ **Other Provisions Necessary for Definition or Administration of this Water Right should not be included in the decree.**

11. ☒ **I object because:**

- ☐ This water right should not exist
- ☐ This water right was not recommended, but should be recommended with the elements described above.

☒ The propriety of including other provisions (including alleged water right ownership under the Swan Falls Agreement), or any provisions regarding the Swan Falls Agreement, in an SRBA decree is the subject of the designation of Basin-Wide Issue #13, (SRBA Subcase #91-13) which the SRBA Court has framed as addressing "To What Extent, If Any, Should the Swan Falls Agreement Be Addressed in the SRBA or Memorialized in a Decree?"

E. REASONS SUPPORTING OBJECTION(S):

Amended Director's Report is not based upon a Notice of Claim, as required by statute.

Claimant disputes the necessity for and legal correctness of the referenced language under number 10 above.

This objection is filed in the Snake River Basin Adjudication pursuant to applicable deadlines, and is done without prejudice to Idaho Power Company's rights to pursue the issues encompassed herein and related issues in other appropriate forums, state or federal.

F. VERIFICATION

State of IDAHO)
) ss.
County of Gooding)

_____James C. Tucker_____, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6), or that I am the attorney for the party/claimant objecting, and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)
James C. Tucker, Senior Attorney
Idaho Power Company

Subscribed and sworn to before me on: May 1, 2007.

Notary Public for: Idaho
Residing at: Gooding
My Commission Expires: 12-22-09

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **Fax filings will not be accepted.**
You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on May 1, 2007, I hand-delivered and mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original hand delivered to:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

2. One copy mailed to the claimant of the water right at the following address:

Name: Idaho Power Company
Address: P.O.Box 70
Boise, Idaho 83707

3. Copies mailed to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

Copies faxed to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449
Fax: 208-334-2690

Josephine P. Beeman
Beeman & Associates, P.C.
409 West Jefferson St.
Boise, ID 83702
Fax: 208-331-0954

James C. Tucker, Senior Attorney
Idaho Power Company

RECEIVED

JUN - 1 2007

DEPARTMENT OF
WATER RESOURCES

EXHIBIT C

**“Standard Form 2 Response to Objection to
Amended Director’s Report”
(including attached “Counterclaim”)**

**(filed by Idaho Power Company
on May 11, 2007, in the Basin 37 subcases)**

LODGED

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

2007 MAY 10 PM 1 16 MAIL 91571

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	)	A. Subcase Nos. 37-2128, 37-2471, 37-2472,
	)	37-20709 and 37-10710
Case No. 39576	)	STANDARD FORM 2
	)	RESPONSE TO OBJECTION
_____	)	TO AMENDED DIRECTOR'S REPORT

B. NAME AND ADDRESS OF PERSON RESPONDING:

Name: IDAHO POWER COMPANY
Address: P. O. BOX 70
BOISE, IDAHO 83707
Daytime Phone: (208) 388-2112

RECEIVED BY

MAY 15 2007

OFFICE OF THE
ATTORNEY GENERAL

Name and Address of Attorney:

John K. Simpson
Barker, Rosholt & Simpson, LLP
P.O. Box 2139
Boise, ID 83701
Telephone: (208) 336-0700

James S. Lochhead
Michael A. Gheleta
Adam T. DeVoe
Brownstein Hyatt Farber Schreck, P.C.
410 17th St., Suite 2200
Denver, CO 80202
Telephone: (303) 223-1100

C. NAME AND ADDRESS OF PERSON(S) WHO FILED OBJECTION TO WHICH
YOU ARE RESPONDING:

Name: State of Idaho
Address: 700 W. Jefferson, Room 210
P.O. Box 44449
Boise, ID 83711-4449
(208) 334-2400

D. I am responding to the objection(s) to the following elements:

1. ☒ Name and Address
2. ☐ Source
3. ☐ Quantity
4. ☐ Priority Date
5. ☐ Point(s) of Diversion
6. ☐ Instream Flow Description
7. ☐ Purpose(s) of Use
8. ☐ Period of Year
9. ☐ Place of Use
10. ☒ Other.

Idaho Power is filing, as an attachment to this Response to Objection to Amended Director's Report, a Counterclaim for Declaratory and Injunctive Relief ("Counterclaim"), which is hereby incorporated as part of this Response. The Counterclaim raises various issues concerning the Swan Falls Agreement and its relation to the subject water rights, and encompasses the issues raised by the State concerning alleged legal title to the water rights.

In an effort to obtain an integrated and comprehensive determination of issues concerning the Swan Falls Agreement in the SRBA, as opposed to proceeding piecemeal in individual subbasins, Idaho Power is also filing, with the SRBA Court, a Complaint and Petition for Declaratory Relief, a Motion for Stay of Basin-Wide Issue No. 13, and a Motion for Stay of Proceedings on Idaho Power Company Water Rights in Basins 2, 36 and 37, or Alternatively to Consolidate Proceedings.

Idaho Power reserves the right to amend this Response to Objection to Amended Director's Report in accordance with the schedule in these subcases, which provides that Responses to Objections are due on June 22, 2007.

11. Recommendation:

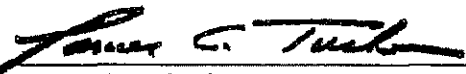
- ☐ This water right should not exist
- ☐ This water right was not recommended, but should be recommended with the elements described above.

VERIFICATION

State of IDAHO)
) ss.
County of Gooding)

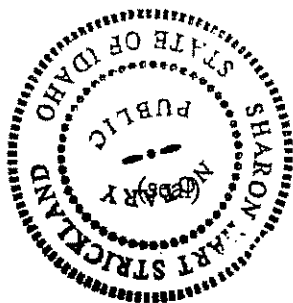
James C. Tucker, duly sworn, upon oath, deposes and says:

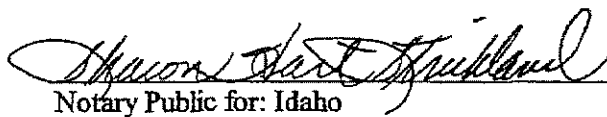
That I am the party/claimant filing this response, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding, and that I have read this response, know its contents and believe that the statements are true to the best of my knowledge.


