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**DEPARTMENT OF
WATER RESOURCES**

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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	)	
	)	Subcase Nos. 37-2128, 37-2471, 37-2472,
	)	37-20709, and 37-20710
Case No 39576	)	
	)	STATEMENT OF GARY AND HELEN
	)	DEMOSS FOR SEPTEMBER 5, 2007
	)	SCHEDULING CONFERENCE

Introduction

Gary and Helen DeMoss (DeMosses), by and through their counsel, Beeman & Associates P.C , hereby submit this Statement for purposes of the September 5, 2007 Scheduling Conference for these five subcases.¹ The five subcases arise from five Idaho Power Company (Idaho Power) SRBA claims in Basin 37.²

On July 23, 2007, subsequent to the setting of this scheduling conference, SRBA Presiding Judge Melanson consolidated these five subcases (and specific other Idaho Power subcases in Basins 02 and 37) in Consolidated Subcase 92-23 as to "issues pertaining to ownership and interpretation and/or application of the *Swan Falls Agreement*" and rescinded the

¹ Order Setting Scheduling Conference and Trial Date, dated May 15, 2007.

² SRBA claims 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710.

Orders of Reference for these subcases on those same issues.³ For each affected subcase, matters apart from 92-23 “remain with the assigned special master and may proceed as determined by the special master ”

The purpose of this Statement is to discuss why the DeMoss Objections to Subcase Nos. 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 should be stayed pending the resolution of Consolidated Subcase 92-23.

THE NATURE AND INTENT OF THE DEMOSS OBJECTIONS

The DeMosses filed *Standard Form 1: Objections* to the Director’s Reports for Idaho Power rights 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 on March 10, 2006. The DeMosses objected to the source, priority date, and period of use elements of Idaho Power’s downstream senior priority water rights in order to protect the DeMosses’ junior priority water rights 37-856, 37-2780, 37-7754, and 37-2778 on Dry Creek from curtailment during times of water administration.⁴ The DeMosses filed similar objections to additional downstream senior

³ Order Granting in Part, Denying in Part Motion to Dismiss; Consolidating Common Issues into Consolidated Subcase; and Permitting Discovery Pending Objection Period in Basin 02; and Notice of Scheduling Conference, dated July 23, 2007.

⁴ The DeMosses provided the following reasons supporting these objections:

With historical practice pursuant to decree and water master delivery, diversions to storage under water rights 37-856, 37-2780, 37-7754, and 37-2778 have not been subject to curtailment as a result of priority calls from downstream senior direct flow irrigation water rights before April 1 or by downstream senior direct flow stockwater rights at any time of the year, or by downstream senior direct flow hydropower water rights, recreation or aesthetics water rights, or instream flow water rights at any time of the year. In accordance with the historical practice, these four water rights should not be subject to curtailment as a result of priority calls from downstream senior direct flow water rights.

This water right should be decreed with the following general provisions.

priority rights in Basin 37, but only these five Idaho Power claims are part of Consolidated Subcase 92-23.⁵ The intent behind all of these objections, including the objections to the five Idaho Power rights, was to protect the DeMosses' SRBA claims 37-856, 37-2780, 37-2778, and 37-7754 from curtailment as a result of priority calls from downstream senior direct flow water rights. This is reflected in the common language of the reasons for the DeMoss objections.

Separate Streams:

For purposes of water distribution in the Big Wood River drainage basin (including the Malad River to which the Big Wood River is a tributary in Basin 37), water rights from the following sources to the extent recommended herein, are not considered junior to water rights from the Big Wood River, and the Malad River, and will be administered separately from all other water rights in Basin 37: Dry Creek tributary to Big Wood River in T05S, R14E, Section 22

Separate Administration:

The following water rights from the following sources of water in Basin 37 shall be administered separately from all other water rights in Basin 37 in accordance with the prior appropriation doctrine as established by Idaho law: Dry Creek tributary to Big Wood River in T05S, R14E, Section 22

