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DEPARTMENT OF
WATER RESOURCES

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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	)	
_____	)	Consolidated Subcase No. 92-00023
IDAHO POWER COMPANY,	)	
Plaintiff,	)	AFFIDAVIT OF SHELLEY M. DAVIS
	)	IN SUPPORT OF IDAHO POWER
v.	)	COMPANY'S MEMORANDUM IN
	)	SUPPORT OF CROSS MOTION FOR
STATE OF IDAHO; C.L. "BUTCH" OTTER,	)	SUMMARY JUDGMENT
Governor of the State of Idaho; LAWRENCE G.	)	
WASDEN, Attorney General of the State of	)	
Idaho; IDAHO DEPARTMENT OF WATER	)	
RESOURCES; and DAVID TUTHILL, Director,	)	
Idaho Department of Water Resources	)	
Defendants.	)	
_____	)	

STATE OF IDAHO)
) ss.
County of Ada)

SHELLEY M. DAVIS, being first duly sworn upon oath, deposes and states as follows:

1. I am one of the attorneys representing Plaintiff Idaho Power Company in the above-entitled action, and make the following affidavit upon my personal knowledge of the facts and circumstances set forth herein below.

2. Attached hereto as Exhibit A is a true and correct copy of the Swan Falls Agreement, with appended exhibits as signed by Governor Evans, Attorney General Jim Jones, and attorney Tom Nelson, on October 25, 1984.

3. Attached hereto as Exhibit B is a true and correct copy of the Consent Judgment entered in Ada County case *Idaho Power Company v. the State of Idaho, et al.*, case no. 62237.

4. Attached hereto as Exhibit C is a true and correct copy of the Consent Judgment entered in Ada County case *Idaho Power Company v. the Idaho Department of Water Resources, et al.*, case no. 81375.

5. Attached hereto as Exhibit D is a true and correct copy of the Complaint filed by Idaho Power Company commencing *Idaho Power Company v. the State of Idaho, et al.*, case no. 62237.

6. Attached hereto as Exhibit E are true and correct excerpts of the Complaint filed by Idaho Power Company commencing *Idaho Power Company v. the Idaho Department of Water Resources, et al.*, case no. 81375.

7. Attached hereto as Exhibit F are true and correct copies of the Motions For Stay filed by Idaho Power Company and the State of Idaho in case nos. 62237 and 81375.

8. Attached hereto as Exhibit G are true and correct copies of the Order's granting the parties Motions for Stay entered in case nos. 62237 and 81375.

9. Attached hereto as Exhibit H is a true and correct copy of a letter dated April 5, 1989 from Tom Nelson of the law firm Nelson, Rosholt, Robertson, Tolman & Tucker, to Clive Strong, Deputy Attorney General.

10. Attached hereto as Exhibit I are true and correct copies of the Notices of Change in Water Rights Ownership filed by the State of Idaho against Idaho Power Company's water rights on or about December 22, 2006.

11. Attached hereto as Exhibit J is a true and correct copy of a letter dated March 15, 1989 from R. Keith Higginson, Director of the Idaho Department of Water Resources, to Robert J. O'Connor, CEO of Idaho Power Company.

12. Attached hereto as Exhibit K is a true and correct copy of a letter dated May 9, 1984 from Governor John Evans to Mr. James Bruce, CEO of Idaho Power Company.

13. Attached hereto as Exhibit L is a true and correct copy of a letter dated May 23, 1984 from Mr. James Bruce, CEO of Idaho Power Company to Governor John Evans.

14. Attached hereto as Exhibit M are true and correct copies of the Notice of Hearing of the Joint Motion for Entry of Judgment in case no. 81375, and the Minute Order of the Court in case nos. 62237 and 81375.

15. Attached hereto as Exhibit N are true and correct excerpts of the Transcript of the Deposition of Thomas G. Nelson taken on October 31, 1990.

Dated this 24th day of January, 2008.

IDAHO POWER COMPANY

James C. Tucker, Esq.
Senior Attorney, Idaho Power Company
1221 West Idaho Street
Boise, ID 83702-5627

James S. Lochhead, Esq.
Michael A. Gheleta, Esq.
Brownstein Hyatt Farber Schreck, P.C.
410 17th Street, Twenty-Second Floor
Denver, CO 80202

By: *[Signature]*

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
Attorneys for Idaho Power Company

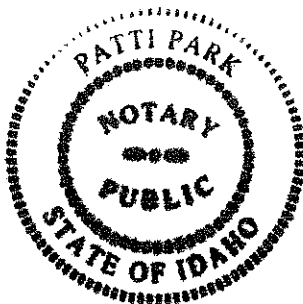
SUBSCRIBED AND SWORN to before me this 24th day of January, 2008.

Patti Park

Notary Public for Idaho

Residing at: *Boise Idaho*

Commission Expires: *2-19-2010*



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of January 2008, I caused to be served a true and correct copy of the foregoing **AFFIDAVIT OF SHELLEY M. DAVIS IN SUPPORT OF IDAHO POWER COMPANY'S MEMORANDUM IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT** by the method indicated below, and addressed to each of the following:

Filed with the Court via U.S. Mail.

Lawrence Wasden
Steven Olsen
Karl T. Klein
Michael C. Orr
700 W. Jefferson, Room 210
P.O. Box 44449
Boise, ID 83711-4449
Attorneys for Defendant, State of Idaho

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

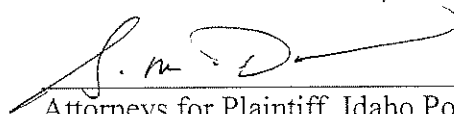
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449

☒ U.S. Mail, Postage Prepaid
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Randall C. Budge
Candice M. McHugh
Racine Olson Nye-Budge & Bailey, Chtd.
P.O. Box 1391
Pocatello, ID 83204-1391

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☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Attorneys for Plaintiff, Idaho Power Company

EXHIBIT A

AGREEMENT

This Agreement is made and entered into among the State of Idaho, by and through the Governor, hereinafter referred to as "State"; John V. Evans, in his official capacity as Governor of the State of Idaho; Jim Jones, in his official capacity as Attorney General of the State of Idaho; and Idaho Power Company, a corporation hereinafter referred to as "Company".

1. Effective Date

This Agreement shall take effect upon execution, except as to paragraphs 7, 8, and 11.

2. Executive Commitment

When the parties agree on certain actions to be taken by State, it is their intent to commit the executive branch of Idaho state government, subject to constitutional and statutory limitations, to take those actions.

3. Attorney General

Jim Jones is a party to this Agreement solely by reason of his official position as counsel for the State of Idaho and its agencies in Idaho Power Company v. State of Idaho, Ada County Civil Case No. 62237 and Idaho Power Company v. Idaho Department of Water Resources, Ada County Civil Case No. 81375.

4. Good Faith

When the parties agree to jointly recommend a particular piece of legislation or action by another entity, each party agrees to actively and in good faith support such legislation or action.

The State shall enforce the State Water Plan and shall assert the existence of water rights held in trust by the State and that the Snake River is fully appropriated as needed to enforce the State Water Plan. State and Company shall not take any position before the legislature or any court, board or agency which is inconsistent with the terms of this agreement.

5. Stay Of Current Court And Regulatory Action

- A. The parties shall file a motion with the court in Ada County Civil Case Numbers 81375 and 62237, seeking a

stay of further proceedings until seven days following the adjournment of the First Regular Session of the 48th Idaho Legislature, except as to preservation of testimony pursuant to the Idaho Rules of Civil Procedure, completion of designated discovery filed by the State of Idaho and dismissal of various defendants by Company. The State shall designate in writing, within fifteen (15) days from the execution of this Agreement, those items of its discovery that must be responded to by Company. The Company shall respond to those items of discovery designated by the State within ninety (90) days from execution of this Agreement.

B. The parties shall request the Federal Energy Regulatory Commission (FERC) to stay any subordination-related decisions in any Company project listed in paragraph 7 licensing or relicensing proceeding pending implementation of this Agreement except as contemplated in paragraph 12 of this Agreement. The parties acknowledge, however, that FERC could independently take action prejudicial to their interests and, in such event, the parties may take reasonable actions necessary to protect their interests. Further, the State shall not file any motions to intervene in Project Numbers 2777 (Upper Salmon) and 2778 (Shoshone Falls); however, by agreeing to this provision, the Company in return waives any defense to the timeliness of a motion to intervene caused by this Agreement in the event this Agreement is not implemented. Company is not agreeing, however, that a motion to intervene would be timely if filed now.

C. The parties shall not attempt to influence any executive agency of the United States to take a particular position regarding subordination in any Company FERC licensing or relicensing proceeding pending implementation of this Agreement.

6. Legislative Program

The parties agree to propose and support the following legislation to implement this Agreement:

A. Enactment of Public Interest Criteria as set forth in Exhibit 1 attached hereto.

- B. Funding for a general adjudication of the Snake River Basin generally as set forth in Exhibit 2 attached hereto.
- C. Establishment of an effective water marketing system.
- D. Funding for hydrologic and economic studies, as set forth in Exhibit 3 attached hereto.
- E. Allocation of gains upon sale of utility property as set forth in Exhibit 4 attached hereto.
- F. Limitations on IPUC jurisdiction as set forth in Exhibit 5 attached hereto.
- G. Rulemaking and moratorium authority for Idaho Department of Water Resources generally as set forth in Exhibit 8 attached hereto.

7. Company's Water Right

State and Company agree that Company's water right shall be as follows (Bracketed names used below refer to Company projects):

- A. State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad), 37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls) entitle the Company to an unsubordinated right of 3900 c.f.s. average daily flow from April 1 to October 31, and 5600 c.f.s. average daily flow 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. The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in NW1/4NE1/4SE1/4 of Section 35 in Township 1 South, Range 1 West, Boise Meridian, Ada County Hydrologic Unit 17050103, on right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.
- B. The Company is also entitled to use the flow of the Snake River at its facilities to the extent of its actual beneficial use but not to exceed those amounts stated in State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad),

37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls), but such rights in excess of the amounts stated in 7(A) shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the State in accordance with State law unless the depletion violates or will violate paragraph 7(A). Company retains its right to contest any appropriation of water in accordance with State law. Company further retains the right to compel State to take reasonable steps to insure the average daily flows established by this Agreement at the Murphy U.S.G.S. gauging station. 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. This paragraph shall constitute a subordination condition.

- C. The Company's rights listed in paragraph 7(A) and 7(B) are also subordinate to the uses of those persons dismissed from Ada County Case No. 81375 pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.
- D. The Company's rights listed in paragraph 7(A) and 7(B) are also subordinate to those persons who have beneficially used water prior to October 1, 1984, and who have filed an application or claim for said use by June 30, 1985.
- E. Company's ability to purchase, lease, own, or otherwise acquire water from sources upstream of its power plants and convey it to and past its power plants below Milner Dam shall not be limited by this agreement. Such flows shall be considered fluctuations resulting from operation of Company facilities.
- F. Upon implementation of this Agreement, State and Company shall consent to entry of decrees in Ada County Civil Case Nos. 62237 and 81375 that describe the Company's water right as provided in paragraphs 7(A) through 7(E).

8. Damages Waiver

Company waives any claim against the State or its agencies for compensation or damages it may have or that may arise from any diminution in water available to Company at its facilities as a result of this Agreement. Company waives any claim for compensation or damages from any use approved by the state in accordance with paragraph 7B. Company retains its right to seek injunctions, compensation, damages, or other relief from any future appropriator, as defined in paragraph 7(B), whose use of water violates or will violate the Company's water right of 3900 c.f.s. average daily flow from April 1 to October 31, and 5600 c.f.s. average daily flow from November 1 to March 31, as measured at the Murphy gauging station, and also retains its rights against the state and its agencies as set out in paragraph 7(B).

9. Proposed 1180 Contract

The parties acknowledge that the Governor and the Company have finalized the terms of a contract that would implement the provisions of Senate Bill 1180 of the First Regular Session of the Idaho Legislature, presently codified as §§ 61-539 and 61-540, Idaho Code which is being executed on this date.

10. Agreement Not An Admission

The parties agree that this Agreement represents an attempt to compromise pending litigation, and it shall not be considered an admission, waiver, or abandonment of any issue of fact or law by any party, and no party will assert or contend that paragraphs 7, 8, and 11 have any legal effect until this Agreement is implemented by the accomplishment of the acts described in paragraph 13.

11. Status of State Water Plan

State and Company agree that the resolution of Company's water rights and recognition thereof by State together with the Idaho State Water Plan provide a sound comprehensive plan for the management of the Snake River watershed. Thus, the parties acknowledge that this Agreement provides a plan best adapted to develop, conserve, and utilize the water resources of the region in the public interest. Upon implementation of this agreement, State and Company will present the Idaho State Water Plan and this document to FERC as a comprehensive plan for the management of the Snake River Watershed.

12. Regulatory Approvals

- A. Within 45 days of the execution of this Agreement, Company shall file appropriate pleadings or other documents with the Idaho Public Utilities Commission (IPUC), to obtain an order determining that the execution and implementation of this Agreement is in the public interest, and does not constitute an abandonment, relinquishment or transfer of utility property. Such pleadings or other documents shall also provide that the order shall state that any effect upon the Company's hydro generation resulting from execution and implementation of this Agreement shall not be grounds now or in the future for a finding or an order that the Company's rate base or any part thereof is overstated or that any portion of its electrical plant in service is no longer used and useful or not devoted to public service, nor will such effect upon the Company's hydro generation be grounds for a finding or an order reducing the Company's present or future revenue requirement or any present or future rate, tariff, schedule or charge.

In the event the IPUC does not issue an order acceptable to the parties, the parties will seek appropriate remedial legislation.

- B. i. Within forty-five (45) days of the execution of this Agreement, the Company shall file with FERC a request for a declaratory ruling that the implementation of this agreement assures a sufficient supply of water for Project Numbers 1975 (Bliss), 2061 (Lower Salmon), 2777 (Upper Salmon), 2055 (C.J. Strike), 2778 (Shoshone Falls), 18 (Twin Falls), 2726 (Upper and Lower Malad), and 503 (Swan Falls).
- ii. Within forty-five (45) days of implementation of this Agreement, the Company shall submit this Agreement and the consent decree to FERC in the proceedings for relicensing of Project Numbers 18 (Twin Falls), and 503 (Swan Falls) and the State and Company shall request that FERC recognize this Agreement as a definition of the Company's water rights in those proceedings.
- iii. When any project listed in (i) hereof is hereafter due for relicensing proceeding, Company

shall submit this Agreement to FERC in the relicensing proceeding, and the State and Company shall request that FERC recognize this Agreement as a definition of the Company's water right in those proceedings.

- C. The Governor and Attorney General on behalf of the State and its agencies shall seek intervention in support of the Company's efforts before the IPUC and FERC, and shall actively support the issuance of acceptable orders by both Commissions, and shall provide authorized witnesses to testify in the proceedings at the request of Company.
- D. Company shall, if necessary, file appropriate pleadings or other documents with the Public Utility Commissioner of Oregon for an order similar to that stated in paragraph 12(A). Such filing, if necessary, shall be done within forty-five (45) days of the execution of this Agreement.