James C. Tucker, Senior Attorney
Idaho Power Company

Attorneys for Respondents

Subscribed and sworn to before me on: May 10, 2007




Notary Public for: Idaho
Residing at: Gooding
My Commission Expires: 12-22-09

James S. Lochhead
Michael A. Gheleta
BROWNSTEIN HYATT FARBER SCHRECK, P.C.
410 Seventeenth Street, Suite 2200
Denver, CO 80202
(303) 223-1100 – Telephone
(303) 223-1111 – Facsimile

John K. Simpson, ISB No. 4242
Shelley M. Davis, ISB No. 6788
BARKER ROSHOLT & SIMPSON LLP
205 North Tenth St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 – Telephone
(208) 344-6034 – Facsimile

James C. Tucker, ISB No. 2038
Senior Attorney
IDAHO POWER COMPANY
1221 West Idaho Street
Boise, ID 83702-5627
(208) 388-2112 – Telephone
(208) 388-6935 – Facsimile

Attorneys for Plaintiff Idaho Power Company

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

IDAHO POWER COMPANY,

Plaintiff,

v.

STATE OF IDAHO; C.L. "BUTCH" OTTER,
Governor of the State of Idaho; LAWRENCE G.
WASDEN, Attorney General of the State of
Idaho; IDAHO DEPARTMENT OF WATER

)
) Subcase Nos. 37-2128, 37-2471,
) 37-2472, 37-20709 and 37-20710

)
) COUNTERCLAIM

RESOURCES; and DAVID TUTHILL, Director,
Idaho Department of Water Resources

Defendants.

Plaintiff Idaho Power Company ("Idaho Power"), an Idaho corporation, hereby files this Counterclaim in conjunction with its Response to the State of Idaho's Objection to the Amended Director's Report in Basin 37 of the Snake River Basin Adjudication ("SRBA").

INTRODUCTION

1. The State of Idaho has been enmeshed in controversy on a number of fronts with respect to the continuing decline of ground water levels in the Eastern Snake Plain Aquifer ("ESPA") and the resulting decline of Snake River flows. IDWR has had to deal with a number of water right "calls" made by senior priority appropriators utilizing surface and spring water from the Snake River, the flows of which are affected by withdrawals of ground water from the ESPA. However, to date IDWR has not taken into account the multiple year impacts of groundwater pumping from the ESPA in its administration of water rights, and instead has curtailed or threatened to curtail groundwater rights only on the basis of within-the-year or seasonal impacts of such pumping. The Idaho judiciary has been required to address the constitutionality of IDWR's administrative rules governing conjunctive management of ground water and surface water, with a trial court first holding the rules facially unconstitutional, and the Idaho Supreme Court then upholding the facial constitutionality of the rules, still leaving the possibility of a constitutional challenge based on application of the rules in the future. The Idaho legislature has initiated various processes, including through the Idaho Water Resource Board, in an attempt to understand and identify ways to address the decline of the ESPA and spring and River flows.

2. The decline of the ESPA reflects the basic fact that the Snake River System is over appropriated presently, and has been for some time. In the face of this reality, the State has continued to search for ways to satisfy existing water users with existing supplies. Unfortunately, in an over appropriated system such opportunities come at the expense of the owners of existing water rights. One idea pursued by the State is the possibility of recharging ground water in the ESPA through deliveries of surface water from the Snake River, including water encompassed by Idaho Power's water rights. Another attempt recently made by the State is to interpret the Swan Falls Settlement, reached between the State and Idaho Power in settlement of litigation over 20 years ago, in a manner which minimizes the amount of water available to Idaho Power under its water rights, while maximizing control of the water by the State. This latest effort involving interpretation of the Swan Falls Settlement and its purported trust arrangement spearheaded by the Idaho Attorney General has put at issue in the SRBA the interpretation and meaning of the Swan Falls Settlement in a number of respects.

3. The actions of the Attorney General and IDWR have raised disputes concerning interpretation or application of the Swan Falls Settlement. A declaratory judgment by this Court resolving these disputes and their impact upon the subject water rights will clarify and settle the legal relations at issue. Accordingly, Idaho Power brings this Counterclaim respectfully requesting the Court to issue declaratory and injunctive or other appropriate relief regarding the status and nature of Idaho Power's water rights, as well as the respective rights, duties and responsibilities of the parties under the Swan Falls Settlement, all as more fully set forth herein.

PARTIES

4. Idaho Power is an Idaho corporation with its principal place of business in Boise, Idaho. Idaho Power owns and operates numerous facilities in the Snake River Basin, including hydroelectric power, fish propagation, commercial, domestic and irrigation facilities. These

facilities operate under water rights decreed, permitted, licensed and beneficially used pursuant to Idaho law.

5. The State of Idaho and its officials are subject to the Idaho Constitution, including Article XV concerning water rights, and other applicable law.

6. C.L. "Butch" Otter is the Governor of the State of Idaho. Pursuant to Article IV, § 6 of the Idaho Constitution, the supreme executive power of the state is vested in the governor, who shall see that the laws are faithfully executed. The Governor is a party to the Swan Falls Agreement, having executed the Agreement on behalf of the State of Idaho.

7. Lawrence G. Wasden is the Attorney General of the State of Idaho, and is responsible for carrying out the duties of that office under Article IV, § 1 of the Idaho Constitution, Idaho Code § 67-1401, and other applicable law. The Attorney General is a party to the Swan Falls Agreement, having executed the Agreement solely by reason of his official position as counsel for the State of Idaho and its agencies in litigation relating to the Swan Falls Agreement that was pending at the time of its execution.

8. The Idaho Department of Water Resources ("IDWR") is an executive department of the government of the State of Idaho, and is charged with duties regarding management and administration of water resources under Idaho Code §§ 42-1701 et seq. and other applicable law.

9. David Tuthill is the Director of IDWR, and is charged with duties regarding administration of water rights under Idaho Code §§ 42-1701 et seq. and other applicable law.

JURISDICTION AND VENUE

10. Jurisdiction over this action is proper in the district courts under Idaho Const. Art. V, § 20, and Idaho Code § 1-705. Venue is proper in this district court under Idaho Code § 5-

401, in that the subject of the action or some part thereof is situated in this county, and under Idaho Code § 5-402.2, in that the cause of action or some part thereof arose in this county.

11. Jurisdiction and venue in this case are proper in the SRBA Court under Idaho Code §§ 42-1401A and 42-1406A, since this matter seeks the determination of the nature, extent and priority of water rights, the adjudication of the right to the use of water, and the resolution of disputed issues concerning the right to the use of water within the Snake River Basin.

