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DEPARTMENT OF
WATER RESOURCES

**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

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Subcase No. 92-23

**STATE OF IDAHO'S FIRST SET
OF INTERROGATORIES TO
IDAHO POWER COMPANY**

TO: IDAHO POWER COMPANY AND ITS ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the State of Idaho requires you to respond to the following Interrogatories within thirty (30) days from the date of service hereof in conformance with the Idaho Rules of Civil Procedure, including without limitation Rules 26 and 33.

DEFINITIONS

1. Subject matter of your Complaint. As used herein, the phrase "subject matter of your Complaint" refers only to the subjects discussed in the First, Second, Third, Fourth, and Fifth

Claims for Relief set forth in Idaho Power's Complaint and Petition for Declaratory and Injunctive Relief ("Complaint"). The subject matter of the Complaint's Sixth and Seventh Claims for Relief is beyond the scope of discovery for the reasons set forth in the objections raised at pages 2-4 of State's Responses to Idaho Power's First Set of Discovery Requests. The State reserves the right to seek discovery regarding the Complaint's Sixth and Seventh Claims for Relief in the event the Court overrules the State's objections or otherwise indicates that such discovery is permissible.

2. Document. As used herein the term "Document" refers to all media on which information is recorded or stored. The term "Document" includes, for example and without limitation, any and all tangible things such as papers, writings, drawings, graphs, charts, photographs, microfilm, audio and video recordings, and data compilations from which information can be obtained, translated, if necessary by the responding party through detection devices into reasonably usable form, and data or information that exists in electronic or data storage devices in any medium (e.g., digital images, e-mail, and voice-mail messages).

INTERROGATORIES

INTERROGATORY NO. 1: Please identify by name, address, and telephone number each and every person having knowledge of facts concerning the subject matter of your Complaint, and for each such person:

- a. State whether you, your agents, representatives, and/or attorneys have spoken with that person and, if so, whether any oral or written statement has been obtained from that person; and
- b. Identify each and every Document, writing, photograph, or other item of tangible or documentary evidence obtained by you, your agents, representatives and/or attorneys from that person or known to you, your agents, representatives and/or attorneys to be in the possession of that person.

- c. State whether you expect to call that person as a witness at trial and, if so, what the substance of his or her expected testimony will be.

INTERROGATORY NO. 2: Please identify by name, address and telephone number each and every person who you expect to call as an expert witness regarding the subject matter of your Complaint, in conformance with IRCP 26(b)(4), state all facts known to and opinions held by each such expert, including without limitation:

- a. All opinions to be expressed and the basis and reasons therefore;
- b. What data or other information the witness considered in forming the opinions;
- c. What exhibits, if any, will be used as a summary of or support for the opinions;
- d. The qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years;
- e. The compensation to be paid for the testimony; and
- f. A listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

INTERROGATORY NO. 3: Please describe all admissions (as defined in IRE 801(d)(2)) or statements against interest (as defined in IRE 804(b)(3)) that relate in any way to the subject matter of your Complaint, which you attribute to the State of Idaho, any Governor of the State of Idaho, an Attorney General of the State of Idaho, and any Director of the Idaho Department of Water Resources ("IDWR"), and/or their agencies, subdivisions, or agents, in full, complete and material detail by stating for each such admission or statement:

- a. The substance of the admission or statement;
- b. The identity of the person making the admission or statement;
- c. The date and place where the admission or statement was made; and
- d. The identity of each and every person who heard or saw the admission or statement being made.

INTERROGATORY NO. 4: Paragraph 31 of the Complaint contends, in pertinent part, that the parties to the Agreement reached a “mutual understanding in 1984 that Trust Water existed for future development...” Please describe in detail your basis for this contention, including within your description and without limitation each and every fact, witness, and Document that you believe supports the contention, a description of the existence and extent of any tests, data compilations, model runs, measurements, studies, and reports known to you to discuss such facts, and how and when such facts, witnesses, and Documents came to be known to Idaho Power.

INTERROGATORY NO. 5: Paragraph 31 of the Complaint contends, in pertinent part: “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.” Please describe in detail your basis for this contention, including within your description and without limitation each and every fact, witness, and Document that you believe supports the contention, a description of the existence and extent of any tests, data compilations, model runs, measurements, studies, and reports known to you to discuss such facts, and how and when such facts, witnesses, and Documents came to be known to Idaho Power.

INTERROGATORY NO. 6: Paragraph 34 of the Complaint contends, in pertinent part: “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.” Please describe all facts upon which you base this contention, including within your description and without limitation the identity (i.e., name, address, and telephone number) of each and every person having

knowledge of such facts, a description of the existence and extent of any tests, data compilations, model runs, measurements, studies, and reports known to you to discuss such facts, and when and how such facts, witnesses, and Documents came to be known to Idaho Power.

INTERROGATORY NO. 7: Paragraph 61 of the Complaint contends, in pertinent part: “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.’” Please describe in detail your basis for this contention, including within your description and without limitation each and every fact, witness, and Document that you believe supports the contention, a description of the existence and extent of any tests, data compilations, model runs, measurements, studies, and reports known to you to discuss such facts, and how and when such facts, witnesses, and Documents came to be known to Idaho Power.

INTERROGATORY NO. 8: Paragraph 63 of the Complaint contends, in pertinent part, that the parties to the Swan Falls Agreement “were acting on the basis of a mutual mistake of fact regarding the existence of Trust Water.” Please describe in detail your basis for this contention, including within your description and without limitation each and every fact, witness, and Document that you believe supports the contention, a description of the existence and extent of any tests, data compilations, model runs, measurements, studies, and reports known to you to discuss such facts, and how and when such facts, witnesses, and Documents came to be known to Idaho Power.

INTERROGATORY NO. 9: Paragraph 65 of the Complaint contends, in pertinent part, that to the extent a trust was created “the trust *res* is water and not water rights....” Please describe in detail your basis for this contention, including within your description and without limitation each and every fact, witness, and Document that you believe supports the contention, and how and when such facts, witnesses, and Documents came to be known to Idaho Power.

INTERROGATORY NO. 10: Paragraph 67 of the Complaint contends “that the State of Idaho’s claim of legal title to Idaho Power’s water rights is barred by doctrines of estoppel, waiver, and laches.” Please describe in detail your basis for this contention by separately setting forth, as to each theory asserted, i.e. as to (a) estoppel, (b) waiver, and (c) laches, each and every fact, witness, and Document that you believe supports the contention and how and when such facts, witnesses, and Documents came to be known to Idaho Power.

INTERROGATORY NO. 11: Paragraph 69 of the Complaint contends: “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.” Please describe in detail your basis for this contention, including within your description and without limitation each and every fact, witness, and Document that you believe supports the contention, and how and when such facts, witnesses, and Documents came to be known to Idaho Power.

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INTERROGATORY NO. 12: Please provide the name, current address and telephone number of each person who participated in answering the State's interrogatories, requests for production, and/or requests for admissions, and identify the particular answer(s) with which each person was involved.

DATED this 20th day of November, 2007.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: 

KARL T. KLEIN
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 20th day of November, 2007, I caused to be served a true and correct copy of the foregoing FIRST SET OF INTERROGATORIES TO IDAHO POWER COMPANY addressed as follows:

Via U. S. Mail To:

Clerk of the SRBA Court
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

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

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

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Via Hand-Delivery To:

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Office of the Attorney General
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Boise, Idaho 83720-4449

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