13. Conditions on Effectiveness

- A. The provisions of paragraphs 7, 8, and 11 shall not be binding and effective until each of the following conditions have been implemented:
 - i. Amendment of the State Water Plan to implement the provisions of Exhibit 6;
 - ii. Enactment of the legislative program outlined in paragraph 6;
 - iii. Issuance of an appropriate order by IPUC as set forth in paragraph 12(A), or enactment of appropriate legislation by the State of Idaho, as set forth in Exhibit 5;
 - iv. Issuance of an appropriate order by FERC in a form acceptable to the parties as set out in paragraph 12(B)(i);
 - v. Dismissal with prejudice of the proceeding pending before the IPUC in Case No. U-1006-124;
 - vi. Issuance of an appropriate order by the Public Utility Commissioner of Oregon if Company has requested one; and

vii. Enactment by the State of Idaho of subordination legislation, as set forth in Exhibits 7A and 7B attached to this Agreement.

B. In the event any of these conditions are not implemented, or should this Agreement be terminated as provided in paragraph 16, then this Agreement shall be void.

14. Authority of Department of Water Resources and Idaho Water Resource Board Not Affected

This Agreement shall not be construed to limit or interfere with the authority and duty of the Idaho Department of Water Resources or the Idaho Water Resource Board to enforce and administer any of the laws of the state which it is authorized to enforce and administer.

15. Waiver, Modification or Amendment

No waiver, modification, or amendment of this Agreement or of any covenants, conditions, or limitations herein contained shall be valid unless in writing duly executed by the parties and the parties further agree that the provisions of this section may not be waived, modified, or amended except as herein set forth.

16. Termination of Contract

This Agreement shall terminate upon the failure to satisfy any of the conditions stated in paragraph 13. The parties shall meet on May 15, 1985, to determine if the contract shall be continued or terminated.

17. Subsequent Changes In Law

This Agreement is contingent upon certain enactments of law by the State and action by the Idaho Water Resource Board. Thus, within this Agreement, reference is made to state law in defining respective rights and obligations of the parties. Therefore, upon implementation of the conditions contained in paragraph 13, any subsequent final order by a court of competent jurisdiction, legislative enactment or administrative ruling shall not affect the validity of this Agreement.

18. Successors

The provisions of this Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties.

19. Entire Agreement

This Agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written between them other than are herein set forth.

20. Effect of Section Headings

The section headings appearing in this Agreement are not to be construed as interpretations of the text but are inserted for convenience and reference only.

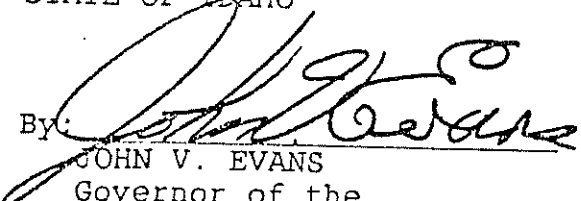
21. Multiple Originals

This Agreement is executed in quadruplicate. Each of the four (4) Agreements with an original signature of each party shall be an original.

IN WITNESS WHEREOF, the parties have executed this Agreement at Boise, Idaho, this 25th day of October, 1984.

STATE OF IDAHO

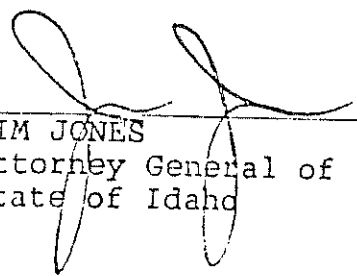
IDAHO POWER COMPANY

By: 

JOHN V. EVANS
Governor of the
State of Idaho

By: 

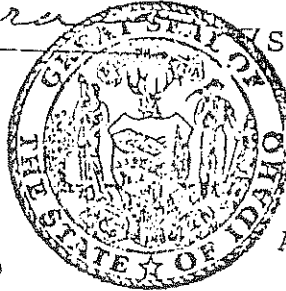
JAMES E. BRUCE
Chairman of the Board
and Chief Executive
Officer

By: 

JIM JONES
Attorney General of the
State of Idaho

ATTEST:


PETE T. CENARRUSA
Secretary of State



Seal of the State of Idaho)

(Corporate Seal of Idaho
Power Company)

ATTEST:


Secretary of Idaho Power

CERTIFICATE OF SECRETARY

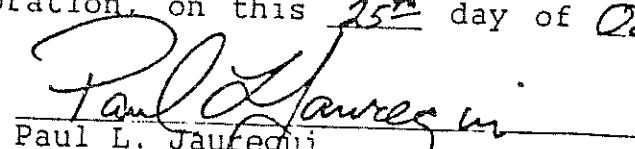
Paul L. Jauregui, as secretary of Idaho Power Company,
a Maine Corporation, hereby certifies as follows:

(1) That the corporate seal, or facsimile thereof,
affixed to the instrument is in fact the seal of the
corporation, or a true facsimile thereof, as the case may be;
and

(2) That any officer of the corporation executing the
instrument does in fact occupy the official position indicated,
that one in such position is duly authorized to execute such
instrument on behalf of the corporation, and that the signature
of such officer subscribed thereunto is genuine; and

(3) That the execution of the instrument on behalf of
the corporation has been duly authorized.

In witness whereof, I, PAUL L. JAUREGUI, as the
secretary of Idaho Power Company, a Maine corporation, have
executed this certificate and affixed the seal of Idaho Power
Company, a Maine Corporation, on this 25th day of October,
1984.


Paul L. Jauregui
Secretary of Idaho Power Company

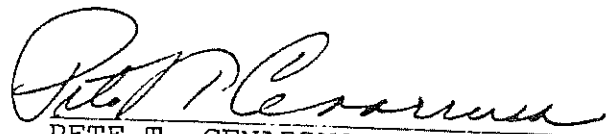
CERTIFICATE OF SECRETARY OF STATE
OF THE STATE OF IDAHO

PETE T. CENARRUSA, as Secretary of State of the State of Idaho, hereby certifies as follows:

1. That the State of Idaho seal, or facsimile thereof, affixed to the instrument is in fact the seal of the State of Idaho, or a true facsimile thereof, as the case may be; and
2. That the officials of the State of Idaho executing the instrument do in fact occupy the official positions indicated, that they are duly authorized to execute such instrument on behalf of the State of Idaho, and that the signatures of such officials of the State of Idaho subscribed thereunto are genuine; and
3. That the execution of the instrument on behalf of the State has been duly authorized.

IN WITNESS WHEREOF, I, Pete T. Cenarrusa, Secretary of State of the State of Idaho, have executed this Certificate and affixed the seal of the State of Idaho on this 25th day of October, 1984.




PETE T. CENARRUSA
Secretary of State
State of Idaho

STATE OF IDAHO)
) ss.
County of Ada)

On this 25th day of October, 1984, before me, a Notary Public, in and for said County and State, personally appeared JAMES E. BRUCE, and PAUL L. JAUREGUI, known or

identified to me to be the President and Secretary, respectively, of Idaho Power Company, the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

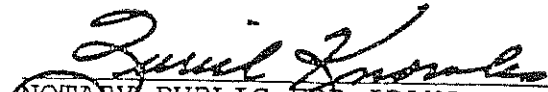
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


NOTARY PUBLIC FOR IDAHO
Residing at Basco, Idaho

STATE OF IDAHO)
) ss.
County of Ada)

On this 25th day of October 1984, before me, a Notary Public, in and for said County and State, personally appeared JOHN V. EVANS, known or identified to me to be the Governor of the State of Idaho; JIM JONES, known or identified to me to be the Attorney General of the State of Idaho; and PETE T. CENARRUSA, known to me to be the Secretary of the State of Idaho; and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


NOTARY PUBLIC FOR IDAHO
Residing at Basco, Idaho

LEGISLATURE OF THE STATE OF IDAHO

Forty-eighth Legislature

First Regular Session - 1985

IN THE _____

_____ BILL NO. _____

BY _____

AN ACT

RELATING TO WATER RIGHTS FOR HYDROPOWER PURPOSES; AMENDING SECTION 42-203, IDAHO CODE, BY MAKING CERTAIN ORGANIZATIONAL CHANGES AND BY PROVIDING FOR THE MAILING OF NOTICES TO PAID SUBSCRIBERS; AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-203C TO PROVIDE THAT THE DEPARTMENT SHALL CONSIDER PUBLIC INTEREST CRITERIA WHEN AN APPLICANT'S APPROPRIATION WOULD SIGNIFICANTLY REDUCE THE AMOUNT OF WATER AVAILABLE FOR A SUBORDINATED POWER USE; AND AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-203D TO PROVIDE THAT THE DEPARTMENT SHALL REVIEW ALL PERMITS ISSUED PRIOR TO THIS ACT'S EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-203, Idaho Code be, and the same is hereby amended to read as follows:

42-203. NOTICE UPON RECEIPT OF APPLICATION -- PROTEST -- HEARING AND FINDINGS -- APPEALS. ~~On and after the passage/ approval, and effective date of this section/~~ (1) Upon receipt of an application to appropriate the waters of this state, the department of water resources, shall prepare a notice in such form as the department may prescribe, specifying: (a) the number of the application; ~~and~~ (b) the

date of filing thereof/; (c) the name and post-office address of the applicant/ (d) the source of the water supply/; (e) the amount of water to be appropriated/ (f) in general the nature of the proposed use/ (g) the approximate location of the point of diversion/ (h) and the point of use/. The department shall also state in said notice that any protest against the approval of such application, in form prescribed by the department, shall be filed with the department within ten (10) days from the last date of publication of such notice.

(2) The director of the department of water resources shall cause the notice to be published in a newspaper printed within the county wherein the point of diversion lies, or in the event no newspaper is printed in said county, then in a newspaper of general circulation therein. When the application proposes a diversion in excess of 20 c.f.s. or 2,000 acre feet, the director shall cause the notice to be published in the newspaper(s) sufficient to achieve statewide circulation. This notice shall be published at least once a week for two (2) successive weeks.

(3) The director of the department shall cause a copy of the notice of application to be sent by ordinary mail to any person who requests in writing to receive any class of notices of application and who pays an annual mailing fee as established by departmental regulation.

(4) Any person, firm, association or corporation concerned in any such application may, within the time allowed in the notice of application, file with said director of the department of water resources a written protest against the approval of such application, which protest shall state the name and address of protestant and shall be signed by him or by his agent or attorney and shall clearly set forth his objections to the approval of such application. Hearing upon the protest so filed shall be held within sixty (60) days from the date such protest is received. Notice of this hearing shall be given by mailing notice not less than ten (10) days before the date of hearing and shall be forwarded to both the applicant and the protestant, or protestants, by certified mail. Such notice shall state the names of the applicant and protestant, or protestants, the time and place fixed for the hearing and such other information as the director of the department of water resources may deem advisable. In the event that no protest is filed, then the director of the department of water resources may forthwith approve the application, providing the same in all respects conforms with the requirements of this chapter, and with the regulations of the department of water resources.

(5) Such hearing shall be conducted in accordance with the provisions of section 42-1701A(1) and (2), Idaho Code. The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller less quantity of water than applied for, or may grant permit upon conditions. The provisions of this section shall apply to any boundary stream between this and any other state in all cases where the water sought to be appropriated has its source largely within the state, irrespective of the location of any proposed power generating plant.

(6) Any person or corporation who has formally appeared at the hearing, ~~feeling~~ aggrieved by the judgment of the director of the department of water resources, may seek judicial review thereof in accordance with section 42-1071A(4), Idaho Code.

SECTION 2. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION to be known and designated as Section 42-203C, Idaho Code, and to read as follows:

42-203C. PUBLIC INTEREST DETERMINATION -- CRITERIA --
WEIGHT -- BURDEN OF PROOF.

(1) If an applicant intends to appropriate water which is or may be available for appropriation by reason of a subordination condition applicable to a water right for power purposes, then the director shall consider, prior to approving the application, the criteria established in section 42-203A, and whether the proposed use would significantly reduce, individually or cumulatively with other uses, the amount of water available to the holder of a water right used for power production and, if so, whether the proposed use is in the public interest.

(2)(a) The director in making such determinations for purposes of this section shall consider:

- (i) the potential benefits, both direct and indirect, that the proposed use would provide to the state and local economy;
- (ii) the economic impact the proposed use would have upon electric utility rates in the State of Idaho, and the availability, foreseeability and cost of alternative energy sources to ameliorate such impact, to the state and local economy;
- (iii) the promotion of the family farming tradition;
- (iv) the promotion of full economic and multiple use development of the water resources of the State of Idaho;
- (v) whether the proposed development conforms to a staged development policy of up to 20,000 acres per year or 80,000 acres in any four-year period in the Snake River Basin above the Murphy gauge.

No single factor enumerated above shall be entitled to greater weight by the director in arriving at this determination.

(b) The burden of proof under this section shall be on the protestant.

SECTION 3. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION to be known and designated as Section 42-203D, Idaho Code, and to read as follows:

42-203D. REVIEW OF PERMITS -- OPPORTUNITY FOR HEARING. The department shall review all permits issued prior to the effective date of this section, except to the extent a permit has been put to beneficial use prior to July 1, 1985, to determine whether they comply with the provisions of chapter 2, title 42, Idaho Code. If the department finds that the proposed use does not satisfy the criteria of chapter 2, title 42, Idaho Code, then the department shall either cancel the permit or impose the conditions required to bring the permit into compliance with chapter 2, title 42, Idaho Code. If the department finds that the permit satisfies the criteria established by chapter 2, title 42, Idaho Code, then the department shall enter an order continuing the permit.

The department shall provide an opportunity for hearing in accordance with section 1701A, title 42, Idaho Code and sections 5209 through 5215, title 67, Idaho Code, for each holder of a permit that is either cancelled or made subject to new conditions.

LEGISLATURE OF THE STATE OF IDAHO

Forty-eighth Legislature

First Regular Session - 1985

IN THE _____

_____ BILL NO. _____

BY _____

AN ACT

RELATING TO THE ADJUDICATION OF WATER RIGHTS, AMENDING CHAPTER 14, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1406A PROVIDING FOR THE COMMENCEMENT OF AN ADJUDICATION OF THE WATER RIGHTS OF THE SNAKE RIVER BASIN; AMENDING SECTION 42-1414, IDAHO CODE, TO MODIFY THE SCHEDULE OF FEES FOR FILING A NOTICE OF CLAIM IN A WATER RIGHTS ADJUDICATION PROCEEDING AND PROVIDING A PROCEDURE FOR COLLECTION OF THE FEES; AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1777 PROVIDING FOR THE CREATION OF THE WATER RESOURCES ADJUDICATION ACCOUNT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF IDAHO:

SECTION 1. That Chapter 14, Title 42, Idaho Code, be, and the same is hereby amended by the addition of a NEW SECTION, to be known and designated as Section 42-1406A, Idaho Code, and to read as follows:

42-1406A. SNAKE RIVER BASIN ADJUDICATION - COMMENCEMENT.

(1) Effective management in the public interest of the waters of the Snake River Basin requires that a comprehensive determination of the nature, extent and priority of the rights of all users of surface and ground water from that system be determined. Therefore, the director of the department of water resources on or after July 1, 1985 shall petition the district court of Ada County to commence an adjudication of the water rights of the Snake River Basin either through initiation of a new proceeding or the enlargement of an ongoing adjudication proceeding. The petition shall describe:

(a) the boundaries of the entire system within the state to be adjudicated;

(b) the boundaries of any hydrologic sub-basins within the system for which the director intends to proceed separately with respect to the actions required or authorized to be taken pursuant to sections 42-1408 through 42-1413, Idaho Code; and

(c) the uses of water, if any, within the system that are recommended to be excluded from the adjudication proceeding.