12. The court has jurisdiction to quiet title pursuant to Idaho Code § 6-401.

13. The court has jurisdiction to issue a declaratory judgment pursuant to Idaho Code § 10-1201 and Idaho R. Civ. P. 57.

14. The court has jurisdiction to issue injunctive relief pursuant to Idaho R. Civ. P. 65.

15. The State of Idaho has consented and agreed to resolution of disputes concerning interpretation or application of the Swan Falls Agreement through the mechanism of a petition for declaratory relief such as this Counterclaim. A Stipulation signed by Attorney General Wasden and counsel for Idaho Power, and submitted to the IDWR Director on April 11, 2006, provides:

Further Proceedings Relating to the Swan Falls Agreement. The parties agree that in the event there are *disagreements or disputes between the parties as to the interpretation or application of the Swan Falls Agreement* that they will endeavor to resolve those disagreements through informal discussions and negotiation. In the event that the parties are unable to resolve any such disagreements to their mutual satisfaction, *either party, after notice to the other, may file a petition for declaratory relief with a court of appropriate jurisdiction to have the disagreement resolved and the Swan Falls Agreement interpreted* and neither this Stipulation nor I.C. §§ 42-234, 42-4201, or 42-4201A shall act as a bar to the filing of such action. (Emphasis added).

Idaho Power has provided notice of this Counterclaim to counsel representing the Idaho Attorney General.

GENERAL ALLEGATIONS

The Ownership and Use of Water in Idaho

16. Waters in Idaho "flowing in their natural channels," including surface water and ground water, are the property of the State. Idaho Code § 42-101. However, the right to the use of any of the waters of the State by the people of Idaho is "recognized and confirmed." Id. The State's interest in the waters of the State is subject to the Constitutional guarantee that "the right to divert and appropriate the unappropriated waters of any natural stream to beneficial use shall never be denied." IDAHO CONST. art. XV, § 3. Therefore, the State's role is to "supervise" the "appropriation and allotment to those diverting" water "for any beneficial purpose." Idaho Code § 42-101.

17. Unappropriated water may be appropriated by the diversion and the application thereof to beneficial use. Once water is appropriated a water right is established, which is a right to use the waters owned by the State. A water right is a real property right, which vests upon appropriation.

18. Once a water right has been established, priority of appropriation shall govern the relative rights of those using water. IDAHO CONST. art. XV, § 3.

19. If the quantity of water rights in a basin exceeds the physical supply of water available during all or portions of a year, that basin is considered "over appropriated." In such a circumstance, the Constitutional right to divert and appropriate unappropriated water cannot exist, since there is no unappropriated water available for appropriation. Idaho law recognizes the interconnected nature of surface water and tributary ground water. Thus, the concept of "over appropriation" applies both to surface and interconnected ground water.

Swan Falls Settlement

20. An "Agreement," which was the centerpiece of what has come to be known as the overall "Swan Falls Settlement," was signed on October 25, 1984, by Idaho Power Company's Chairman of the Board and Chief Executive Officer James E. Bruce, Idaho Governor John V. Evans, and Idaho Attorney General Jim Jones. In addition to this 1984 "Agreement," the overall "Swan Falls Settlement" also includes: subsequent implementing legislation, rules, regulations and administrative practices by the State of Idaho; an October 25, 1984 Contract executed by the three parties pursuant to Senate Bill No. 1180 ("1180 Contract"); and a Consent Judgment entered by the court in 1990 in the pending litigation in Case No. 81375 in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada.

21. The Agreement contemplated enactment of a legislative program to implement the Agreement, including legislation relating to the subordination of certain of Idaho Power's water rights, the funding of a general stream adjudication (the SRBA) to assist in determining water availability and facilitate water administration, and the establishment of public interest criteria to facilitate the use of trust water by subsequent appropriators as contemplated by the Agreement. Legislation was subsequently enacted in 1985, and amended in 1986.

22. The Settlement recognized the water rights appropriated and owned by Idaho Power and used at its facilities referenced in the Agreement as valid existing rights. Specific to this Counterclaim, the hydroelectric generation facilities owned and operated by Idaho Power which are more fully set forth in the Settlement, the licenses and decrees under which such facilities divert and beneficially use water, and the amounts of such licenses and decrees are as follows:

- a. Thousand Springs Power Plant: License No. 36-2013 (600 c.f.s.) (Partial Decree entered 11/25/97.)

- b. Lower Malad Power Plant: License No. 37-2128 (700 c.f.s.); and License No. 37-2472 (650 c.f.s.)
- c. Upper Malad Power Plant; License No. 37-2471 (900 c.f.s.)
- d. Clear Lake Power Plant: License No. 36-2018 (526 c.f.s.) (Partial Decree entered 11/25/97.)
- e. Sand Springs [used at Thousand Springs Power Plant]: License No. 36-2026 (100 c.f.s.) (Partial Decree entered 11/25/97.)
- f. Upper Salmon Power Plant; License No. 02-2057 (6,500 c.f.s.)
- g. Lower Salmon Power Plant: License No. 02-2001A (1,700 c.f.s.); License No. 02-2001B (1,300 c.f.s.); License No. 02-2059 (250 c.f.s.); and License No. 02-2060 (14,000 c.f.s.)
- h. Bliss Power Plant: License No. 02-2064 (12,000 c.f.s.); and License No. 02-2065 (3,000 c.f.s.)
- i. Twin Falls Power Plant: License No. 02-2056 (1,050 c.f.s.)
- j. Shoshone Falls Power Plant: License No. 02-2036 (1,000 c.f.s.)
- k. Swan Falls Power Plant; License No. 02-2032 (4,000 c.f.s.); License No. 02-4000 (1,840 c.f.s.); License No. 02-4001 (1,460 c.f.s.); and Decree No. 02-100 (2,150 c.f.s.) (While the licenses and decree for Swan Falls Power Plant total 9,450 c.f.s., the Idaho Supreme Court found in Idaho Power I, 104 Idaho at 578, that Power Plant capacity, and accordingly the limit of Idaho Power's Swan Falls water rights in 1984, was 8,400 c.f.s.)

Idaho Power owns other water rights at other facilities, including hydropower projects, which are not subject to the terms of the Swan Falls Settlement.

