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DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

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

KARL T. KLEIN (ISB # 5156)
Deputy Attorney General
Civil Litigation Division

MICHAEL C. ORR (ISB # 6720)
Deputy Attorney General
Natural Resources Division

700 West State Street, 2nd Floor
P.O. Box 44449
Boise, ID 83711-4449
(208) 334-2400
Attorneys for 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	) Consolidated Subcase no. 92-23
	)
	) STATE OF IDAHO'S STATUS
	) REPORT FOR DECEMBER 18, 2007
Case No. 39576	) STATUS AND SCHEDULING
	) CONFERENCE
	)
	)

1. On May 10, 2007, Idaho Power Company made three filings in the main SRBA case: a "Complaint and Petition for Declaratory and Injunctive Relief" ("Complaint"), a "Motion for Stay of Proceedings on Idaho Power Company Water Rights in Basins 2, 36 and 37, or Alternatively to Consolidate Proceedings," and a "Motion for Stay of Basin-Wide Issue No. 13 and Request for Expedited Hearing."

2. On May 30, 2007, the State filed in the main SRBA case a "Motion to Strike or Alternatively Dismiss Complaint and Petition for Declaratory and Injunctive

Relief.” On June 22, 2007, the State filed in the main SRBA case a “Response to Motion for Stay of Proceedings on Idaho Power Company Water Rights in Basin 2, 36, and 37, or Alternatively to Consolidate Proceedings.”

3. The Court heard argument on the foregoing on June 25, 2007, and took the matters under advisement. On July 24, 2007, the Court entered the “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” (“Order”).

4. The Order states the Court “will parse out the issues over which it has jurisdiction and consolidate and hear them in conjunction with the issues raised in Idaho Power’s objections. Following resolution of the scope of Idaho Power’s water rights any remaining issues over which the Court concludes it does not have jurisdiction can be dealt with accordingly.” Order at 9. The Court also stated that “[f]ollowing the determination of the preliminary issues regarding the scope of Idaho Power’s water rights, this Court will transfer the issues of compliance and enforcement to an administrative body or a court of appropriate jurisdiction.” Order at 13.

5. The Court found that “the issues raised in the *Complaint and Petition* and the *Counterclaim*, which are in the jurisdiction of the SRBA, can be resolved in conjunction with the objection and response resolution process set forth in *AOI* and therefore a special proceeding on the *Complaint and Petition* is unnecessary because the *Director’s Report’s* have been filed for all of the subject hydropower claims.” Order at 15.

6. The Court “considered moving the objection period to an earlier date for the claims in Basin 02 in order to expedite hearing all of Idaho Power’s hydropower claims together. . . . The court has determined that a more practical approach would be to stay the proceedings, except discovery, until the close of the objection period in Basin 02. The issues shall be set for trial thereafter.” Order at 16.

7. The Court ordered that “in order to avoid unnecessary costs or delay, issues pertaining to ownership and interpretation and/or application of the *Swan Falls Agreement* in [the subcases subject to the Order] shall be separated and consolidated with subcase 92-23 into a single consolidated subcase for purposes of resolution.” Order at 16. The Court also ordered that “[t]he proceedings in Consolidated Subcase 92-23, with the exception of discovery, are stayed pending the close of the objection period for Basin 02 on December 5, 2007.” Order at 17.¹ The Court further ordered that a scheduling and status conference be set for December 17, 2007. Order at 17. This was subsequently changed to December 18, 2007.

8. On July 31, 2007, the Court issued a “Notice of Status Conference” setting an additional status conference for December 18, 2007, “for the purpose of determining whether the issues in Consolidated Subcase 92-23 need to be resolved before the Court can address Basin-Wide Issue 13.”

9. On October 9, 2007, Idaho Power Company served the State with the Company’s first set of discovery requests, which consisted principally of fifty-four (54) requests for admission that in large part re-stated the allegations of the Complaint, and

¹ The Order also stayed and separated Idaho Power Company’s claims against the Department of Water Resources and the Director of the Department, and dismissed Idaho Power Company’s request for an order that the Attorney General “repeal” Attorney General Opinion 06-2. Order at 13-15.

which were accompanied by a single interrogatory that required separate explanatory responses as to each request for admission the State denied in whole or part. The Company's discovery requests also included a request for production of documents identified in the interrogatory responses.

10. On October 18, 2007, the State served its first set of discovery requests on Idaho Power Company. These requests provided Idaho Power Company with approximately 900 pages of documents pertaining to the trust and the State's claim of legal title to the water rights at issue in this consolidated subcase, including copies of certified copies of the full legislative history of the Swan Falls trust and subordination legislation, and sought admissions that the copies were genuine, true and correct and admissible as evidence. Idaho Power Company denied all of the State's requests for admission in responses served on November 19, 2007.

11. On November 13, 2007, the State responded to Idaho Power Company's first set of discovery requests. The State denied in whole or part the assertions in Idaho Power Company's requests for admission, explained the denials, and identified the documents on which the State based its denials, including documents previously provided to Idaho Power Company in the State's first set of discovery requests and in a hand delivery in December 2006, and some 2,700 additional pages of responsive documents provided with the State's responses.²

² The following discovery has taken place to date: Idaho Power Company served its first set of discovery requests to the State on October 9, 2007; the State served its first set of discovery requests to Idaho Power Company on October 18, 2007; the State served its responses to Idaho Power Company's first set of discovery on November 13, 2007; the State served its second set of discovery on Idaho Power Company on November 20, 2007.