(2) Upon issuance of an order by the district court which:

(a) authorizes the director to commence an investigation and determination of the various water rights existing within the system;

(b) defines the system boundaries;

(c) defines the boundaries of any hydrologic sub-basins within the system for which proceedings may advance separately pursuant to sections 42-1408 through 42-1412, Idaho Code; and

(d) defines any uses of water excluded from the adjudication proceeding;

the adjudication shall proceed in the manner provided by the provisions of chapter 14, title 42, Idaho Code, with the exception of sections 42-1406 and 42-1407.

SECTION 2. That section 42-1414, Idaho Code, be, and the same is hereby amended to read as follows:

42-1414. FEEs FOR FILING NOTICE OF CLAIM - In order to provide an adequate and equitable cost-sharing formula for financing the costs of adjudicating water rights The department of water resources shall accept no notice of claim required under the provisions of section 42-4109, Idaho Code, unless such notice of claim is submitted with a filing fee based upon the quantity of water claimed which shall be determined on the same basis as the fee for filing an application for a permit to appropriate the public waters of this state as provided in section 42-221, Idaho Code, except that where such claim is in connection with a water right established pursuant to a valid permit or license previously issued by the department of water administration or a water right which has previously been adjudicated by a state or federal court, the claimant shall pay a filing fee of only

ten dollars (\$10.00) fee schedule set forth below. Failure to pay the variable water use fee in accordance with the timetable provided shall be cause for the department to reject and return the notice of claim to the claimant. Provided/ However/ that no filing fee shall be required with any notice of claim when proceedings for adjudication involving such claim were under way when this act/ Chapter 153/ Laws of 1971/ was enacted/ The fee schedule set forth below applies to adjudication proceedings commenced or enlarged on or after July 1, 1985 and to adjudication proceedings for which a proposed finding of water rights has not been filed with the appropriate district court by the department of water resources prior to July 1, 1985.

A. Flat fee per claim filed:

1. Claims for domestic and/or stock-watering rights \$25.00
2. Claims for all other rights. \$50.00

B. Additional variable water use fee for each claim filed:

1. Irrigation use: \$ 1.00 per acre.
2. Power: \$ 25.00 per c.f.s.
3. Aquaculture: \$ 10.00 per c.f.s.
4. Municipal, Industrial, Commercial, Mining, Heating, Cooling: \$100.00 per c.f.s.
5. Public: \$100.00 per c.f.s.
6. Miscellaneous: flat fee only.

C. Payment of a variable water use fee of more than \$1,000.00 may be spread out over as many as five annual equal payments with 10 percent interest accruing on the unpaid balance. All fees collected by the department pursuant to this section shall be placed in the water resources adjudication account established by section 42-1777, Idaho Code.

SECTION 3. That Chapter 17, Title 42, Idaho Code, be, and the same is hereby amended by the addition of a NEW SECTION, to be known and designated as Section 42-1777, Idaho Code, and to read as follows:

42-1777. WATER RESOURCES ADJUDICATION ACCOUNT. - A water resource adjudication account is hereby created and established in the agency asset fund. Fee moneys in the account

are to be utilized by the department of water resources, upon appropriation by the legislature, to pay the costs of the department attributable to the Snake River Basin adjudication provided for by section 42-7406A, Idaho Code.

The state treasurer is directed to invest all moneys in the account. All interest or other income accruing from such investment shall accrue to the account.

LEGISLATURE OF THE STATE OF IDAHO

Forty-eighth Legislature

First Regular Session - 1985

IN THE _____

_____ BILL NO. _____

BY _____

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE
DIVISION OF FINANCIAL MANAGEMENT, FOR FISCAL YEAR 1986.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Office of the Governor from the general account the amount of \$200,000 to be used for the purpose of conducting hydrologic and economic studies of the Snake River Basin. A technical advisory committee named by the Governor shall oversee the studies.

LEGISLATURE OF THE STATE OF IDAHO

Forty-eighth Legislature

First Regular Session - 1985

IN THE _____

_____ BILL NO. _____

BY _____

AN ACT

AMENDING CHAPTER 5, TITLE 61, IDAHO CODE, BY THE ADDITION OF A
NEW SECTION 61-502B TO PROVIDE THAT GAIN UPON SALE OF A
PUBLIC UTILITY'S WATER RIGHT SHALL ACCRUE TO THE BENEFIT OF
THE RATEPAYERS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1 - That Chapter 5, Title 61, Idaho Code, be, and the
same is hereby amended by the addition thereto of a NEW
SECTION, to be known and designated as Section 61-502B, Idaho
Code, and to read as follows:

61-502B. ALLOCATION OF GAIN UPON SALE OF WATER RIGHT.

The gain upon sale of a public utility's water right used
for the generation of electricity shall accrue to the benefit
of the ratepayers.

MEMORANDUM

SUBJECT: PROPOSED LEGISLATION RELATING TO UTILITIES COMMISSION AND ITS JURISDICTION TO REVIEW REVENUE REQUIREMENT AND OTHER REGULATORY IMPLICATIONS OF SWAN FALLS COMPROMISE.

SECTION 1 -- FINDINGS AND STATEMENT OF PURPOSE.--After hearing testimony from the Office of the Governor, the Office of the Attorney General, the Idaho Public Utilities Commission, the Idaho Department of Water Resources, the Idaho Water Resources Board, the Idaho Department of Fish and Game, other governmental entities and other interested groups and individuals of the State of Idaho, the legislature hereby finds that while portions of the testimony differ, the [describe the settlement and stipulation] is in the public interest for all purposes, including but not limited to, all purposes under the Public Utilities Law, as amended. Implementation of the settlement will resolve continuing controversy over electric utility water rights in the Snake River Basin above Murphy U.S.G.S gaging station. That controversy has rendered the amount of the water available for hydropower uncertain, thus placing at risk both the availability of low-cost hydropower to the ratepayers and the state's ability to manage an increasingly scarce resource. This settlement balances all of the parties' concerns and insures that existing hydropower-generating facilities will remain useful, that ratepayers will not be burdened with excessive costs, and that availability of water for additional domestic, manufacturing, and agricultural uses will judiciously expand.

SECTION 2 -- PUBLIC UTILITIES COMMISSION--JURISDICTION.--The Idaho Public Utilities Commission shall have no jurisdiction to consider in any proceeding, whether instituted before or after the effective date of this act, any issue as to whether any electric utility, (including Idaho Power Company), should have or could have preserved, maintained or protected its water rights and hydroelectric generation in a manner inconsistent with [describe the settlement and stipulation].

SECTION 3 -- IPUC--EFFECT OF AGREEMENT.--In any proceeding before the Idaho Public Utilities Commission, including but not limited to a proceeding in which the commission is setting or reviewing the revenue requirement of any electric utility (including Idaho Power Company), the commission shall accept as reasonable and in the public interest for all purposes, the [describe the settlement and stipulation], including without limitation the effects of implementation of such [describe the settlement and stipulation] on the utility's revenue requirements and hydroelectric generation.

SECTION 4 -- EXEMPTION.--Implementation of the []
shall not constitute a sale, assignment, conveyance or
transfer within the meaning of §§61-327, 61-328, 61-329,
61-330, and 61-331, I.C., to the extent any of those sections
may apply.

EXHIBIT 6

The executive branch of the State of Idaho and the Idaho Power Company agree to recommend that the following positions be incorporated into policy 32 of the state water plan.

1. The minimum daily flow at the Murphy gauging station should be increased to 3,900 c.f.s. from April 1 through October 31 and to 5,600 c.f.s from November 1 to March 31.
2. The minimum daily flow at the Milner gauging station shall remain at zero c.f.s.
3. New storage projects upstream from the Murphy gauge should only be approved after it is determined that existing storage above Murphy is fully utilized.
4. The Idaho Water Resource Board should consider reserving a block of water for future DCMI purposes.
5. There should be an express recognition of the adverse effects of diversions for storage from the mainstream of the Snake River between Milner and Murphy on hydropower production from November 1 to March 31. In this regard, approval of any new storage projects that contemplate the diversion of water during the November 1 to March 31 period from the mainstream of the Snake River between Milner Dam and Murphy Gauge should be coupled with provisions that mitigate the impact such depletions would have on the generation of hydropower.

[The parties are proposing a policy which is neutral on the question of which Company facilities should be considered in mitigation decisions. At any later time the Board considers that question, the parties reserve the right to take any position they deem appropriate.]

LEGISLATURE OF THE STATE OF IDAHO

Forty-eighth Legislature

First Regular Session - 1985

IN THE _____

_____ BILL NO. _____

BY _____

AN ACT

AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-203B, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHALL HAVE THE AUTHORITY TO SUBORDINATE RIGHTS GRANTED FOR POWER PURPOSES TO SUBSEQUENT UPSTREAM RIGHTS, AND TO LIMIT PERMITS OR LICENSES GRANTED FOR POWER PURPOSES TO A SPECIFIC TERM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-203B, Idaho Code, and to read as follows:

42-203B. AUTHORITY TO SUBORDINATE RIGHTS -- NATURE OF SUBORDINATED WATER RIGHT AND AUTHORITY TO ESTABLISH A SUBORDINATION CONDITION -- AUTHORITY TO LIMIT TERM OF PERMIT OR LICENSE. The director shall have the authority to subordinate the rights granted in a permit or license for power purposes to subsequent upstream beneficial depletionary uses. A subordinated water right for power use does not give rise to any claim against, or right to interfere with, the holder of subsequent upstream rights established pursuant to state law. The director shall also have the authority to limit a permit or license for power purposes to a specific term.

SECTION 2. This Act does not apply to licenses which have already been issued as of the effective date of this Act. .

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this Act shall be in full force and effect on and after its passage and approval.

Section 1:

1. The legislature finds and declares that it is in the public interest to specifically implement the state's power to regulate and limit the use of water for power purposes and to define the relationship between the state and the holder of a water right for power purposes to the extent such right exceeds an established minimum flow. The purposes of the trust established by Sections 2 and 3 of this act are to assure an adequate supply of water for all future beneficial uses and to clarify and protect the right of a user of water for power purposes to continue using the water pending approval of depletionary future beneficial uses. [Further findings will be added]
2. A water right for power purposes which is defined by agreement with the state as unsubordinated to the extent of a minimum flow established by state action shall remain unsubordinated as defined by the agreement. Any portion of the water rights for power purposes in excess of the level so established shall be held in trust by the State of Idaho, by and through the Governor, for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho. The rights held in trust shall be subject to subordination to and depletion by future upstream beneficial users whose rights are acquired pursuant to state law.
3. Water rights for power purposes not defined by agreement with the state shall not be subject to depletion below any applicable minimum stream flow established by state action. Water rights for power purposes in excess of such minimum stream flow shall be 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. The rights held in trust shall be subject to subordination to and depletion by future upstream beneficial users whose rights are acquired pursuant to state law.
4. The user of water for power purposes as beneficiary of the trust established by Sections 2 and 3 shall be entitled to use water available at its facilities to the extent of the water right, and to protect its rights to the use of the water as provided by state law against depletions or claims not in accordance with state law.
5. The Governor or his designee is hereby authorized and empowered to enter into agreements with holders of water rights for power purposes to define that portion of their water rights at or below the level of the applicable minimum stream flow as being unsubordinated to upstream beneficial uses and depletions, and to define such rights in excess thereof as

being held in trust by the State according to Section 2 above. Such agreements shall be subject to ratification by law. The contract entered into by the Governor and the Idaho Power Company on October 24, 1984, is hereby found and declared to be such an agreement, and the legislature hereby ratifies the Governor's authority and power to enter into this agreement.

Section 2: This Act shall not be construed as modifying, amending, or repealing any interstate compact.

Section 3: The provisions of this Act are hereby declared to be severable. If any provision of this Act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this Act.

Section 4: An emergency existing therefor, which emergency is hereby declared to exist, this Act shall be in full force and effect on and after its passage and approval.

Exhibit 8

LEGISLATURE OF THE STATE OF IDAHO

Forty-eighth Legislature

First Regular Session - 1985

IN THE _____

_____ BILL NO. _____

BY _____

AN ACT

AMENDING SECTION 42-1805, IDAHO CODE, TO PROVIDE THAT THE
DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHALL HAVE
THE POWER TO ESTABLISH RULES AND REGULATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-1805, be, and the same is hereby
amended to read as follows:

42-1805. ADDITIONAL DUTIES -- In addition to other duties
prescribed by law, the director of the department of water
resources shall have the following powers and duties:

(1) To represent the state in all matters pertaining to
interstate and international water rights affecting Idaho water
resources; and to cooperate with all agencies, now existing or
hereafter to be formed, within the state or within other
jurisdictions, in matters affecting the development of the
water resources of this state.

(2) To prepare a present and continuing inventory of the
water resources of this state, ascertain means and methods of
conserving and augmenting these and determine as accurately as
possible the most effective means by which these water
resources may be applied for the benefit of the people of this
state.

(3) To conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

(4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies.

(5) To cooperate with and coordinate activities with the administrator of the division of environmental protection of the department of health and welfare as such activities relate to the functions of either or both departments concerning water quality. Such cooperation and coordination shall specifically require that:

(a) The director meet at least quarterly with the administrator and his staff to discuss water quality programs. A copy of the minutes of such meeting shall be transmitted to the governor.

(b) The director transmit to the administrator, reports and information prepared by him pertaining to water quality programs, and proposed rules and regulations pertaining to water quality programs.

(c) The director shall make available to the administrator and the administrator shall make available to the director all notices of hearings relating to the promulgation of rules and regulations relating to water quality, waste discharge permits, and stream channel alteration, as such directly affect water quality, and notice of any other hearings and meetings which relate to water quality.

(6) To perform administrative duties and such other functions as the board may from time to time assign to the director to enable the board to carry out its powers and duties.

(7) To suspend the issuance of licenses or permits of a defined class or in a defined geographic area, as necessary to protect existing uses, ensure compliance with state law or implement the State Water Plan.

(8) To promulgate, adopt, modify, repeal and enforce rules and regulations implementing or effectuating the powers and duties of the department.

EXHIBIT B

FILED 4/15
P.M.

MAR 9 1990

JOHN CASTIDA CLERK
BY Kathleen Martinez
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

* * * * *

IDAHO POWER COMPANY,	)	Case No. 62237
a corporation,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u>CONSENT JUDGMENT</u>
	)	
STATE OF IDAHO, IDAHO DEPARTMENT	)	
OF WATER RESOURCES, et al.	)	
	)	
Defendants.	)	

* * * * *

Upon stipulation of Plaintiff and the State
Defendants, and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Idaho Power Company's water rights shall be as
follows (bracketed names below refer to Company projects):

A. State Water License Numbers 36-2013
(Thousand Springs), 37-2128 & 37-2472 (Lower
Malad), 37-2471 (Upper Malad), 36-2018
(Clear Lake), 36-2026 (Sand Springs),
02-2057 (Upper Salmon), 02-2001A, 02-2001B,
02-2059, 02-2060 (Lower Salmon), 02-2064,
02-2065 (Bliss), 02-2056 (Twin Falls),
02-2036 (Shoshone Falls), 02-2032, 02-4000,
02-4001, and Decree Number 02-0100 (Swan

Falls) entitle the Company to an unsubordinated right of 3900 c.f.s. average daily flow from April 1 to October 31, and 5600 c.f.s. average daily flow 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. The Murphy gauging station is located at latitude 43°17'31", Longitude 116°25'12", in NW1/4 NE1/4 SE1/4 of Section 35 in Township 1 South, Range 1 West, Boise Meridian, Ada County Hydrologic Unit 17050103, on right bank 4.2 miles downstream from Swan Falls Power Plant, 7.5 miles NE of Murphy, at river mile 453.5.