23. As more fully set forth in Paragraph 7(A) of the Agreement, the water rights of Idaho Power identified in Paragraph 22 entitle Idaho Power to an unsubordinated right to average daily minimum stream flows in the Snake River of 3,900 c.f.s. in the summer (April 1 to October 31) and 5,600 c.f.s in the winter (November 1 to March 31) measured at the Murphy Gage (the "Swan Falls Daily Minimum Flows"). These flows are not subject to depletion.

24. As more fully set forth in Paragraph 7(B) of the Agreement, Idaho Power is entitled to the use of the flow of the Snake River at its facilities to the extent of its actual beneficial use up to the full amounts of the water rights identified in Paragraph 22 above. However, Idaho Power subordinated those water rights in excess of the Swan Falls Daily Minimum Flows to beneficial upstream uses subsequent to October 1, 1984, upon approval of such uses by the State in accordance with State law, unless the depletion violates or will violate the Swan Falls Daily Minimum Flows. Idaho Power retained its right to contest any appropriation of water in accordance with State law, and the right to compel the State to take reasonable steps to insure and guarantee the Swan Falls Daily Minimum Flows.

25. As more fully set forth in Paragraphs 7(C) and 7(D) of the Swan Falls Agreement, and also as more fully set forth in the 1180 Contract and the consent judgment entered in Case No. 81375 in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, Idaho Power also subordinated the water rights identified in Paragraph 22 above to then existing uses -- specifically to the uses of those persons dismissed from Ada County Case No. 81375 pursuant to the 1180 Contract, and to those persons who beneficially used water prior to October 1, 1984, and who filed an application or claim for said use by June 30, 1985. Idaho Power does not challenge here this subordination to existing uses set forth more fully in Paragraphs 7(C) and 7(D) of the Agreement, the 1180 Contract, or the consent judgment in Case

No. 81375 in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada.

26. As more fully set forth in Paragraph 7(E) of the Agreement, the Swan Falls Daily Minimum Flows are determined without taking into account additional water which Idaho Power may acquire. The use of such acquired water by Idaho Power is not limited by or subject to the Agreement, and must be administered and accounted for by the State of Idaho in addition to the Swan Falls Daily Minimum Flows. The parties acknowledged Idaho Power's right and ability to acquire additional water for power purposes over and above the Swan Falls Daily Minimum Flows by agreeing in Paragraph 6(C) of the Agreement to support legislation relative to the establishment of an effective water marketing system.

27. The Agreement provides in Paragraph 4 that the State and Idaho Power "shall not take any position before the legislature or any court, board or agency which is inconsistent with the terms of this agreement."

28. The Settlement purports to establish a "trust." The parties to the purported trust intended that the trust beneficiaries would be Idaho Power and the people of the State of Idaho. The parties to the purported trust also intended that the trustee of such trust would be the State of Idaho, acting by and through the Governor.

Over Appropriation of Snake River Basin Above Murphy Gage and Absence of Trust Res

29. Fundamental to the establishment of the purported trust arrangement was the mutual assumption, based on the information available to the parties in 1984, that there was some amount of water in the Snake River Basin, including groundwater in the ESPA, that was available for use by new appropriations subsequent to October 1, 1984, the use of which would not cause the flow of the Snake River at the Murphy Gage to drop below the Swan Falls Daily

Minimum Flows. This additional water over and above the Swan Falls Daily Minimum Flows was referred to as the "Trust Water."

30. All Trust Water had been previously appropriated under Idaho Power's water rights described in Paragraph 22 above. However, under the Settlement, the parties established a mechanism by which Idaho Power would subordinate its use of water previously appropriated under Idaho Power's water rights to subsequent appropriation for beneficial uses, that were authorized at that time, by junior water users after October 1, 1984, based upon the State's determination that such appropriations would not cause the flow of the Snake River to drop below the Swan Falls Daily Minimum Flows, and upon the State's determination that such appropriations satisfied specified public interest criteria. Thus, the State was obligated under the Swan Falls Settlement to insure and guarantee the Swan Falls Daily Minimum Flows, and to not issue any permits in the Snake River Basin for ground or surface water use after October 1, 1984, if the use of water under such permits would deplete the flow of the Snake River below the Swan Falls Daily Minimum Flows.

31. In reaching this mutual understanding in 1984 that Trust Water existed for future development, the parties to the Agreement, based upon the best hydrologic data available at the time, believed that the full depletive effect of then-existing uses of ground water in the ESPA was reflected in the historic low flow of the Snake River. Because of the hydrologic interconnectivity of the ESPA and the Snake River, withdrawals of ground water from the ESPA impact flows in the River, and vice-versa. However, the depletive effect of withdrawals of ground water from the ESPA on Snake River flows is delayed for a period, often many years, depending upon various factors, including the distance from the well to the River. Contrary to the assumption of the parties to the Agreement, ground water withdrawals from the ESPA that had occurred prior to 1984 caused depletions in the hydrologic system, which were not

manifested in reduced flows in the Snake River in 1984 when the Agreement was reached.

Moreover, information now available indicates that the impact of such groundwater withdrawals may not yet be reflected in Snake River flows at the Murphy Gage.

32. Over appropriation of the Snake River Basin is a long-term issue, and the State, in fulfilling its obligation to manage both surface water and ground water so as to not violate the Swan Falls Daily Minimum Flows, must take into account the multiple year impacts of ground water depletions from the ESPA.

33. On or about July 12, 2003, average daily flows in the Snake River measured at the Murphy Gage and calculated under the Swan Falls Settlement fell below the Swan Falls Daily Minimum Flows. Such flows did not reflect the total delayed depletive effect of ground water withdrawals from the ESPA that occurred prior to October 1, 1984, or the total delayed depletive effect of ground water withdrawals from the ESPA of Trust Water and non-Trust Water under appropriations that have been allowed by the State of Idaho since October 1, 1984.

34. Based on hydrologic conditions in the Snake River Basin that have manifested since the Settlement, it is apparent that at the time of the Agreement, the Snake River Basin was over appropriated to the extent of the Swan Falls Daily Minimum Flows. The condition of the ESPA and the Snake River upstream from the Murphy Gage remains over appropriated and continues to threaten the Swan Falls Daily Minimum Flows guaranteed by the Settlement. As a result, there never was any Trust Water available for use by post-1984 water uses, there was no trust *res*, and there exists no trust. Therefore, the parties to the Swan Falls Settlement were operating under a mutual mistake of fact in entering into and establishing the "trust" relationship.