The following water rights from the following sources of water in Basin 37 shall be administered separately from all other water rights in the Snake River basin in accordance with the prior appropriation doctrine as established by Idaho law: Dry Creek tributary to Big Wood River in T05S, R14E, Section 22

⁵ The DeMoss objections in Basin 37 included 20 downstream senior priority water rights (37-238A, 37-239A, 37-239D, 37-240A, 37-240D, 37-447C, 37-447D, 37-507, 37-607D, 37-608D, 37-1160, 37-1175, 37-2128, 37-4112, 37-4241, 37-11131, 37-19294, 37-19550, 37-19551, 37-19553, and 37-21595), 8 water rights for which DeMoss withdrawals of objection are pending (37-859A, 37-1175A, 37-7108, 37-7857, 37-7865, 37-7920, 37-7922, and 37-7944) and the 4 DeMoss rights with storage components (37-856, 37-2780, 37-2778, and 37-7754).

SRBA RECOMMENDATIONS FOR 37-2128, 37-2471, 37-2472, 37-20709, 37-20710

The Director's Report for these five Idaho Power rights includes several conditions relating to the Swan Falls Agreement; five of those conditions are referred to consecutively as Paragraphs 1 through 5 in each Director's Report.⁶ Paragraph 4 provides:

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1. Right Nos. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 03-2032B, 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, 03-2032B, 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. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032A, 03-2032B, 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).

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

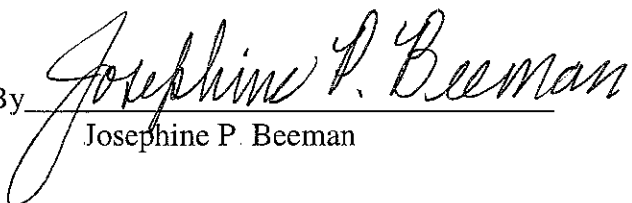
Since rights 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710 are listed in paragraphs 1 and 2, they are subordinated to any water rights with a priority date prior to October 1, 1984. The DeMoss water rights 37-856, 37-2780, 37-7754, and 37-2778 all have priority dates prior to October 1, 1984.⁷ Thus, as recommended, the five Idaho Power rights are subordinated to the DeMosses rights

**THE DEMOSSES' OBJECTIONS SHOULD BE STAYED
PENDING THE RESOLUTION OF CONSOLIDATED SUBCASE 92-23**

Successful resolution of Consolidated Subcase 92-23, consistent with the conditions presently recommended for 37-2128, 37-2471, 37-2472, 37-20709 and 37-20710, would make pursuit of the DeMosses' objections unnecessary for these five rights because the subordination of these five rights achieves the core purpose of protecting "diversions to storage under water rights 37-856, 37-2780, 37-7754, and 37-2778" from curtailment from these downstream senior priority basin 37 Idaho Power water rights. For this reason the DeMosses' objections to 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 should be stayed pending the outcome in consolidated subcase 92-23

DATED this 4th day of September 2007.

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By 
Josephine P. Beeman

⁷ The priority dates for the DeMoss rights are as follows: 37-856 (February 1, 1917), 37-2780 (April 13, 1954), 37-2778 (February 26, 1957), and 37-7754 (December 14, 1978).

CERTIFICATE OF MAILING

I certify that on September 4, 2007, I mailed a copy of the foregoing **STATEMENT OF GARY AND HELEN DEMOSS FOR SEPTEMBER 5, 2007 SCHEDULING CONFERENCE** to the following:

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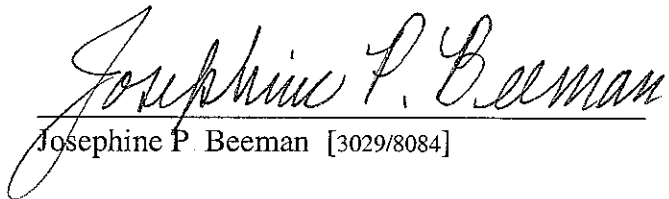
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