B. The Company is also entitled to use the flow of the Snake River at its facilities to the extent of its actual beneficial use, but not to exceed those amounts stated in State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad), 37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls), but such rights in excess of the amounts stated in 1(A) shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the State in accordance with State law unless the depletion violates or will violate paragraph 1(A). Company retains its right to contest any appropriation of water in accordance with State law. Company further retains the right to compel State to take reasonable steps to insure the average daily flows established by this Agreement at the Murphy U.S.G.S. gauging station. 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. This paragraph shall constitute a subordination condition.

C. The Company's rights listed in paragraph 1(A) and 1(B) are also subordinate to the uses of those persons dismissed from Ada County Case No. 81375 pursuant to the

contract executed between the State and Company implementing the terms of Idaho Code §§61-539 and 61-540.

D. The Company's rights listed in paragraph 1(A) and 1(B) are also subordinate to those persons who have beneficially used water prior to October 1, 1984, and who have filed an application or claim for said use by June 30, 1985.

E. Company's ability to purchase, lease, own, or otherwise acquire water from sources upstream of its power plants and convey it to and past its power plants below Milner Dam shall not be limited by this agreement. Such flows shall be considered fluctuations resulting from operation of Company facilities.

2. The above-captioned case is hereby dismissed without prejudice as to all remaining defendants other than the State Defendants.

3. The above-captioned case is hereby dismissed with prejudice as against the State defendants as to all claims of plaintiff not resolved by the decisions of the Idaho Supreme Court reported as Idaho Power Company v. State of Idaho, 104 Idaho 570, 661 P.2d 736 and 104 Idaho 575, 661 P.2d 741 (1983) or by the entry of this Judgment.

4. The Swan Falls Agreement, dated October 25, 1984, shall not be merged into nor integrated with this Judgment, but shall remain in full force and effect independent of this Judgment.

5. Each and all parties shall bear their own costs.

DATED this 17th day of March, 1990

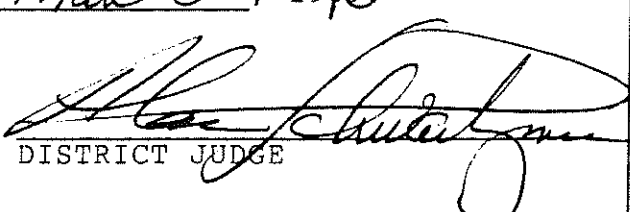

DISTRICT JUDGE

EXHIBIT C

NO. _____
FIL. _____
A.M. _____ P.M. 2:05

FEB 16 1960

JOHN BASTIDA, CLERK

Regina Jacobson

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

* * * * *

IDAHO POWER COMPANY,
a corporation,

Plaintiff,

vs.

STATE OF IDAHO, IDAHO DEPARTMENT
OF WATER RESOURCES, et al.

Defendants.

Case No. 81375

CONSENT JUDGMENT

* * * * *

Upon stipulation of Plaintiff and the State
Defendants, and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Idaho Power Company's water rights shall be as
follows (bracketed names below refer to Company projects):

A. State Water License Numbers 36-2013
(Thousand Springs), 37-2128 & 37-2472 (Lower
Malad), 37-2471 (Upper Malad), 36-2018
(Clear Lake), 36-2026 (Sand Springs),
02-2057 (Upper Salmon), 02-2001A, 02-2001B,
02-2059, 02-2060 (Lower Salmon), 02-2064,
02-2065 (Bliss), 02-2056 (Twin Falls),
02-2036 (Shoshone Falls), 02-2032, 02-4000,
02-4001, and Decree Number 02-0100 (Swan
Falls) entitle the Company to an
unsubordinated right of 3900 c.f.s. average

1 daily flow from April 1 to October 31, and
2 5600 c.f.s. average daily flow from November
3 1 to March 31, both to be measured at the
4 Murphy U.S.G.S. gauging station immediately
5 below Swan Falls. These flows are not
6 subject to depletion. The Murphy gauging
7 station is located at latitude 43°17'31",
Longitude 116°25'12", in NW1/4 NE1/4 SE1/4
of Section 35 in Township 1 South, Range 1
West, Boise Meridian, Ada County Hydrologic
Unit 17050103, on right bank 4.2 miles
downstream from Swan Falls Power Plant, 7.5
miles NE of Murphy, at river mile 453.5.

8 B. The Company is also entitled to use the
9 flow of the Snake River at its facilities to
10 the extent of its actual beneficial use, but
11 not to exceed those amounts stated in State
12 Water License Numbers 36-2013 (Thousand
13 Springs), 37-2128 & 37-2472 (Lower Malad),
14 37-2471 (Upper Malad), 36-2018 (Clear Lake),
15 36-2026 (Sand Springs), 02-2057 (Upper
16 Salmon), 02-2001A, 02-2001B, 02-2059,
17 02-2060 (Lower Salmon), 02-2064, 02-2065
18 (Bliss), 02-2056 (Twin Falls), 02-2036
19 (Shoshone Falls), 02-2032, 02-4000, 02-4001,
20 and Decree Number 02-0100 (Swan Falls), but
21 such rights in excess of the amounts stated
22 in 1(A) shall be subordinate to subsequent
23 beneficial upstream uses upon approval of
24 such uses by the State in accordance with
25 State law unless the depletion violates or
26 will violate paragraph 1(A). Company
27 retains its right to contest any
28 appropriation of water in accordance with
State law. Company further retains the
right to compel State to take reasonable
steps to insure the average daily flows
established by this Agreement at the Murphy
U.S.G.S. gauging station. 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. This
paragraph shall constitute a subordination
condition.

26 C. The Company's rights listed in
27 paragraph 1(A) and 1(B) are also subordinate
28 to the uses of those persons dismissed from
this case pursuant to the contract executed
between the State and Company implementing
the terms of Idaho Code §§61-539 and 61-540.

1 D. The Company's rights listed in
2 paragraph 1(A) and 1(B) are also subordinate
3 to those persons who have beneficially used
4 water prior to October 1, 1984, and who have
5 filed an application or claim for said use
6 by June 30, 1985.

7 E. Company's ability to purchase, lease,
8 own, or otherwise acquire water from sources
9 upstream of its power plants and convey it
10 to and past its power plants below Milner
11 Dam shall not be limited by this agreement.
12 Such flows shall be considered fluctuations
13 resulting from operation of Company
14 facilities.

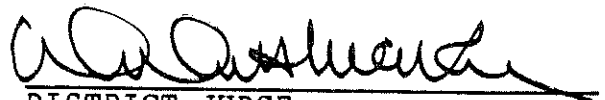
15 2. The above-captioned case is hereby dismissed
16 without prejudice as to all remaining defendants other than the
17 State defendants.

18 3. The above-captioned case is hereby dismissed with
19 prejudice as against the State defendants as to all claims of
20 plaintiff not resolved by the decisions of the Idaho Supreme
21 Court reported as Idaho Power Company v. State of Idaho, 104
22 Idaho 570, 661 P.2d 736 and 104 Idaho 575, 661 P.2d 741 (1983)
23 or by the entry of this Judgment.

24 4. The Swan Falls Agreement, dated October 25, 1984,
25 shall not be merged into nor integrated with this Judgment, but
26 shall remain in full force and effect independent of this
27 Judgment.

28 5. Each and all parties shall bear their own costs.

DATED this 12th day of February, 1990
~~1989~~.


DISTRICT JUDGE

0726p

EXHIBIT D

PARRY, ROBERTSON, DALY & LARSON
P. O. Box 525
Twin Falls, Idaho 83301
Telephone: 733-3722
Attorneys for Plaintiff

FILED

OCT 21 1977

CLERK OF DISTRICT COURT

CLERK OF DISTRICT COURT

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

* * * * *

IDAHO POWER COMPANY,)
Plaintiff,)

Case No. _____

vs.)

COMPLAINT

THE STATE OF IDAHO, acting)
by and through the DEPARTMENT)
OF WATER RESOURCES, the IDAHO)
WATER RESOURCE BOARD, and)
its Executive Director,)
C. Stephen Allred, in his)
official capacity; The State)
of Idaho, acting by and)
through the IDAHO PUBLIC)
UTILITIES COMMISSION, and)
Commissioners Robert)
Lenaghan, Conley Ward, and)
Ralph Wickberg in their)
official capacities; and)
Matthew Mullaney, John Peavey,)
Charles Hisaw, Diane Plastino,)
Jeff Fereday, Billie Thompson,)
L.N. "Bud" Purdy, John)
Faulkner, Bill Arkoosh, Elsie)
Heinz, Harold Ingram, Ralph)
Ingram, Harold Huyser, Mary)
Mech, Gerald Tews, John)
Bryngelson, Clive Schell,)
David Michelson, A. W.)
Molyneux, Morgan & Shilling-)
ton, a partnership, Fred)
Tiede, Gary Tiede, Otto Tiede,)
James Tiede, Ferdinand)
Gehring, Melvin Funk, Sid)
Allen, Jim Pahl, Lenard)
Schritter, Alfred Fothergill,)
Marcia Pursley and J.W. Swan,)
as Complainants in P.U.C.)

1 Complaint, Case No. U-1006-124)
2)
3 Murphy Water Company, Crane)
4 Falls Mutual Irrigation Co.,)
5 Nelda E. McAndrew, Pilgram)
6 Irrigation Company, and)
7 Enterprize Acres;)
8)
9 Upper Grand View Canal)
10 Company, Martin K. Slane, and)
11 Mountain View Irrigation)
12 Company, aka Yahoo Company,)
13 Inc.,)
14)
15 Ronald H. Warrick, Cottonwood)
16 Canal Company, John Doe, Roy)
17 Vader, and The State of Idaho,)
18 acting by and through the)
19 Department of Fish & Game,)
20 acting through its Executive)
21 Director Joseph Greenley, in)
22 his official capacity;)
23)
24 John Peavey, Picabo Livestock,)
25 Inc., Faulkner Land & Live-)
26 stock, Bill Arkoosh, Ralph)
27 Ingram, Harold Huyser,)
28 Michelson Farms, Inc., A. W.)
29 Molyneux, Morgan & Shilling-)
30 ton Farm Co., a partnership,)
31 Fred Tiede, Gary Tiede, Otto)
32 Tiede, Melvin Funk, Jim Pahl,)
33 and Lenard Schritter)
34)
35 Mud Flat Canal Company;)
36)
37 Defendants,)

38 * * * * *

39 Plaintiff alleges:

40 I.

41 Plaintiff is a corporation organized and existing
42 under the laws of the State of Maine, qualified to do business in
43 the State of Idaho, with principal offices at 1220 Idaho Street,
44 Boise, Idaho 83721.

45 II.

46 Plaintiff holds certain decreed and licensed water
47 rights on the Snake River in the State of Idaho for power
48 production at its Swan Falls hydro-electric plant. Such rights
49 can be summarized as follows:
50
51
52

1 2150 cfs priority January 17, 1900 (decreed)
2 1840 cfs priority January 17, 1900 (license)
3 1460 cfs priority April 17, 1900 (license)
4 4000 cfs priority July 29, 1919 (license)

5 III.

6 Plaintiff obtained a license from the Federal Power
7 Commission for the Swan Falls project (Project No. 503) which
8 was issued effective January 1, 1928, for a period ending June
9 30, 1970. In 1969 the Company applied for a new license
10 including several alternatives for development. Since the
11 original date of expiration, the project has been under annual
12 license to plaintiff under Section 15 of the Federal Power Act
13 until the issuance of the new license for the project. The
14 continued operation and maintenance of Swan Falls Project No.
15 503 is subject to the terms and conditions of its original
16 license.

17 IV.

18 In 1971, following a joint-venture proposal by Idaho
19 Power Company and the Idaho Water Resource Board, the Idaho
20 State Legislature adopted the Swan Falls enabling legislation
21 (S.L. 1971, CH. 265 p. 1064). Section 3 of that legislation
22 provides, in pertinent part:

23 "Provided that the state or the state and the joint
24 venturer shall petition the Federal Power Commission
25 for insertion of a license condition subordinating the
26 project power right to future upstream depletionary
27 use."

28 The joint venture contract executed by Plaintiff and the Idaho
29 Water Resource Board contains the following provision:

30 "Section 14.2. Balance Between Irrigation and
31 Power. The parties hereto recognize that the act
32 requires that the board, or the board and the company,
shall petition the Federal Power Commission for
insertion of a license condition subordinating the
Swan Falls - Guffey project water right to future
upstream depletionary use. The parties agree to
comply with this requirement."

33 V.

34 The license issued by the Federal Power Commission for

1 the Hells Canyon Project (No. 1971) contained the following
2 language:

3 "Article 41. The project shall be operated in such
4 manner as will not conflict with the future depletion
5 and flow of the waters of Snake River and its tribu-
6 taries, or prevent or interfere with the future
7 upstream diversion and use of such water above the
8 back water created by the project, for the irrigation
9 of lands and other beneficial consumptive uses in the
10 Snake River watershed."

11 VI.

12 The Idaho Power Company by agreement with the Governor
13 and the State Reclamation Engineer in 1952 authorized the
14 subordination of the water license to be issued for the C. J.
15 Strike project to upstream depletionary uses. Proof of
16 beneficial use was made on the Strike project on the 9th day of
17 December, 1952, and the license issued on the 9th day of April,
18 1953 as Water License No. 21671 was conditioned as follows:

19 "The rights herein granted are subject to the con-
20 dition that the project shall be operated in such a
21 manner as will not conflict with future depletion and
22 flow of the waters of Snake River and its tributaries,
23 or prevent or interfere with the future upstream
24 diversion and use of such waters, for the irrigation
25 of lands and other beneficial consumptive uses in the
26 Snake River watershed."

27 VII.

28 The Idaho Power Company constructed the Hells Canyon
29 project which approximately doubled its then generating
30 capacity.

31 VIII.

32 The Columbia Interstate Compact was ratified by the
Idaho Legislature when it enacted Chapter 310 of the Idaho
Session Laws of 1963. While Idaho's approval of the compact
draft was repealed in 1975 because the states of Washington and
Oregon had not ratified said compact, Article 7 of the draft
approved by the Idaho Legislature dealt with apportionment of
water and related matters, pertinent parts of which section
reads as follows:

1 "A. So far as the states are concerned, all
2 waters of the Columbia River System shall be available
3 for appropriation for beneficial purposes under and to
4 the extent permitted by the laws of the states
5 involved, but, except for the provisions in this
6 subdivision A relating to certain relationships
7 between consumptive and nonconsumptive uses, no
8 apportionment of waters or determination of rights to
9 the use thereof is made by this Compact.

10 So far as the states are concerned, rights to
11 beneficial consumptive uses of water within the
12 upstream area, whether established heretofore or
13 hereafter under the laws of the states involved, shall
14 be recognized up to the average annual depletions
15 shown in Plat 7 of the Report of the North Pacific
16 Division, U.S. Army Engineers dated 1 June, 1958, as
17 against, and shall not be limited by, any rights,
18 existing or future, to the quantity of such waters for
19 nonconsumptive uses.

20 In the case of a stream situated wholly within a
21 downstream state and tributary to the Snake River or
22 to the Columbia River, however, the relationships as
23 between nonconsumptive use rights appurtenant to a
24 development located thereon and consumptive use rights
25 as to the waters of such a tributary upstream from
26 that development shall be governed by the laws of that
27 state without regard to the foregoing limitations of
28 this subdivision."