IDWR's Erroneous Issuance of Appropriation Permits Pursuant to Swan Falls Subordination

35. Despite the absence of Trust Water, IDWR has processed and approved numerous applications for new appropriations of Trust Water since 1984, which permits were premised upon the erroneous assumption that Trust Water was available for use and which rely upon subordination of Idaho Power's water rights under the Swan Falls Settlement. Put simply, IDWR authorized the use of Trust Water that did, and does, not exist.

36. Following the Swan Falls Settlement, pursuant to various policies and rules, IDWR processed water right filings for the use of Trust Water. IDWR established a Trust Water Area, which was the area of the Snake River Basin in which the State determined Trust Water was located. IDWR also determined to issue some permits for the use of Trust Water for specific terms long enough to amortize development investment of the permittees. Upon expiration of the permit term the permits would be reprocessed, which would involve reconsideration of the adequacy of the water supply and reevaluation of the public interest criteria.

37. IDWR has issued numerous permits for the appropriation of Trust Water, including permits with 20 year terms. The terms of many of these term permits are nearing expiration. The water supply and public interest analyses which IDWR performed to issue permits pursuant to the subordination provided for in the Swan Falls Settlement are out of date and must be updated, and the Court, based on its findings, should order IDWR to take appropriate action to review and reconsider these term permits in consideration of the fact that no Trust Water ever existed.

Attorney General's and IDWR Director's Filings Concerning Interpretation or Application of Swan Falls Agreement

38. Faced with the continuing decline of ground water levels in the ESPA, and the resulting declines in Snake River flows, the State must finally acknowledge that the Snake River

System is and has been over appropriated as to the Swan Falls Daily Minimum Flows. To date, however, the State has been reluctant to do so, and has consequently been searching for ways to satisfy existing water users with existing supplies. Most recently, both the Idaho Attorney General and IDWR have made efforts to interpret the Settlement in a manner that minimizes the amount of water available to Idaho Power under its water rights, while maximizing control of this water by the State. Specifically, the Attorney General and IDWR have asserted legal title to Idaho Power's water rights under the Settlement, and by virtue of such claim of ownership have sought to subordinate Idaho Power's rights to ground water recharge.

39. On December 22, 2006 and January 2, 2007, Attorney General Wasden filed with IDWR several "Notice[s] of Change in Water Right Ownership" (hereinafter "Notices"), asserting that the State of Idaho owns "legal title" to all or a portion of a number of the water rights referenced in Paragraph 22 on the Snake River in Basins 2, 36 and 37, to which decrees, licenses or beneficial uses have been established by Idaho Power and issued by the State, but which the Attorney General now asserts the State acquired as part of the Settlement's purported trust arrangement.

40. The first notification provided by the Idaho Attorney General to Idaho Power that the Attorney General intended to file the Notices with IDWR was a telephone call from two members of the Attorney General's staff on December 22, 2006, the same day that the Attorney General filed the Notices with IDWR and that Idaho Power received them. The Attorney General's filing of the Notices constituted a breach of a Stipulation signed by Attorney General Wasden and counsel for Idaho Power, and filed with the IDWR Director on April 11, 2006.

41. On December 28, 2006, six days after the Attorney General filed the Notices, IDWR filed with the SRBA Court its Director's Report for Basin 2. As to the water rights in Basin 2 referenced in Paragraph 22, the Director's Report essentially tracked the ownership

claims as asserted in the Notices of Change in Water Right Ownership filed by the Attorney General. The issuance of the IDWR Director's Report less than one week after the Attorney General's filing of the Notices of Change in Water Right Ownership indicates that the actions of the Attorney General and IDWR apparently were coordinated.

42. On or about November 1, 2005, IDWR filed a Director's Report in the SRBA for Basin 37 which recognized Idaho Power as the sole water right owner for water rights in Basin 37 referenced in Paragraph 22. However, following the Attorney General's filings, on February 14, 2007, IDWR filed a Notice of Completed Administrative Proceeding ("NCAP") listing such water rights as asserted in the Attorney General's filings. Attached to the NCAP were replacement pages from the Director's Report for Basin 37 concerning each of the five listed water rights in that Basin, which essentially tracked the ownership claims as asserted in the Notices of Change in Water Right Ownership filed by the Attorney General. These replacement pages apparently comprise the Amended Director's Report.

43. IDWR issued a Director's Report in 1992, and an Amended Director's Report in 1995, for Basin 36 which recommended that the SRBA Court decree Idaho Power's Water Right Nos. 36-0213, 36-0218 and 36-02026 as claimed in the name of Idaho Power Company. No objections were filed to the IDWR recommendations, by the State or any other parties, relating to ownership of the water rights. On November 25, 1997, SRBA Presiding Judge Daniel C. Hurlbutt, Jr. entered three Orders of Partial Decree, ordering that these three Idaho Power water rights be decreed as set forth in the Partial Decrees attached to the Orders. The Partial Decrees decreed the water rights in the name of Idaho Power Company.

44. On December 22, 2006, the Idaho Attorney General filed with IDWR a Notice of Change in Water Right Ownership asserting that the State of Idaho held legal title to Water Right

Nos. 36-0213, 36-0218 and 36-02026. The Attorney General's filing provided no indication that these three water rights had been recognized in partial decrees almost a decade earlier.

45. The State has never filed a Notice of Claim in the SRBA regarding Idaho Power's water rights referenced in Paragraph 22, as required by Idaho Code § 42-1409(4).

46. The Attorney General's filing of the Notices claiming and the IDWR Director's Reports recommending legal title in the State to Idaho Power's water rights raise the prospect and establish the threat and intent of the State to take actions prejudicial to Idaho Power on the basis of this assertion of legal title allegedly arising out of the purported Swan Falls Settlement trust, prevent Idaho Power from exercising its full rights as legal owner of its water rights, and are in and of themselves a breach of the Agreement.