12. On December 5, 2007, the parties conferred telephonically regarding scheduling and Idaho Power Company's proposal to extend the stay to the close of the period for filing responses to objections, on February 5, 2008. Idaho Power Company informed the State that Idaho Power Company intended to move for a continuance of the stay, and the State informed Idaho Power Company that the State intended to oppose the motion.

13. On December 7, 2007, Idaho Power Company filed a "Motion for Continuance of Stay Pending Filing of Responses to Objections in Basin 2 and Request for Expedited Hearing."

14. The parties conferred telephonically regarding scheduling on December 12, 2007 and December 14, 2007, but were unable to reach agreement. The State informed Idaho Power Company in the December 14 telephonic conference that the State intended to file a motion for partial summary judgment.

15. On December 14, 2007, the State filed the "State of Idaho's Motion for Partial Summary Judgment" ("Motion for Partial Summary Judgment") and the "State of Idaho's Response to Idaho Power Company's Motion for Continuance of Stay" ("Response to Motion to Extend Stay"). The State provided e-mail and fax service copies to counsel for Idaho Power Company the same day.

16. The State submits the following proposal for scheduling of this matter:

January 4, 2008: State's opening brief on State's motion for partial summary judgment brief filed and served;

February 1, 2008: Idaho Power's responsive brief on State's motion for partial summary judgment brief filed and served;

February 8, 2008: State's reply brief on State's motion for partial summary judgment filed and served;

February 15, 2008: Hearing on State's motion for partial summary judgment;

April 15, 2008: Idaho Power's expert disclosure and Rule 26(b)(4) reports due;

June 15, 2008: State's expert disclosure and Rule 26(b)(4) reports due;

August 15, 2008: Idaho Power's rebuttal expert disclosure;

September 30, 2008: State's rebuttal expert disclosure;

October 31, 2008: Discovery closes;

November 14, 2008: Dispositive motion filing deadline;

January 6, 2009: Pre-trial statements with final witness and exhibit lists;

January 13, 2009: Pre-trial conference;

January 27, 2009: Trial (three to four weeks).

17. Based on the parties' discussions, the State believes Idaho Power Company will ask this Court to set trial at a date much later than that proposed by the State. The State recognizes that each party should have sufficient time to develop its theories in the case. In its July 24, 2007 Order, this Court specifically authorized the parties to engage in discovery. Under the State's proposed schedule, the parties will have had over fifteen months from entry of the Order, and over seventeen months from the filing of the Complaint, to complete discovery. Further, Idaho Power Company will have had nearly nine months from the date of the Order to disclose its expert witnesses and their reports. If trial is set as the State requests, over eighteen months will have elapsed between the date of the Order and trial. The State's proposal provides the parties more than sufficient time to complete the development of their cases and prepare for trial.

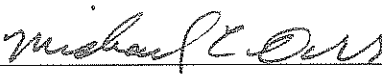
DATED this 17th day of December, 2007.

LAWRENCE G. WASDEN
Attorney General

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

KARL T. KLEIN
Deputy Attorney General
Civil Litigation Division

MICHAEL C. ORR
Deputy Attorney General
Natural Resources Division



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of December 2007, I caused to be served a true and correct copy of the foregoing STATE OF IDAHO'S STATUS REPORT FOR DECEMBER 18, 2007 STATUS AND SCHEDULING CONFERENCE on the following parties by the method indicated:

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

☒ Facsimile: 208-736-2121

Office of the Governor
Represented by David Hensley
304 North 8th Street
Third Floor
Boise, Idaho 83702

☒ Hand Delivery

Idaho Power Company
Represented by:
James C. Tucker
P.O. Box 70
1221 W. Idaho
Boise, ID 83707

☒ U.S. Mail

Idaho Power Company
Represented by:
James S. Lochhead
Adam T. DeVoe
Mark J. Mathews
Michael A. Gheleta
Michelle C. Kales
Brownstein Hyatt Farber Shreck
410 17th Street, Ste. 2200
Denver, CO 80202-4432

☒ U.S. Mail
☒ Facsimile: 303-223-1111
☒ E-mail: MGheleta@BHFS.com

Idaho Power Company
Represented by
John K. Simpson
Shelley M. Davis
1010 W. Jefferson, Suite 102
Boise, ID 83701-2139
IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

☒ Hand Delivery

☒ Statehouse Mail

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83720-4449

☒ Not Applicable

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

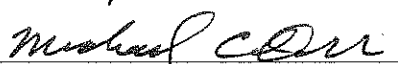
☒ U.S. Mail

Randall C. Budge
Candice M. McHugh
Racine Olson Nye Budge & Bailey,
Chartered
P.O. Box 1391
Pocatello, Idaho 83204-1391

☒ U.S. Mail
☒ E-mail: cmm@racinelaw.net

Josephine Beeman
Beeman & Associates, P.C.
409 W. Jefferson Street
Boise, Idaho 83702

☒ U.S. Mail
☒ E-mail: :jo.beeman@beemanlaw.com


MICHAEL C. ORR
Deputy Attorney General