29 IX.

30 On January 19, 1970, Representative John Saylor of
31 Pennsylvania submitted to the U.S. House of Representatives
32 legislation to establish a Hells Canyon - Snake River National
River in the states of Oregon, Idaho and Washington, providing
among other things that no new dams be constructed on the Snake,
Imnaha, Salmon or Grand Rhonde rivers. On January 23, 1970,
Senator Robert Packwood of Oregon introduced an identical bill in
the Senate. Neither bill contained a protection for continued
upstream diversion for irrigation and other consumptive
purposes. In Idaho the Bills were met with unified opposition.
Congress passed neither bill.

33 X.

34 In 1964, Pacific Northwest Power Company was granted
35 an FPC license to construct the High Mountain Sheep Dam in the
36 reaches of the Lower Snake River below the Hells Canyon complex

1 of the plaintiff. Upon the urging of the state of Idaho and
2 Idaho wateruser organizations, Article 45 was included in the
3 license for Project No. 2243 and 2273, as follows:

4 "Article 45. The Licensee shall not make any
5 claim under the authority of this license against the
6 United States or any water users' organization
7 claiming through the United States for any damage
8 resulting from any future depletion in the flow of the
9 waters of the Snake River and its tributaries for the
10 irrigation of lands and other beneficial consumptive
11 uses."

12 XI.

13 In 1974, the Department of Ecology of the State of
14 Washington proposed a unilateral establishment of minimum flow
15 requirements for the reach of the Snake River located totally
16 within the State of Washington. The proposals for minimum flow
17 were opposed in Idaho and in 1974 the Idaho State Legislature
18 adopted Senate Concurrent Resolution No. 134, pertinent
19 provisions of which are hereinafter set out:

20 WHEREAS, adoption of such flow requirements may
21 have a detrimental effect on existing and future uses
22 of water from the Snake River and its tributaries
23 upstream in Idaho and other states; and

24 WHEREAS, the proposed policy appears to be based
25 on inaccurate information and erroneous assumptions,
26 and was developed without consultation with other
27 affected states; and

28 WHEREAS, The State of Idaho is currently involved
29 in extensive water planning studies which will
30 identify the future needs and resources of the State
31 of Idaho from the Snake River system; and

32 WHEREAS, the State of Idaho, along with the State
of Washington and other states is involved in
coordinated planning of the future water needs of the
Northwest through the Pacific Northwest River Basins
Commission.

NOW, THEREFORE, BE IT RESOLVED by the Second
Regular Session of the Forty-second Idaho Legislature,
the Senate and House of Representatives concurring
therein, that it opposes and will not recognize any
minimum streamflow established by any Pacific
Northwest state by unilateral action which affects the
ability of upstream states to make full use of their
water resources, . . ."

1 To date Washington has not adopted such minimum flow criteria.

2 XII.

3 In 1975, the Congress of the United States enacted
4 legislation establishing a portion of the lower Snake River
5 basin as a National Recreation Area. The National Recreation
6 Area legislation was conditioned as follows in 16 U.S.C.A.
7 Section 460gg-3 and reads as follows:

8 §460gg-3. Present and future use of Snake River; flow
9 requirements

10 (a) No provision of the Wild and Scenic Rivers
11 Act, nor of sections 460gg to 460gg-13 of this title,
12 nor any guidelines, rules, or regulations issued here-
13 under, shall in any way limit, restrict, or conflict
14 with present and future use of the waters of the Snake
15 River and its tributaries upstream from the boundaries
16 of the Hells Canyon National Recreation Area created
17 hereby, for beneficial uses, whether consumptive or
18 nonconsumptive, now or hereafter existing, including,
19 but not limited to, domestic, municipal, stockwater,
20 irrigation, mining, power, or industrial uses.

21 (b) No flow requirements of any kind may be im-
22 posed on the waters of the Snake River below Hells
23 Canyon Dam under the provisions of the Wild and Scenic
24 Rivers Act, of sections 460gg to 460gg-13 of this
25 title, or any guidelines, rules, or regulations
26 adopted pursuant thereto. Pub. L. 94-199, §6, Dec.
27 31, 1975, 89 Stat. 1118."

28 XIII.

29 On January 7, 1977, the Idaho Water Resource Board
30 filed an application for permit with the Idaho Department of
31 Water Resources to construct the Shoestring Dam with the point
32 of diversion in the NW¼ of the SW¼ of Section 9, Township 6
South, Range 11 E., B.M., Elmore County, Idaho, on the Snake
River. Said dam would be 395 feet in height with a total
reservoir capacity of 1.2 million acre feet. Beneficial use of
the water would be for power production, fish and wildlife and
recreation on a year around basis. The Board described
"instream flow augmentation" as an additional beneficial use of
the water. Application No. 02-7238 on file with the Idaho
Department of Water Resources, specifies an additional 360,000

1 acre feet of water would be withdrawn for irrigation purposes
2 from March 15th to October 15th of each irrigation season.

3 The proposed project would flood plaintiff's Bliss,
4 Lower Malad, Lower Salmon, and Upper Salmon projects consisting
5 of dams, powerplants, and related facilities, said powerplants
6 having a total name plate generating capacity of 182,900
7 kilowatts, rendering said plants unusable, and destroying
8 plaintiff's means of utilizing its water rights at those sites.

9 While the Idaho Resource Board has apparent authority
10 to construct a water project and to generate and wholesale
11 hydro-electric power at the site of production in accordance
12 with Article 15, Section 7 of the Constitution, Idaho Code
13 Section 42-1734(f) limits the power of the Idaho Water Resource
14 Board in generating and wholesaling hydro-electric power at the
15 site of production, to the condition that such power production
16 is connected with another purpose for such project.

17 The construction of the Shoestring Dam by the Idaho
18 Water Resource Board would constitute a taking of the company's
19 facilities at Bliss, Lower Malad, Lower Salmon, and Upper Salmon
20 projects and would require payment in accordance with Article 1,
21 Section 14 of the Idaho Constitution.

22 Plaintiff further alleges that Idaho Code Section 42-
23 1734(g) limits the Idaho Water Resource Board to filing
24 applications and obtaining permits "to appropriate, store, or
25 use the unappropriated waters" Plaintiff further
26 alleges that pursuing a completion of the Shoestring project may
27 result in a taking of its private property in perfected water
28 rights for public and private use and that if the Shoestring
29 Project is within the Board's powers, the plaintiff is entitled
30 to compensation in accordance with Article 1, Section 14 of the
31 Idaho Constitution for the taking of such water rights, and is
32 further entitled to a determination that its rights at the Swan

1 Falls and C. J. Strike projects may not in any way be jeopardized
2 by the construction or operation of said project by the Idaho
3 Water Resource Board.

4 XIV.

5 By constitutional amendment adopted in 1964, Article
6 15, Section 7 of the Idaho Constitution was added which provided
7 for the establishment of a water resource agency "which shall
8 have the power to formulate and implement a State Water Plan for
9 optimum development of water resources in the public interest;"
10 . . . Pursuant to the constitutional dictate, in 1965 the Idaho
11 Legislature enacted Idaho Code Section 42-1731, et seq. In Idaho
12 Code Section 42-1734(b) the Idaho Water Resource Board was given
13 the following charge:

14 "To progressively formulate an integrated,
15 coordinated program for conservation, development and
16 use of all unappropriated water resources of this
17 state, based upon studies and after public hearings in
affected areas at which all interested parties shall
be given an opportunity to appear. . ."

18 In December of 1976, the Idaho Water Resource Board
19 finalized and adopted the State Water Plan. Appropriate
20 portions of that plan call for the irrigation development of
21 additional acres upstream from the Swan Falls project which
22 would cause the further depletion of the flows of the Snake
23 River to a minimum of 3,300 cfs at Murphy in August. In Policy
24 No. 32 of the State Water Plan as adopted by the Idaho Water
25 Resource Board on December 29, 1976, the following language
26 appears at page 116 of the plan:

27 "A flow of 3,300 cfs at Swan Falls is about one-
28 third of the flow necessary to meet the entitlement of
29 hydro-generation at that power plant if the recorded
30 water filings are valid. It is also less than the
31 amount identified as needed for fish, wildlife and
32 recreation purposes at Swan Falls or downstream. The
potential uses of water in the main stem Snake River
have been identified in sufficient detail to determine
that remaining water supplies cannot fulfill all
identified needs.

1 The Idaho Water Resource Board concluded, after
2 considering all current and potential uses of water on
3 the main stem Snake River, that depletion of flows
4 below that currently available in the low flow months
5 to maintain water for production of hydropower and
6 other main stem water uses is not in the public
7 interest.

8 Therefore, main stem Snake River flows will be
9 protected against further appropriations and
10 preserved to provide the following average daily
11 flows at the following U.S. Geological Survey
12 stream gaging stations.

Gaging Station	Protected Flow (Average Daily)
Milner	0 cfs
Murphy	3,300 cfs
Weiser	4,750 cfs

13 Studies indicate that sufficient water exists in
14 excess of these flows to provide for additional uses
15 if water conserving and storage facilities are
16 constructed."

17 In early 1977, the first regular session of the Forty-
18 fourth Idaho Legislature enacted H.B. 14, which added Idaho Code
19 Section 42-1736. That section reads as follows:

20 "42-1736. LEGISLATIVE REVIEW. - The State Water
21 Plan adopted by the Idaho Water Resource Board
22 pursuant to authority of Section 42-1734, Idaho Code,
23 shall not become effective until it has been submitted
24 to the Legislature of the State of Idaho and has been
25 affirmatively acted upon in the form of a concurrent
26 resolution which may adopt, reject, amend or modify
27 the same. Thereafter, any change in the State Water
28 Plan shall be submitted in the same manner to the
29 legislature prior to becoming effective. (1977
30 Session Laws, Chapter 117, Section 1, p. 252)."

31 Article 15, Section 3 of the Idaho Constitution
32 provides in part the right to divert and appropriate the
unappropriated waters of any natural stream to beneficial uses,
shall never be denied, "except that the State may regulate and
limit the use thereof for power purposes." If Idaho Code
Section 42-1736 is in conflict with the provisions of Article
15, Section 7 of the Idaho Constitution, and if this court
determines that the State Water Plan as officially adopted by
the Idaho Water Resource Board is in all respects effective,
although plaintiff recognizes the right of the state to regulate

1 the use of water for power purposes in accordance with Article
2 XV, Section 3, plaintiff alleges that pursuing the policy of the
3 State Water Plan will result in a taking of its private property
4 for public and private use, rather than a regulation for power
5 purposes under Idaho Constitution, Article 15, Section 3, and
6 that the plaintiff is entitled to compensation in accordance
7 with Article I, Section 14 of the Idaho Constitution.

8 XV.

9 Defendants Murphy Water Company, Crane Falls Mutual
10 Irrigation Company, Nelda E. McAndrew, Pilgrim Irrigation
11 Company, and Enterprize Acres have filed applications with the
12 Department of Water Resources to appropriate the flows of Snake
13 River at various locations above Swan Falls. Said diversions
14 will cause the diminution of flows at the Swan Falls plant of the
15 Company if said applications are approved and permits issued
16 pursuant thereto.

17 XVI.

18 Defendants Upper Grand View Canal Company, Idaho Water
19 Resource Board, Martin K. Slane, and the Mountain View
20 Irrigation Company (aka Yahoo Company, Inc.), have obtained
21 permits from the Department of Water Resources to appropriate
22 the waters from various reaches of Snake River above Swan Falls
23 for the purpose of irrigation. Said diversions will cause the
24 diminution of flows at the C. J. Strike plant of the Company.

25 XVII.

26 Defendants Ronald H. Warrick, Cottonwood Canal
27 Company, John Doe, Roy Vader, and the Idaho Department of Fish &
28 Game, have either obtained licensed rights from the Department
29 of Water Resources or decreed water rights for the purpose of
30 irrigation of certain lands with the waters of Snake River
31 between Swan Falls and Milner Dam. Continued diversion causes
32 diminution of flows at the Swan Falls plant of the Company.

XVIII.

Defendants John Peavey, Picabo Livestock, Inc., Faulkner Land & Livestock, Bill Arkoosh, Ralph Ingram, Harold Huyser, Michelson Farms, Inc., A. W. Molyneux, Morgan & Shillington Farm Co., a partnership, Fred Tiede, Gary Tiede, Otto Tiede, Melvin Funk, Jim Pahl, and Lenard Schritter, have filed applications to divert, have been issued permits to divert, or hold licenses to divert and appropriate certain subterranean waters of the Snake plain aquifer for irrigation purposes. Said diversions have caused or will cause the diminution of flows of the Snake plain aquifer through the springs in the Hagerman Valley and will reduce the flows available at the Swan Falls plant of the Company.

XIX.

All inflow to the Snake River between Milner Dam and Swan Falls powerplant, whether from surface or subterranean sources, is tributary to the Snake River and the water right or rights of plaintiff herein be determined to include flows from the tributaries of Snake River.

XX.

A complaint has been filed by Matthew Mullaney, John Peavey, Charles Hisaw, Diane Plastino, Jeff Fereday, Billie Thompson, L.N. "Bud" Purdy, John Faulkner, Bill Arkoosh, Elsie Heinz, Harold Ingram, Ralph Ingram, Harold Huyser, Mary Mech, Gerald Tews, John Bryngelson, Clive Schell, David Michelson, A. W. Molyneux, Morgan & Shillington, a partnership, Fred Tiede, Gary Tiede, Otto Tiede, James Tiede, Ferdinand Gehring, Melvin Funk, Sid Allen, Jim Pahl, Lenard Schritter, Alfred Fothergill, Marcia Pursley and J.W. Swan with the defendant Idaho Public Utilities Commission alleging the licensed right of the plaintiff at Swan Falls should be used as the basis for the Idaho Power Company to protest all present and future water rights,

1 above and below Swan Falls. A decision of this court concerning
2 the status of the Company's Swan Falls water right and other
3 water rights between Milner Dam and Hells Canyon is required for
4 the guidance of the parties hereto, and a justicable controversy
5 exists between and among the parties hereto. If it is
6 determined by this court that Idaho Power Company has a
7 protectable right in the reach of the Snake River between Milner
8 Dam and Hells Canyon by reason of its Swan Falls water licenses
9 and other licenses (whether approved by the Department of Water
10 Resources or the Federal Power Commission), the State of Idaho
11 Department of Water Resources should be permanently enjoined
12 from granting further applications for permits for any
13 consumptive purpose for the reach of the river between Milner
14 Dam and the Swan Falls project.

15 XXI.

16 As a result of the complaint filed with the P.U.C., in
17 Case No. U-1006-124 discussed in paragraph XX immediately above,
18 plaintiff has notified or will notify by letter all persons,
19 corporations or other entities including the defendant Mud Flat
20 Canal Company, who plan depletionary water diversions from the
21 Snake River and its surface and subterranean tributaries between
22 Milner Dam and Hells Canyon in plaintiff's electrical service
23 area, that power hook-ups cannot be made by plaintiff pending a
24 disposition of this case, and P.U.C. Case No. U-1006-124,
25 creating a justicable controversy between the plaintiff and
26 defendant Mud Flat Canal Company and others similarly situated.
27 If it is determined by this court that plaintiff has a right
28 protectible as set out in paragraph XX above, the Department of
29 Water Resources should be permanently enjoined from granting
30 further water applications or permits for any consumptive
31 purpose for said reach of the river and its tributaries and the
32 defendant Mud Flat Canal Company, and others who would divert

1 water to diminish such protectible water rights, should be
2 permanently enjoined by this court from forcing plaintiff by
3 court action to supply the electrical service necessary to
4 effect such depletionary diversions and the Idaho Public
5 Utilities Commission should be permanently enjoined from forcing
6 plaintiff by administrative order to supply electrical service
7 for those who would use such electricity to effect such
8 depletionary diversions.