Water As Res of Any Trust Under Swan Falls Agreement

47. If there in fact was any Trust Water available for distribution at the time of, or subsequent to, the 1984 Swan Falls Agreement, and a valid trust was established through the Settlement, then the Court should proceed to address the parties' disputes regarding the trust relationship. The State's assertion of ownership of Idaho Power's water rights referenced in Paragraph 22 is based on the State's assertion that under the Settlement such water rights were placed into trust and constitute the trust *res*. The State asserts its ownership interest as a trustee. Idaho Power maintains that under the Settlement, the *res* of any created trust is the Trust Water. It was the Trust Water, not Idaho Power's water rights, that was to be available for new uses under the public interest criteria established by the Settlement.

48. The Settlement made this *res* of Trust Water subject to appropriation for beneficial uses authorized at that time by water users junior to Idaho Power's water rights, and based upon the State's determination, as trustee for such water, that any such appropriations individually and cumulatively satisfied public interest criteria set forth in statutes and regulations

implementing the Agreement. Upon the State's approval of the appropriation of Trust Water by junior water users, Idaho Power's water rights identified in the Agreement were to be automatically subordinated to the extent of such junior appropriations. Pending the use of Trust Water by such junior appropriations, Idaho Power retains full title to and use of its water rights. Even once such rights are subordinated, Idaho Power retains full title to and the right to use water under such rights when available, and the right to contest any appropriation of water in accordance with State law.

49. Nowhere in the Settlement is there any reference made to the State of Idaho owning or claiming legal title to Idaho Power's water rights as trustee, or to Idaho Power conveying its water rights into a trust. Pursuant to the Settlement, starting approximately twenty years ago the State of Idaho has processed and approved applications for the use of Trust Water by junior water users in the Snake River Basin. The State approved such applications and issued permits under new priority dates, not the priority dates of any water rights owned by Idaho Power. The subordination provisions of the Agreement and the establishment of the Trust Water concept thus did not eliminate, seize or provide for the redistribution or reallocation of Idaho Power's water rights. The Agreement and Settlement merely prevents Idaho Power from asserting the priority of its senior water rights above the Swan Falls Daily Minimum Flows against certain upgradient tributary junior priority water rights that Idaho Power subordinated to under (i) Paragraphs 7(C) and 7(D) of the Agreement, (ii) the 1180 Contract or the Consent Judgment in Case No. 81375 in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, or (iii) the Trust Water provisions of the Settlement.

50. Until the actions of the State referenced in this Complaint, the State of Idaho has never claimed nor asserted legal title to Idaho Power's water rights, requested conveyance of title, otherwise asserted that legal title was necessary for the State of Idaho to undertake its duties

as trustee of the Trust Water, or otherwise contested ownership of Idaho Power's water rights. To the contrary, the State of Idaho through IDWR previously submitted recommendations to this Court that water right decrees be adjudicated in the name of Idaho Power as the owner of such water rights. As a result, the actions of the State, its officials, and its agencies following execution of the Agreement have been consistent with title to the water rights remaining with Idaho Power. Idaho Power has relied upon the conduct of the State, its officials, and its agencies. Accordingly, the State of Idaho's claim of legal title to Idaho Power's water rights is barred by the doctrines of estoppel, waiver and laches.

Attorney General's 2006 Opinion Concerning Alleged Subordination of Idaho Power Water Rights to Aquifer Recharge

51. In addition to its claims of legal title, the State has sought to interpret the Settlement in a manner which would allow water appropriated under Idaho Power's water rights to be utilized to recharge the declining ESPA. On March 9, 2006, Attorney General Wasden, in response to questions in a February 27, 2006 letter from State House Speaker Bruce Newcomb, issued Attorney General Opinion 06-2 "Regarding Swan Falls Agreement and Idaho Code §§ 42-234(2) and 42-4201A(2)" (hereinafter "Attorney General Opinion 06-2").

52. Attorney General Opinion 06-2 raised the following question: "Is aquifer recharge a use to which Idaho Power Company subordinated its hydropower water rights under the Swan Falls Agreement?" On this question, the Opinion erroneously concluded that "the hydropower rights referenced in the Swan Falls Agreement are subordinated to aquifer recharge in accordance with state law."

53. Attorney General Opinion 06-02 reached its erroneous conclusion by also finding that statutory law in place currently, which makes water rights for recharge secondary to water rights for hydropower otherwise subordinated under the Settlement, could be ignored as a result

of the Attorney General's interpretation of the Settlement. Specifically, the Opinion found that statutes currently in place, including Idaho Code §§ 42-234(2) and 42-4201A(2), have no legal effect and are "trumped" by the Settlement, since according to the Opinion "the State, as trustee, holds legal title to the water placed in trust and, in accordance with the Swan Falls Agreement, the State has the right to determine how the [T]rust [W]ater will be used."

54. The Idaho legislature considered proposed legislation concerning the relationship between vested water rights for hydropower and water rights for aquifer recharge during the 2006 legislative session. During the legislative proceedings for H 800, significant emphasis was put on Attorney General Opinion 06-2, with some legislators assuming that the Attorney General Opinion was legally correct.

55. The Attorney General's issuance of Attorney General Opinion 06-2, coupled with the Attorney General's filing of the Notices of Change in Water Right Ownership, both of which rely upon the allegation that the State holds "legal title" to water rights licensed to Idaho Power, raise a dispute regarding interpretation of the Settlement appropriate for judicial resolution.

56. The finding in Attorney General Opinion 06-2 that Idaho Power's water rights are subordinate to recharge breaches the Agreement and further raises the prospect and establishes the threat and intent of the State to take actions prejudicial to Idaho Power.

Declaration as to State's Obligations Regarding Swan Falls Minimum Flows and Administrative Duties

57. The Settlement provides for the initiation and completion of the adjudication of water rights in the Snake River Basin through the SRBA, and the integrated and comprehensive administration of such rights by the State.

58. Pursuant to the Settlement, the State is obligated to insure and guarantee the Swan Falls Daily Minimum Flows. The State is further obligated under the Settlement to not issue any

permits in the Snake River Basin for ground or surface water use after October 1, 1984, if the use of water under such permits would deplete the flow of the Snake River below the Swan Falls Daily Minimum Flows. Under Paragraph 7(B) of the Agreement, Idaho Power retained the right to compel the State to take reasonable steps to insure that the Swan Falls Daily Minimum Flows were not violated.