9 WHEREFORE Plaintiff prays judgment as follows:

10 1. Adjudging and decreeing that plaintiff's water
11 rights at its Swan Falls powerplant are valid, subsisting water
12 rights not subject to upstream depletion and the subsequent
13 rights of holders of water rights in the Snake River above Swan
14 Falls and below Milner Dam are subject to the said rights of
15 Idaho Power Company.

16 2. That it be determined by this court that the
17 plaintiff's water license at Swan Falls is not subject to
18 depletion for upstream consumptive uses including irrigation and
19 other beneficial purposes; declaring and determining the rights
20 of the plaintiff as to its relationship with the various
21 defendants specifically identified in paragraphs XV, XVI, XVII,
22 XVIII, and XXI.

23 3. Determining whether Idaho Code Section 42-1736 is
24 constitutional in accordance with the Idaho Attorney General's
25 opinion No. 77-26 of April 12, 1977, and if Policy No. 32 of the
26 State Water Plan is subsequently adopted by the Idaho
27 Legislature; or in the alternative if this court determines
28 Idaho Code Section 42-1736 unconstitutional and that the Idaho
29 State Water Plan is now formally adopted and in effect, as
30 adopted by the Idaho Water Resource Board in December of 1976,
31 thus effectuating the Idaho State Water Plan; that in either
32 event, when the Idaho State Water Plan is declared the legally

1 effective State Water Policy for the State of Idaho, that this
2 court adjudge and decree that all subsequent actions of the
3 Department of Water Resources shall be henceforth consistent
4 with the provisions of the Idaho State Water Plan.

5 4. Determining whether the construction of the
6 Shoestring Dam project is within the constitutional and
7 statutory power of the Idaho Water Resource Board, and if it is,
8 adjudging and decreeing that the construction of the Shoestring
9 Dam project by the Idaho Water Resource Board necessitates the
10 payment of just compensation for the taking of the Bliss, Lower
11 Salmon, Upper Salmon, and Lower Malad projects of the plaintiff
12 and that plaintiff is entitled to a determination that its
13 rights at its Swan Falls and C.J. Strike projects may not in any
14 way be jeopardized by the construction or operation of said
15 project by the Idaho Water Resource Board.

16 5. Adjudging and decreeing that the implementation
17 of the State Water Plan by the Idaho Water Resource Board or its
18 subsequent approval by the Idaho Legislature specifying certain
19 minimum flows at Murphy, Idaho, below the Swan Falls project,
20 which contemplated diversions above Swan Falls would constitute
21 a taking of the property of plaintiff without compensation.

22 6. If the Court determines that the Swan Falls
23 rights of plaintiff are protectable and not subject to upstream
24 depletion, that the court identify the specific reach of Snake
25 River and its tributaries where such right is protectible, and
26 order the institution of a judicial proceeding by an appropriate
27 party or parties for a full adjudication of the respective water
28 rights within said specific stretch of the Snake River and its
29 tributaries between Swan Falls and Milner Dam as the court shall
30 determine in accordance with Idaho Code Section 42-1406 and that
31 a survey and determination of water uses be made by the Director
32 of the Department of Water Resources and supplied to the court
in accordance with Idaho Code Section 42-1401.

1 7. For such other and further relief as this court
2 deems just.

3 PARRY, ROBERTSON, DALY & LARSON

4
5 By: John A. Rosholt
6 John A. Rosholt

7
8 And

9
10 _____
11 Thomas G. Nelson
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EXHIBIT E

1 Thomas G. Nelson
2 James C. Tucker
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13 Attorneys for Plaintiff

14 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
15 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

16 * * * * *

17 IDAHO POWER COMPANY, a) Case No.81375
18 corporation,)
19)
20 Plaintiff,)
21) SECOND AMENDED COMPLAINT
22 vs.)
23)
24 IDAHO DEPARTMENT OF WATER)
25 RESOURCES, an executive agency)
26 of the State of Idaho; IDAHO)
WATER RESOURCE BOARD, an)
executive agency of the State)
of Idaho; IDAHO PUBLIC)
UTILITIES COMMISSION, an)
executive agency of the State)
of Idaho; COOK, LAMOND;)
PRESTON, TIMOTHY; PARKINSON,)
TIM; COVINGTON, BRENT E.;)
WADSWORTH, JAY; COVINGTON, E.)
BLAIR; WADSWORTH, DONALD C.;)
WADSWORTH, DOREEN; SMITH,)
MARJORIE; TOMCHAK, BURLEIGH;)
VORNDRAH, STEVEN C.; HILL,)
MERLIN H.; STATE OF IDAHO;)

SECOND AMENDED COMPLAINT

-1-

SF - 42

BRS012943

1 REX; SNIDEMAN, NANCY; NIELSON,)
 2 PETER; MOUNTAIN HOME HIGHWAYS;)
 3 HALL, A.B.; GALEY, FRANK S.,)
 4 JR.; MURPHY WATER COMPANY;)
 5 CRANE FALLS MUTUAL IRRIGATION)
 6 COMPANY; NELDA E. McANDREW;)
 7 PILGRIM IRRIGATION COMPANY;)
 8 ENTERPRISE ACRES; UPPER GRAND)
 9 VIEW CANAL COMPANY; IDAHO WATER)
 10 RESOURCE BOARD; MOUNTAIN VIEW)
 11 IRRIGATION COMPANY, A/K/A YAHOO)
 12 COMPANY, INC.; PICABO)
 13 LIVESTOCK, INC.; FAULKNER LAND)
 14 & LIVESTOCK; BILL ARKOOSH;)
 15 RALPH INGRAM; HAROLD KUYSER;)
 16 A-W MOLYNUEUX; MORGAN &)
 17 SHILLINGTON FARM CO., A)
 18 PARTNERSHIP; GARY TIEDE; OTTO)
 19 TIEDE; MELVIN FUNK; BELL RAPIDS)
 20 IRRIGATION COMPANY; GRINDSTONE)
 21 BUTTE MUTUAL CANAL COMPANY;)
 22 TWIN BUTTES MUTUAL CANAL)
 23 COMPANY, and JOHN DOES 1 to 500,)
 24)
 25 Defendants.)

26 * * * * *

Plaintiff alleges as follows:

COUNT ONE

I

Plaintiff Idaho Power Company (hereinafter "Idaho
 Power"), at all times relevant hereto, was and is a corporation
 organized and existing under the laws of the State of Maine,
 with its principal place of business in the State of Idaho.

II

Defendant Idaho Department of Water Resources
 (hereinafter "IDWR"), is an executive department of the State

1 of Idaho created pursuant to Idaho Code §42-1701 and is
2 responsible for administering Idaho's water rights, including
3 the review of water applications filed and permits and licenses
4 issued pursuant to Idaho Code §42-201, et seq., as well as
5 those rights based upon statutory claims and court decrees.

6 III

7 Defendant Idaho Water Resource Board (hereinafter
8 "IWRB"), is a constitutional water agency established within
9 the IDWR pursuant to Article 15, Section 7 of the Constitution
10 of the State of Idaho, and Idaho Code §42-1732, charged with
11 the duty, among others, of formulating and implementing a state
12 water plan for the optimum development of the state's water
13 resources in the public interest.

14 IV

15 Defendant Idaho Public Utilities Commission
16 (hereinafter "IPUC"), is a state commission created pursuant to
17 Idaho Code §61-201 vested with the general power and
18 jurisdiction to supervise and regulate every public utility in
19 the State of Idaho, including Idaho Power, which general power
20 includes the power to regulate the rates, tolls and charges of
21 said utilities.

22 V

23 Idaho Power, by virtue of its creation by merger in
24 1915, acquired all the right, title and interest in and to the
25 Swan Falls dam and power plant originally constructed by the
26 Trade Dollar Consolidated Mining Company in 1901 on the Snake

1 River in southwestern Idaho. The specific location of the Swan
2 Falls Project is more particularly identified on Exhibit "A"
3 attached hereto.

4 VI

5 Idaho Power is the holder of certain licensed and
6 decreed water rights for the generation of power at its Swan
7 Falls power plant, all of which are more specifically
8 identified as follows:

9 <u>RIGHT NO.</u>	<u>DATE OF PRIORITY</u>	<u>RATE OF DIVERSION</u>
10 Decree 02-001	01-17-1900	2150 c/f/s
11 License 02-4000	01-17-1900	1840 c/f/s
12 License 02-4001	04-17-1900	1460 c/f/s
13 License 02-2032	07-21-1919	<u>4000 c/f/s</u>

14
15 TOTAL 9450 c/f/s

16 While the licensed and decreed water rights total 9450 c/f/s
17 (cubic feet per second), the total hydraulic capacity of the
18 generating works at the Swan Falls dam and power plant is 8400
19 c/f/s, and Idaho Power's water right for power purposes is
20 limited to 8400 c/f/s at Swan Falls, as a result thereof.

21 VII

22 Idaho Power's Swan Falls Project was originally
23 licensed under the Federal Power Act (16 U.S.C. 791(a)), by the
24 Federal Power Commission (now the Federal Energy Regulatory
25
26

1
2 B. Upper Grand View Canal Company, Idaho Water
3 Resource Board, and Mountain View Irrigation Company (a/k/a
4 Yahoo Company, Inc.), as permit holders for use of surface
5 waters.

6 C. Picabo Livestock, Inc.; Faulkner Land & Livestock;
7 Bill Arkoosh; Ralph Ingram; Harold Huyser; A-W Molyneux; Morgan
8 & Shillington Farm Co., a partnership; Gary Tiede, Otto Tiede,
9 Melvin Funk, and Leonard Schritter, as claimants to the right
10 to divert and use the underground waters of the State of Idaho.

11 III

12 The issues remaining to be resolved in Civil No.
13 62237, as remanded by the Supreme Court, and the issues
14 presented to this Court for adjudication are common to all
15 named Defendants herein, and in the interest of judicial
16 economy, the Defendants identified in paragraph II of this
17 Count and the issues as they relate to those Defendants are and
18 should be consolidated and included in this action.

19 COUNT THREE

20 I

21 Plaintiff reincorporates and realleges herein the
22 allegations of paragraphs I through XIII of COUNT ONE hereof,
23 as though set out in full herein.

24 II

25 Idaho Power holds all right, title and interest in and
26 to the Bliss power plant, that plant being located on the Snake
River in South-Central Idaho. The specific location of the

1 Bliss power project is more particularly identified on Exhibit
2 "A", attached hereto.

3
4 III

5 Idaho Power is the holder of certain licensed water
6 rights for the generation of power at its Bliss power plant,
7 all of which are more specifically identified as follows:

<u>RIGHT NO.</u>	<u>DATE OF PRIORITY</u>	<u>RATE OF DIVERSION</u>
20223	09-04-1947	12,000 c/f/s
20262	12-11-1947	3,000 c/f/s

10
11 IV

12 Idaho Power's Bliss power project is duly licensed
13 under the Federal Power Act (16 U.S.C. 791(a)), with Idaho
14 Power as the named licensee, said license, like the Swan Falls
15 license, does not contain a "subordination clause" imposing the
16 conditions that Idaho Power's vested state water rights for the
17 Bliss project be subordinated to subsequent water rights for
18 consumptive uses upstream from the Bliss project.

19
20 V

21 In the absence of subordination of the above described
22 water rights in the above existing license issued by the FERC,
23 the ruling of the Idaho Supreme Court in Idaho Power v. State
24 of Idaho, Exhibit "C" hereto, by implication, applies equally
25 to the above-specified water rights of Idaho Power for the
26 Bliss Project, and said rights are consequently, to the extent
not heretofore abandoned or forfeited, superior and senior to
all claims to water rights, including claims, applications,

1 permits and licenses, which those Defendants named in paragraph
2 XIII of COUNT ONE, and each of them, may have for consumptive
3 uses of water which is tributary to the Snake River above the
4 Bliss Project.

5 VI

6 It is believed and therefore alleged that said water
7 rights held or claimed by the Defendants named in paragraph
8 XIII of COUNT ONE, and each of them, when exercised and
9 fulfilled, have heretofore diminished and depleted, and will
10 continue to diminish and deplete, the flows of the Snake River
11 at the Bliss Project to a level precluding the fulfillment of
12 Idaho Power's senior water rights, thereby damaging Idaho Power.

13 COUNT FOUR

14 I

15 Plaintiff reincorporates and realleges herein the
16 allegations of paragraphs I through XIII of COUNT ONE hereof,
17 as though set out in full herein.

18 II

19 Idaho Power holds all right, title and interest in and
20 to the Lower Salmon power plant, that plant being located on
21 the Snake River in South-Central Idaho. The specific location
22 of the Lower Salmon power project is more particularly
23 identified on Exhibit "A", attached hereto.

24 III

25 Idaho Power is the holder of certain licensed water
26 rights for the generation of power at its Lower Salmon power

1 plant, all of which are more specifically identified as follows:

2 <u>RIGHT NO.</u>	<u>DATE OF PRIORTIY</u>	<u>RATE OF DIVERSION</u>
3 2685	05-11-1908	1,700 c/f/s
4 3685	07-02-1908	1,300 c/f/s
5 18107	03-10-1935	250 c/f/s
6 19924	08-08-1946	14,000 c/f/s

7 IV

8
9 Idaho Power's Lower Salmon power project is duly
10 licensed under the Federal Power Act (16 U.S.C. 791(a)), with
11 Idaho Power as the named licensee, said license, like the Swan
12 Falls license, does not contain a "subordination clause"
13 imposing the conditions that Idaho Power's vested state water
14 rights for the Lower Salmon project be subordinated to
15 susequent water rights for consumptive uses upstream from the
16 Lower Salmon Project.

17 V

18 In the absence of subordination of the above described
19 water rights in the above existing license issued by the FERC,
20 the ruling of the Idaho Supreme Court in Idaho Power v. State
21 of Idaho, Exhibit "C" hereto, by implication, applies equally
22 to the above-specified water rights of Idaho Power for the
23 Lower Salmon Project, and said rights are consequently, to the
24 extent not heretofore abandoned or forfeited, superior and
25 senior to all claims to water rights, including claims,
26 applications, permits and licenses, which those Defendants
named in paragraph XIII of COUNT ONE, and each of them, may

1 have for consumptive uses of water which is tributary to the
2 Snake River above the Lower Salmon Project.

3 VI

4 It is believed and therefore alleged that said water
5 rights held or claimed by the Defendants named in paragraph
6 XIII of COUNT ONE, and each of them, when exercised and
7 fulfilled, have heretofore diminished and depleted, and will
8 continue to diminish and deplete, the flows of the Snake River
9 at the Lower Salmon Project to a level precluding the
10 fulfillment of Idaho Power's senior water rights, thereby
11 damaging Idaho Power.

12 COUNT FIVE

13 I

14 Plaintiff reincorporates and realleges herein the
15 allegations of paragraphs I through XIII of COUNT ONE hereof,
16 as though set out in full herein.

17 II

18 Idaho Power holds all right, title and interest in and
19 to the Upper Salmon power plant, that plant being located on
20 the Snake River in South-Central Idaho. The specific location
21 of the Upper Salmon power project is more particularly
22 identified on Exhibit "A", attached hereto.

23 III

24 Idaho Power is the holder of certain licensed water
25 rights for the generation of power at its Upper Salmon power
26 plant, all of which are more specifically identified as
follows:

<u>RIGHT NO.</u>	<u>DATE OF PRIORITY</u>	<u>RATE OF DIVERSION</u>
17069	04-02-1929	6,500 c/f/s

IV

Idaho Power's Upper Salmon power project is duly licensed under the Federal Power Act (16 U.S.C.791 (a)), with Idaho Power as the named licensee, said license, like the Swan Falls license, does not contain a "subordination clause" imposing the conditions that Idaho Power's vested state water rights for the Upper Salmon project be subordinated to subsequent water rights for consumptive uses upstream from the Lower Salmon Project.

V

In the absence of subordination of the above described water rights in the above existing license issued by the FERC, the ruling of the Idaho Supreme Court in Idaho Power v. State of Idaho, Exhibit "C" hereto, by implication, applies equally to the above-specified water rights of Idaho Power for the Upper Salmon Project, and said rights are consequently, to the extent not heretofore abandoned or forfeited, superior and senior to all claims to water rights, including claims, applications, permits and licenses, which those Defendants named in paragraph XIII of COUNT ONE, and each of them, may have for consumptive uses of water which is tributary to the Snake River above the Upper Salmon Project.

1 or all of the projects identified herein for the generation of
2 hydroelectric power diminishes and continues to diminish and it
3 is believed and therefore alleged that the diversions by said
4 entities, and each of them, have so diminished and depleted,
5 and if continued or increased, will continue to diminish and
6 deplete the flows of the Snake River to a level precluding the
7 fulfillment of Idaho Power's senior water rights for power
8 purposes.

9
10 V

11 As a result of said depletions of Idaho Power's water
12 rights and the holding of the Supreme Court of Idaho, in Idaho
13 Power v. State of Idaho, Idaho Power sent a second letter to
14 each of the above entities dated March 2, 1983, true and
15 correct copies of which are attached hereto as Exhibits "I",
16 "J", "K", and "L", revoking any and all permission previously
17 given by Idaho Power to each of them for diversion of waters
18 from the Snake River to the extent that any of such proposed
19 diversions had not yet been made or any water so diverted had
20 not been put to a beneficial use.

21 VI

22 By this action, Idaho Power seeks to enjoin said
23 entities from diverting any waters for consumptive use other
24 than those waters so diverted pursuant to the 1967 permission
25 and thereafter applied to a beneficial use prior to the March 2,
26 1983, notification.

WHEREFORE, Idaho Power prays that judgment be entered
in its favor as follows:

1 AS TO COUNT ONE AND COUNT TWO:

2 1. Adjudging and decreeing that Idaho Power's water
3 rights at its Swan Falls power plant are superior in time and
4 in right to all consumptive rights claimed by the named
5 Defendants herein and each of them and that the rights of each
6 of said Defendants are junior and subordinate to Idaho Power's
7 Swan Falls right;

8 2. Adjudging and decreeing that the consumptive use
9 of the water rights claimed by the Defendants herein and all of
10 them have in part so depleted and diminished, and if allowed to
11 continue will further deplete and diminish, the superior rights
12 of Idaho Power at the Swan Falls plant to such extent that said
13 superior rights cannot be fulfilled;

14 3. Adjudging and decreeing that the superior water
15 rights of Idaho Power at the Swan Falls power plant, or any
16 portion thereof, have neither been abandoned, forfeited, waived,
17 nor lost in any other manner to the Defendants, or any of them,
18 and that as a consequence, the Defendants' consumptive use of
19 water which is tributary to the Snake River above the Swan
20 Falls plant is contrary to and in violation of the superior
21 water rights of Idaho Power;

22 4. That the Defendants, and each of them, be
23 permanently enjoined and restrained from exercising their
24 junior rights in derogation of the superior water rights of
25 Idaho Power at the Swan Falls power plant;

26 5. For costs of suit, to include reasonable
attorney's fees;

1 6. For such other and further relief as this Court
2 deems proper.

3 AS TO COUNT THREE:

4 1. Adjudging and decreeing that Idaho Power water
5 rights at its Bliss power plant are superior in time and in
6 right to all consumptive rights claimed by the named Defendants
7 herein and each of them and that the rights of each of said
8 Defendants are junior and subordinate to Idaho Power's Bliss
9 right;

10 2. Adjudging and decreeing that the consumptive use
11 of the water rights claimed by the Defendants herein and all of
12 them have in part so depleted and diminished, and if allowed to
13 continue will further deplete and diminish, the superior water
14 rights of Idaho Power at the Bliss plant to such an extent that
15 said superior rights cannot be fulfilled;

16 3. Adjudging and decreeing that the superior water
17 rights of Idaho Power at the Bliss power plant, or any portion
18 thereof, have neither been abandoned, forfeited, waived, nor
19 lost in any other manner to the Defendants, or any of them, and
20 that as a consequence, the Defendants' consumptive use of water
21 which is tributary to the Snake River above the Bliss plant is
22 contrary to and in violation of the superior water rights of
23 Idaho Power;

24 4. That the Defendants, and each of them, be
25 permanently enjoined and restrained from exercising their
26 junior rights in derogation of the superior water rights of
Idaho Power at the Bliss power plant;

1 5. For costs of suit, to include reasonable
2 attorney's fees;

3 6. For such other and further relief as this Court
4 deems proper.

5 AS TO COUNT FOUR:

6 1. Adjudging and decreeing that Idaho Power water
7 rights at its Lower Salmon power plant are superior in time and
8 in right to all consumptive rights claimed by the named
9 Defendants herein and each of them and that the rights of each
10 of said Defendants are junior and subordinate to Idaho Power's
11 Lower Salmon right;

12 2. Adjudging and decreeing that the consumptive use
13 of the water rights claimed by the Defendants herein and all of
14 them have in part so depleted and diminished, and if allowed to
15 continue will further deplete and diminish, the superior water
16 rights of Idaho Power at the Lower Salmon plant to such an
17 extent that said superior rights cannot be fulfilled;

18 3. Adjudging and decreeing that the superior water
19 rights of Idaho Power at the Lower Salmon power plant, or any
20 portion thereof, have neither been abandoned, forfeited,
21 waived, nor lost in any other manner to the Defendants, or any
22 of them, and that as a consequence, the Defendants' consumptive
23 use of water which is tributary to the Snake River above the
24 Lower Salmon plant is contrary to and in violation of the
25 superior water rights of Idaho Power;
26

1 4. That the Defendants, and each of them, be
2 permanently enjoined and restrained from exercising their
3 junior rights in derogation of the superior water rights of
4 Idaho Power at the Lower Salmon power plant;

5 5. For costs of suit, to include reasonable
6 attorney's fees;

7 6. For such other and further relief as this Court
8 deems proper.

9 AS TO COUNT FIVE:

10 1. Adjudging and decreeing that Idaho Power water
11 rights at its Upper Salmon power plant are superior in time and
12 in right to all consumptive rights claimed by the named
13 Defendants herein and each of them and that the rights of each
14 of said Defendants are junior and subordinate to Idaho Power's
15 Upper Salmon right;

16 2. Adjudging and decreeing that the consumptive use
17 of the water rights claimed by the Defendants herein and all of
18 them have in part so depleted and diminished, and if allowed to
19 continue will further deplete and diminish, the superior water
20 rights of Idaho Power at the Upper Salmon plant to such an
21 extent that said superior rights cannot be fulfilled;

22 3. Adjudging and decreeing that the superior water
23 rights of Idaho Power at the Upper Salmon power plant, or any
24 portion thereof, have neither been abandoned, forfeited,
25 waived, nor lost in any other manner to the Defendants, or any
26 of them, and that as a consequence, the Defendants' consumptive

1 use of water which is tributary to the Snake River above the
2 Upper Salmon plant is contrary to and in violation of the
3 superior water rights of Idaho Power;

4 4. That the Defendants, and each of them, be
5 permanently enjoined and restrained from exercising their
6 junior rights in derogation of the superior water rights of
7 Idaho Power at the Upper Salmon power plant;

8 5. For costs of suit, to include reasonable
9 attorney's fees;

10 6. For such other and further relief as this Court
11 deems proper.

12 AS TO COUNT SIX:

13 1. Adjudging and decreeing that IDWR has failed to
14 discharge its statutory duties and responsibilities in that it
15 has failed to recognize and protect the superior water rights
16 of Idaho Power at the power facilities identified herein, by
17 approving applications and issuing permits and licenses to
18 junior appropriators where consumptive use of the water
19 tributary to the Snake River have in the past depleted and
20 diminished Idaho Power's vested and superior water rights;

21 2. For assessment of damages against the IDWR, equal
22 to the value of the potential power generation lost as a result
23 of IDWR's failure to recognize and protect the superior water
24 rights of Idaho Power, which resulted in a reduction of the
25 flows of water available for power generation at each of the
26 power facilities referenced herein, said damages to included

1 not only the value of past lost power generation, but also the
2 value of potential power generation expected to be lost in the
3 future, should the water lost by virtue of IDWR's actions not
4 be recoverable;

5 3. For costs of suit, to include reasonable
6 attorney's fees;

7 4. For such other and further relief as this Court
8 deems proper.

9 AS TO COUNT SEVEN:

10 1. That the Defendant Bell Rapids Mutual Irrigation
11 Company, Green Valley Mutual Canal Company, Twin Buttes Mutual
12 Canal Company and Grindstone Butte Mutal Canal Company and each
13 of them, be permanently enjoined and restrained from diverting
14 any water from the Snake River for consumptive use other than
15 those waters previously diverted pursuant to the 1967
16 permission granted by Idaho Power and thereafter applied to a
17 beneficial use prior to the March 3, 1983, notification
18 forwarded to each of said Defendants;

19 2. For costs of suit, to include reasonable
20 attorney's fees;

21 3. For such other and further relief as this Court
22 deems proper.

23 DATED this 28th day of December, 1983.

24 NELSON, RSHOLT, ROBERTSON,
25 TOLMAN & TUCKER

26 By: Thomas G. Nelson

Thomas G Nelson

CERTIFICATE OF MAILING

I hereby certify that on this 28th day of December, 1983, I served a copy of the foregoing SECOND AMENDED COMPLAINT, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Mr. Jim Jones
Attorney General
Statehouse
Boise, ID 83702

Mr. Kent Foster
P.O.Box 129
Idaho Falls, ID 83401


Thomas G. Nelson

EXHIBIT F

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James C. Tucker
NELSON, ROSHOLT, ROBERTSON,
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Attorneys for Plaintiff

NO. 2
FILED
A.M. 11:45 P.M.
NOV 5 1984
JOHN BASTIDA, CLERK
BY James C. Tucker
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

* * * * *

IDAHO POWER COMPANY, a	)	Case No. 62237
corporation,	)	
	)	
Plaintiff,	)	
	)	MOTION FOR STAY
vs.	)	
	)	
STATE OF IDAHO, IDAHO DEPART-	)	
MENT OF WATER RESOURCES, et al	)	
	)	
Defendants.	)	

* * * * *

COMES NOW the Plaintiff, by and through its counsel of
record, and moves the Court to enter an Order staying all
further proceedings in the above-captioned action to and until
seven (7) days following the adjournment of the first regular
session of the 48th Idaho Legislature, except;

1. Preservation of testimony pursuant to the Idaho
Rules of Civil Procedure;
2. Completion of certain discovery filed by the
State Defendants to be designated later; and
3. Dismissal of various Defendants by the Company.

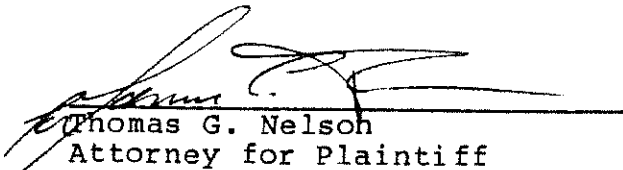
on 30

1 The grounds of this motion are that the Company and
2 the State of Idaho, represented by the Governor and the
3 Attorney General, signed an agreement on October 26, 1984, a
4 copy of which is attached hereto as Exhibit "A" and by this
5 reference made a part hereof. That agreement, if and when
6 implemented according to its terms, should resolve the
7 controversy to the extent that a stipulated judgment can be
8 entered as to those parties who consent, and the action
9 dismissed as to the balance. It is the intent of the moving
10 party to acquire a stay of further proceedings in this case
11 from the Court until after the legislative session in order to
12 allow an evaluation by the parties and the Court of the
13 probabilities and success in implementing the contract. Since
14 the implementation of the contract would offer a means of
15 avoiding the expenses and expenditure of effort attendant upon
16 trial it appears reasonable to grant a stay to allow reasonable
17 opportunity for the parties to approach the legislature and the
18 other agencies involved to obtain implementation.

19 Movant requests oral argument on this motion.)

20 DATED this 2nd day of November, 1984.

21
22 NELSON, ROSHOLT, ROBERTSON,
23 TOLMAN & TUCKER

24
25 
26 Thomas G. Nelson
27 Attorney for Plaintiff
28

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Attorney General's Office
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Idaho Falls, ID 83401

Mr. Jack Murphy
P.O. Box 666
Shoshone, ID 83352

Mr. Ben Cavaness
CAVANESS & BEEBE
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c/o Richard Eismann
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Chief, Natural Resource Division

CLIVE J. STRONG
Deputy Attorney General
Natural Resources Division

PHILLIP J. RASSIER
DAVID J. BARBER
Deputy Attorneys General
Department of Water Resources

FILED
JAN 10 1984
JOHN EASTON, CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IDAHO POWER COMPANY,)
)
Plaintiff,)

Case No. 62237

vs.)

MOTION FOR STAY

THE STATE OF IDAHO, acting by)
and through the DEPARTMENT OF)
WATER RESOURCES, the IDAHO WATER)
RESOURCE BOARD, and its)
Executive Director, A. KENNETH)
DUNN, in his official capacity;)
The State of Idaho, acting by and)
through the IDAHO PUBLIC)
UTILITIES COMMISSION, and Com-)
missioners Richard High, Conley)
Ward, and Perry Swisher in their)
official capacities; and Matthew)
Mullaney, John Peavey, Charles)
Hisaw, Diane Plastino, Billie)
Thompson, L.N. "Bud" Purdy, John)
Faulkner, Bill Arkoosh, Elsie)
Heinz, Harold Ingram, Ralph)
Ingram, Harold Huyser, Mary Mech,)
Gerald Tews, John Bryngelson,)

MOTION FOR STAY-1

Clive Schell, Fred Tiede, Gary)
 Tiede, Otto Tiede, James Tiede,)
 Ferdinand Gehring, Melvin Funk,)
 Sid Allen, Jim Pahl, Lenard)
 Schritter, Alfred Fothergill,)
 Marcia Pursley and J. W. Swan,)
 as Complainants in P.U.C.)
 Complaint, Case No. U-1006-124)
)
 Murphy Water Company, Crane Falls)
 Mutual Irrigation Co., Nelda E.)
 McAndrew, Pilgram Irrigation)
 Company, and Enterprize Acres;)
)
 Upper Grand View Canal Company,)
 Martin K. Slane, and Mountain)
 View Irrigation Company, aka)
 Yahoo Company, Inc.,)
)
 Ronald H. Warrick Cottonwood)
 Canal Company, John Doe, and The)
 State of Idaho, acting by and)
 through the Department of Fish)
 and Game, acting through its)
 Executive Director Jerry Conley,)
 in his official capacity;)
)
 John Peavey, Picabo Livestock,)
 Inc., Faulkner Land & Livestock,)
 Bill Arkoosh, Ralph Ingram,)
 Harold Huyser, Mickelsen Farms,)
 Inc., A.W. Molyneux, Morgan &)
 Shillington Farm Co., a)
 partnership, Melvin Funk, and)
 Lenard Schritter,)
)
 Defendants.)
)

COME NOW the Defendant, Idaho Department of Water
 Resources, by and through its counsel of record, and moves
 the Court to enter an Order staying all further proceed-
 ings in the above-captioned action to and until seven (7)
 days following the adjournment of the first regular
 session of the 48th Idaho Legislature, except as to:

1. Preservation of testimony pursuant to Idaho Rules of Civil Procedure.

2. Action necessary to compel Plaintiff's response as permitted by the Idaho Rules of Civil Procedure, to the following portions of Defendant's September 21, 1984 discovery, which responses are due, as provided by paragraph 5(A) of the Agreement, a copy of which is attached hereto, as Exhibit "A" and by this reference made a part hereof, on or before January 23, 1984:

A. Defendant Idaho Department of Water Resources' First Set of Interrogatories to Plaintiff Dated September 21, 1984.

Interrogatories: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 13.