59. Despite the State's obligations, as a result of pumping of ground water under junior water rights, the water levels in the ESPA have steadily declined, and continue to decline, resulting in diminishing spring flows, reach gains and flows in the Snake River. Average daily flows in the Snake River measured at the Murphy Gage and calculated under the Swan Falls Settlement fell below the Swan Falls Daily Minimum Flows on or about July 12, 2003. In addition to causing a violation of the Swan Falls Daily Minimum Flows, the diminishing water flows have resulted in a number of water right "calls" made by senior priority appropriators utilizing surface and spring water from the Snake River, the flows of which are affected by withdrawals of ground water from the ESPA. However, to date IDWR has not taken into account the multiple year impacts of groundwater pumping from the ESPA in its administration of water rights, even though it cannot be disputed that ground water pumping from the ESPA has impacts beyond the year of such pumping. IDWR instead has curtailed or threatened to curtail ground water rights only on the basis of within-the-year or seasonal impacts of such pumping. The State's failure to insure the Swan Falls Daily Minimum Flows, and its failure to account for the multiple year impacts of ground water pumping, are unreasonable and constitute a breach of the Settlement.

FIRST CLAIM FOR RELIEF

(Declaration as to the Absence of Trust Water and No Valid Trust)

60. Idaho Power incorporates by reference and realleges the allegations of Paragraphs 1 through 59 of this Counterclaim.

61. The Defendants have acted outside their authority and in breach of the Swan Falls Settlement in their actions described above, and there is no adequate administrative remedy. Accordingly, pursuant to Idaho R. Civ. P. 57, Idaho Code § 10-1201, and the parties' Stipulation of April 11, 2006, Idaho Power seeks declarations that: when the Swan Falls Agreement was executed in 1984, the Snake River Basin tributary to the Murphy Gage, including surface water and tributary ground water in the ESPA, was over appropriated; (b) on account of such over appropriation, there was no unappropriated water available in this portion of the Snake River Basin on a firm, average daily basis above the average daily minimum flows provided for in the Agreement, i.e., there was no "Trust Water"; and (c) because no Trust Water existed in 1984, there was no trust *res* and therefore no valid trust established under the Settlement.

SECOND CLAIM FOR RELIEF

(Reformation Based on Mutual Mistake Eliminating Trust While Retaining Other Provisions of Swan Falls Settlement)

62. Idaho Power incorporates by reference and realleges the allegations of Paragraphs 1 through 61 of this Counterclaim.

63. Pursuant to Idaho R. Civ. P. 57, Idaho Code § 10-1201, and the parties' Stipulation of April 11, 2006, Idaho Power seeks declarations that: to the extent that the Snake River Basin above the Murphy Gage, including the ESPA, was over appropriated in 1984 as to the Swan Falls Daily Minimum Flows, the parties, who had assumed that Trust Water was

available for new appropriations under the Swan Falls Agreement's trust arrangement, were acting on the basis of a mutual mistake of fact regarding the existence of Trust Water. The Swan Falls Settlement should therefore be reformed based on mutual mistake of fact regarding the existence of Trust Water available in 1984, eliminating any asserted trust while retaining provisions unrelated to the purported trust, including (i) subordination to specified existing uses, and (ii) Idaho Power's right to acquire additional water from sources upstream of its power plants and to convey such water to and past its power plants below Milner Dam independent of any minimum flows established under the Agreement.

THIRD CLAIM FOR RELIEF

(Declaration as to Nature of Trust Res and Quiet Title)

64. Idaho Power incorporates by reference and realleges the allegations of Paragraphs 1 through 63 of this Counterclaim.

65. Alternatively, pursuant to Idaho R. Civ. P. 57, Idaho Code § 10-1201, Idaho Code § 6-401, and the parties' Stipulation of April 11, 2006, Idaho Power seeks declarations that to the extent there was in fact some amount of Trust Water available in 1984, and to the extent that a valid trust was created under the Settlement: (i) the trust *res* is water and not water rights; (ii) the State of Idaho does not hold legal title to Idaho Power's water rights; and (iii) title to the water rights referenced in Paragraph 22 is therefore quieted in Idaho Power.

FOURTH CLAIM FOR RELIEF

(Waiver, Estoppel, Laches)

66. Idaho Power incorporates by reference and realleges the allegations of Paragraphs 1 through 65 of this Counterclaim.

67. Pursuant to Idaho R. Civ. P. 57, Idaho Code § 10-1201, and the parties' Stipulation of April 11, 2006, Idaho Power seeks declarations that the State of Idaho's claim of legal title to Idaho Power's water rights is barred by the doctrines of estoppel, waiver and laches.

FIFTH CLAIM FOR RELIEF

(Declaration as to No Subordination to Recharge)

68. Idaho Power incorporates by reference and realleges the allegations of Paragraphs 1 through 67 of this Counterclaim.

69. Pursuant to Idaho R. Civ. P. 57, Idaho Code § 10-1201, and the parties' Stipulation of April 11, 2006, Idaho Power seeks declarations that: Idaho Power's water rights for hydropower generation are not, through the Swan Falls Settlement or otherwise, subordinate to use of water for ground water recharge.

SIXTH CLAIM FOR RELIEF

(Declaration as to State's Obligations Regarding Swan Falls Minimum Flows and Administration)

70. Idaho Power incorporates by reference and realleges the allegations of Paragraphs 1 through 69 of this Counterclaim.

71. Pursuant to Idaho R. Civ. P. 57, Idaho Code § 10-1201, and the parties' Stipulation of April 11, 2006, Idaho Power seeks declarations that: the State has failed to take reasonable steps in its administration of water rights priorities in the Snake River Basin, and therefore to meet its obligation to insure and guarantee the Swan Falls Daily Minimum Flows, including failing to account for the multiple year impacts of ground water pumping, and accordingly has violated the Swan Falls Settlement.

SEVENTH CLAIM FOR RELIEF

(Preliminary and Permanent Injunction)

72. Idaho Power incorporates by reference and realleges the allegations of Paragraphs 1 through 71 of this Counterclaim.

73. The Idaho Attorney General and IDWR assert in the SRBA that the State of Idaho holds "legal title" to water rights encompassed by water right licenses issued to Idaho Power. The Attorney General further relied upon his view that the State holds "legal title" to Idaho Power's water rights in issuing Idaho Attorney General Opinion 06-2, which erroneously concludes that "the hydropower rights referenced in the Swan Falls Agreement are subordinated to aquifer recharge in accordance with state law."

74. Because IDWR and the Idaho legislature have taken and may take actions affecting Idaho Power's water rights pursuant to the State's actions asserting that the State holds legal title to the subject water rights, and that Idaho Power's hydropower water rights are subordinated to aquifer recharge, Idaho Power is in danger of real, immediate and irreparable harm which may be prevented only by injunctive relief.

75. Idaho Power is already suffering immediate and irreparable harm as a result of: (a) the State's issuance of permits for the appropriation of water from the ESPA based on the erroneous assumption that Trust Water was available for appropriation; and (b) a resultant improper reduction in Snake River flows which otherwise could be used by Idaho Power under its water rights.

76. Idaho Power has a reasonable probability of success on the merits.

77. There is no plain, speedy and adequate remedy at law to prevent the risk of immediate and irreparable harm to Idaho Power.

78. The granting of injunctive relief would be in the public interest.

79. The balance of equities in this matter favors injunctive relief.

80. A preliminary injunction enjoining the State defendants from taking any action affecting the subject water rights on the basis of the State's asserted legal title to such water rights and asserted opinion that Idaho Power's hydropower water rights are subordinate to recharge will preserve the status quo pending a trial on the merits.

81. Accordingly, Idaho Power requests preliminary and permanent injunctive relief:

(a) enjoining the State defendants from taking any action affecting the subject water rights on the basis of the State's asserted legal title to such water rights; (b) ordering IDWR to re-evaluate water availability, and to take appropriate action, upon the expiration of the 20 year terms of previously granted permits for new appropriations of Trust Water; (c) ordering the Idaho Attorney General to repeal Idaho Attorney General Opinion 06-2 on the basis that it is erroneous as a matter of law and a breach of the Swan Falls Settlement; and (d) ordering IDWR to take reasonable steps in the administration of water rights in the Snake River Basin, and therefore to meet its obligation to insure and guarantee the Swan Falls Daily Minimum Flows, including taking into account the multiple year impacts of ground water pumping in the ESPA.

PRAYER FOR RELIEF

WHEREFORE, Idaho Power prays for the following relief:

A. A declaration that there was no "Trust Water" available when the Swan Falls Agreement was executed in 1984, and therefore no trust *res* and no valid trust established under the Swan Falls Settlement.

B. A reformation of the Swan Falls Settlement based on mutual mistake of fact regarding the existence of Trust Water, eliminating any asserted trust while retaining provisions unrelated to the purported trust.

C. A declaration that to the extent there is a valid trust, the trust *res* is water and not water rights, the State of Idaho does not hold legal title to Idaho Power's water rights, and title to the water rights referenced in the Swan Falls Agreement is quieted in Idaho Power.

D. A declaration that the State of Idaho's claim of legal title to Idaho Power's water rights is barred by the doctrines of estoppel, waiver and laches.

E. A declaration that Idaho Power's water rights for hydropower generation are not, through the Swan Falls Settlement or otherwise, subordinate to the use of water for ground water recharge.

F. A declaration that the State of Idaho has failed in its administration of water rights priorities in the Snake River Basin to account for the multiple year impacts of ground water pumping.

G. Preliminary and permanent injunctions: (a) enjoining the State defendants from taking any action affecting the subject water rights on the basis of the State's asserted legal title to such water rights; (b) ordering IDWR to re-evaluate water availability, and to take appropriate action, upon the expiration of the 20 year terms of previously granted permits for new appropriations of Trust Water; (c) ordering the Idaho Attorney General to repeal Idaho Attorney General Opinion 06-2 on the basis that it is erroneous as a matter of law and a breach of the Swan Falls Settlement; and (d) ordering IDWR to take reasonable steps in the administration of water rights in the Snake River Basin, and therefore to meet its obligation to insure and guarantee the Swan Falls Daily Minimum Flows, including taking into account the multiple year impacts of ground water pumping in the ESPA.

H. Attorney's fees, costs and expenses, including expert witness fees; and

I. Such further relief as this Court deems just and proper.

Dated this 10th day of May, 2007.

Respectfully submitted,



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CERTIFICATE OF MAILING

I certify that on May 10th, 2007, I mailed copies of this Response and Counterclaim, to the following persons:

1. One copy to the claimant and parties who filed the objections at the following address:

Idaho Power Company
P.O. Box 70
Boise, Idaho 83707

State of Idaho
700 W. Jefferson, Room 210
P.O. Box 44449
Boise, Idaho 83711-4449

2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 4449
Boise, Idaho 83711-4449

United States Department of Justice
Environment & Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724


Penny Lalonde



May 10, 2007

Special Master Brigitte Bilyeu
Snake River Basin Adjudication
253 3rd Avenue North
Twin Falls, ID 83301

RE: Subcases 37-2128, 37-2471, 37-2472, 37-10709 and 37-10710

Dear Special Master Bilyeu:

Included with this letter is Idaho Power Company's Standard Form 2 *Response to Objection to Amended Director's Report*, together with a *Counterclaim* which is an attachment to and incorporated as part of the Response. The Counterclaim raises various issues concerning the Swan Falls Agreement and its relation to the subject water rights, and encompasses the issues raised by the State concerning alleged legal title to the water rights.

Idaho Power's Response with attachment responds to the Standard Form 1 *Objection to Amended Director's Report* filed by the State of Idaho on May 3, 2007. Since the State's Objection is the subject of the State's Motion to File Late Objection, which is scheduled to be heard on May 11, 2007 at 2:00 p.m., Idaho Power respectfully requests that its Response to that Objection be lodged with the Court right away, and then filed immediately after the State's Objection is accepted for filing by the Court.

In addition, Idaho Power would like to notify you that in an effort to obtain an integrated and comprehensive determination of issues concerning the Swan Falls Agreement in the SRBA, Idaho Power has also filed, with the SRBA Court: (1) a Complaint and Petition for Declaratory and Injunctive Relief; (2) a Motion for Stay of Basin-Wide Issue No. 13; and (3) a Motion for Stay of Proceedings on Idaho Power Company Water Rights in Basins 2, 36 and 37, or Alternatively to Consolidate Proceedings. Idaho Power has requested an expedited hearing on the two motions filed with the SRBA Court, which has been set for June 19, 2007 at 1:30 p.m.

Sincerely,


James C. Tucker
Senior Attorney

cc: State of Idaho
IDWR Document Depository
United States Dept. of Justice
Chief, Natural Resources Division