B. Request for Production of Documents (filed September 21, 1984).

Requests: 1, 3, 4, 5, 6, 7, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 65, 66, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 82, 83, 85, 86, 88, 89, 90, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, and 104.

C. Request for Admissions Dated September 21, 1984.

Admissions: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 26, 27, 42, 43, 44, 45, 46, 47, 48, 49, 60, 61, 91, 92, 93, 94, 95, and 96.

3. Dismissal of various defendants by the Plaintiff Company.

The grounds of this motion are that the Company, and the State of Idaho by the Governor and the Attorney General, signed an agreement on October 26, 1984 (Exhibit "A"), that if and when implemented according to its terms may resolve most aspects of the controversy to the extent that a stipulated judgment can be entered as to those parties who consent, and the action dismissed as to the balance. It is the intent of the defendant, Idaho Department of Water Resources, to acquire a stay of further proceedings in this case from the Court until after the legislative session in order to allow an evaluation by the parties and the Court of the probabilities and success in implementing the agreement. Since implementation of the agreement would offer a means of avoiding the expenses and expenditure of effort attendant upon trial, it appears reasonable to grant a stay to allow reasonable opportunity for the parties to seek approval of the agreement by the

legislature and the agencies whose approval is required for implementation of the agreement.

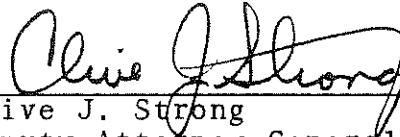
Defendant Idaho Department of Water Resources request oral argument on this motion.

DATED this 2^d day of November, 1984.

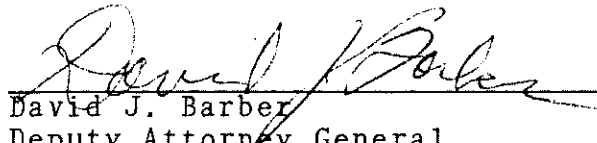
JIM JONES
Attorney General
State of Idaho

By: 

Patrick J. Kile
Deputy Attorney General
Chief, Natural Resources
Division



Clive J. Strong
Deputy Attorney General
Natural Resources Division



David J. Barber
Deputy Attorney General
Department of Water Resources

CERTIFICATE OF MAILING

I hereby certify that on this 2^d day of November, 1984, I served a true and correct copy of the foregoing Motion by depositing the same in the U. S. mail, postage prepaid to:

Phillip M. Barber
Hawley, Troxell, Ennis &
Hawley
P.O. Box 1617
Boise, Idaho 83701

Mike Gilmore
Idaho Public Utility Comm.
STATEHOUSE MAIL

Kent Foster
P.O. Box 129
Idaho Falls, ID 83401

Lloyd J. Walker
P.O. Box 1923
Twin Falls, ID 83301

Anderson, Kaufman,
Anderson & Ringert
P.O. Box 2773
Boise, ID 83701

Jack Murphy
P.O. Box 666
Shoshone, ID 83352

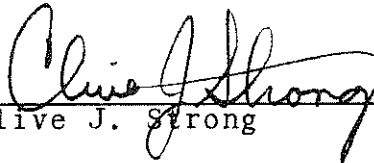
Thomas G. Nelson
Nelson, Rosholt, Robertson
Tolman & Tucker
P.O. Box 1906
Twin Falls, ID 83301

Matthew Mullaney
297 S. Elm Avenue
Boise, ID 83702

Anderson & Wood
P.O. Box 36
Homedale, ID 83628

Steve Goddard
Deputy Attorney General
Dept. Fish and Game
STATEHOUSE MAIL

Stevart Swenson, Jr.
112 Fourth Avenue West
Gooding, ID 83330


Clive J. Strong

1 Thomas G. Nelson
2 James C. Tucker
3 NELSON, ROSHOLT, ROBERTSON,
4 TOLMAN & TUCKER
5 P.O. Box 1906
6 Twin Falls, ID 83301
7 Telephone (208) 734-0700
8
9 Attorneys for Plaintiff
10

US. FILED
X.M. 11:20 P.M.

NOV 05 1984

JOHN BASTIDA, CLERK
BY Danna Dean
DEPUTY

11
12 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
13 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
14

15 * * * * *

16 IDAHO POWER COMPANY, a
17 corporation,

Case No. 81375

18 Plaintiff,

19 vs.

MOTION FOR STAY

20 IDAHO DEPARTMENT OF WATER
21 RESOURCES, et al

22 Defendants.

23 * * * * *

24 COMES NOW the Plaintiff, by and through its counsel of
25 record, and moves the Court to enter an Order staying all
26 further proceedings in the above-captioned action to and until
27 seven (7) days following the adjournment of the first regular
28 session of the 48th Idaho Legislature, except;

1. Preservation of testimony pursuant to the Idaho
Rules of Civil Procedure;

2. Completion of certain discovery filed by the
State Defendants to be designated later; and

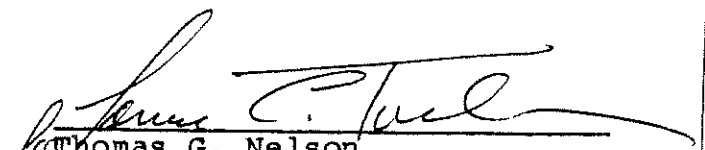
3. Dismissal of various Defendants by the Company.

The grounds of this motion are that the Company and the State of Idaho, represented by the Governor and the Attorney General, signed an agreement on October 26, 1984, a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof. That agreement, if and when implemented according to its terms, should resolve the controversy to the extent that a stipulated judgment can be entered as to those parties who consent, and the action dismissed as to the balance. It is the intent of the moving party to acquire a stay of further proceedings in this case from the Court until after the legislative session in order to allow an evaluation by the parties and the Court of the probabilities and success in implementing the contract. Since the implementation of the contract would offer a means of avoiding the expenses and expenditure of effort attendant upon trial it appears reasonable to grant a stay to allow reasonable opportunity for the parties to approach the legislature and the other agencies involved to obtain implementation.

Movant requests oral argument on this motion.

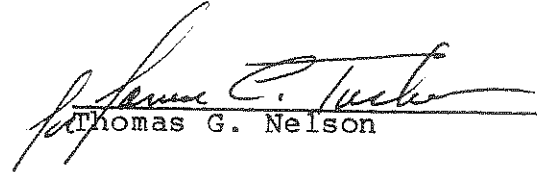
DATED this 2nd day of November, 1984.

NELSON, RSHOLT, ROBERTSON,
TOLMAN & TUCKER


Thomas G. Nelson
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of November, 1984, I served a copy of the foregoing Motion for Stay, using service list D-1 pursuant to the Order set by the Court, depositing same in the United States mail, postage prepaid.


Thomas G. Nelson

JIM JONES
Attorney General
State of Idaho
Room 210, Statehouse
Boise, Idaho 83720
(208) 334-2400

FILED
410
1979 DEC 31
JOHN BASTIAN, CLERK
BY *[Signature]*
DEPUTY

PATRICK J. KOLE
Deputy Attorney General
Chief, Natural Resource Division

CLIVE J. STRONG
Deputy Attorney General
Natural Resources Division

PHILLIP J. RASSIER
DAVID J. BARBER
Deputy Attorneys General
Department of Water Resources

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IDAHO POWER COMPANY,
Plaintiff,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, an Executive Agency
of the State of Idaho; IDAHO
WATER RESOURCE BOARD, an
Executive Agency of the State of
Idaho; IDAHO PUBLIC UTILITIES
COMMISSION, an Executive Agency
of the State of Idaho, et al.,
Defendants.

Case No. 81375

MOTION FOR STAY

COME NOW the State Defendants, by and through their
counsel of record, and move the Court to enter an Order

MOTION FOR STAY-1

staying all further proceedings in the above-captioned action to and until seven (7) days following the adjournment of the first regular session of the 48th Idaho Legislature, except as to:

1. Preservation of testimony pursuant to Idaho Rules of Civil Procedure.

2. Action necessary to compel Plaintiff's response as permitted by the Idaho Rules of Civil Procedure, to the following portions of state defendant's September 21, 1984 discovery, which responses are due, as provided by paragraph 5(A) of the Agreement, a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, on or before January 23, 1984:

A. State of Idaho Defendants' First Set of Interrogatories to Plaintiff Dated September 21, 1984.

Interrogatories 1 through 14.

B. Request for Production of Documents (filed September 21, 1984).

Requests: 1, 3, 4, 5, 6, 7, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 60, 67, 68, 90, 92, 94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105, 108, 109, 111, 112, 118, 119, 121, 122, 123, 125, 126, 127, 128, 129, 130, 131, 133, 134, 135, 136, 137, and 138.

C. Request for Admissions Dated September 21, 1984.

Admissions: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 49, 50, 67, 68, 69, 70, 71, 72, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, and 127.

3. Dismissal of various defendants by the Plaintiff Company.

The grounds of this motion are that the Company, and the State of Idaho by the Governor and the Attorney General, signed an agreement on October 26, 1984 (Exhibit A), that if and when implemented according to its terms may resolve most aspects of the controversy to the extent that a stipulated judgment can be entered as to those parties who consent, and the action dismissed as to the balance. It is the intent of the state defendants to acquire a stay of further proceedings in this case from the Court until after the legislative session in order to allow an evaluation by the parties and the Court of the probabilities and success in implementing the agreement. Since the implementation of the agreement would offer a means of avoiding the expenses and expenditure of effort

attendant upon trial, it is reasonable to grant a stay to allow reasonable opportunity for the parties to seek approval of the agreement by the legislature and the agencies whose approval is required for implementation of the agreement.

State defendants request oral argument on this motion.

DATED this 2d day of November, 1984.

JIM JONES
Attorney General
State of Idaho

By: Patrick J. Kõle
Patrick J. Kõle
Deputy Attorney General
Chief, Natural Resources
Division

Clive J. Strong
Clive J. Strong
Deputy Attorney General

David J. Barber
David J. Barber
Deputy Attorney General
Department of Water Resources

CERTIFICATE OF MAILING

I hereby certify that on this 2d day of November, 1984, I served a true and correct copy of the foregoing Motion by depositing the same in the U. S. mail, postage prepaid to:

Thomas G. Nelson
Nelson, Rosholt, Robertson,
Tolman & Tucker
P.O. Box 1906
Twin Falls, ID 83301

MOTION FOR STAY-4

Paul L. Jauregui
Attorney at Law
Idaho Power Company
P.O. Box 70
Boise, ID 83707

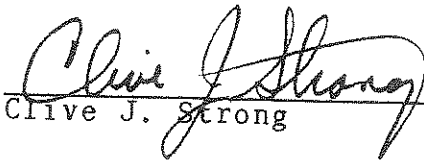

Clive J. Strong

EXHIBIT G

JIM JONES
Attorney General
State of Idaho
Room 210, Statehouse
Boise, Idaho 83720
(208) 334-2400

PATRICK J. KOLE
Deputy Attorney General
Chief, Natural Resource Division

CLIVE J. STRONG
Deputy Attorney General
Natural Resources Division

PHILLIP J. RASSIER
DAVID J. BARBER
Deputy Attorneys General
Department of Water Resources

FILED
AM 8:10 PM

JUL 3 1985

BY JOHN STIDA CLERK
John Stida
CLERK

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IDAHO POWER COMPANY,
Plaintiff,

vs.

THE STATE OF IDAHO, acting by
and through the DEPARTMENT OF
WATER RESOURCES, the IDAHO WATER
RESOURCE BOARD, and its
Executive Director, A. KENNETH
DUNN, in his official capacity;
The State of Idaho, acting by and
through the IDAHO PUBLIC
UTILITIES COMMISSION, and Com-
missioners Richard High, Conley
Ward, and Perry Swisher in their
official capacities; and Matthew
Mullaney, John Peavey, Charles
Hisaw, Diane Plastino, Billie
Thompson, L.N. "Bud" Purdy, John
Faulkner, Bill Arkoosh, Elsie
Heinz, Harold Ingram, Ralph
Ingram, Harold Huyser, Mary Mech,
Gerald Tews, John Bryngelson,

Case No. 62237

ORDER

Clive Schell, Fred Tiede, Gary)
Tiede, Otto Tiede, James Tiede,)
Ferdinand Gehring, Melvin Funk,)
Sid Allen, Jim Pahl, Lenard)
Schritter, Alfred Fothergill,)
Marcia Pursley and J. W. Swan,)
as Complainants in P.U.C.)
Complaint, Case No. U-1006-124)

Murphy Water Company, Crane Falls)
Mutual Irrigation Co., Nelda E.)
McAndrew, Pilgram Irrigation)
Company, and Enterprize Acres;)

Upper Grand View Canal Company,)
Martin K. Slane, and Mountain)
View Irrigation Company, aka)
Yahoo Company, Inc.,)

Ronald H. Warrick Cottonwood)
Canal Company, John Doe, and The)
State of Idaho, acting by and)
through the Department of Fish)
and Game, acting through its)
Executive Director Jerry Conley,)
in his official capacity;)

John Peavey, Picabo Livestock,)
Inc., Faulkner Land & Livestock,)
Bill Arkoosh, Ralph Ingram,)
Harold Huyser, Mickelsen Farms,)
Inc., A.W. Molyneux, Morgan &)
Shillington Farm Co., a)
partnership, Melvin Funk, and)
Lenard Schritter,)

Defendants.)

This matter having come on duly and regularly for
hearing in open court on the 11th day of December, 1984,
the Defendant Idaho Department of Water Resources
appearing by and through its attorney of record, and the
Plaintiff Idaho Power Company appearing by and through its
attorney of record, on their motions for stay,

IT IS HEREBY ORDERED that all further proceedings in this action be stayed until seven (7) days following the adjournment of the first regular session of the 48th Idaho Legislature, except as to:

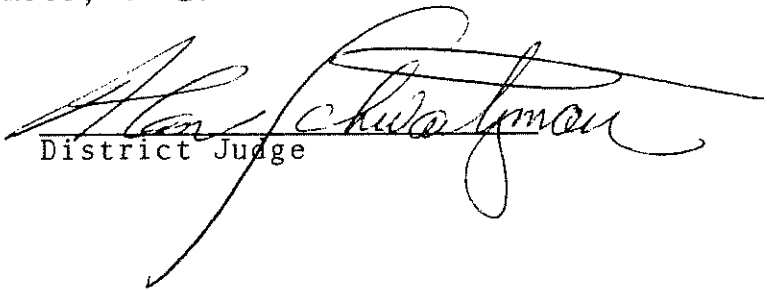
1. Preservation of testimony pursuant to Idaho Rules of Civil Procedure.

2. Completion of discovery designated by the State defendants; and

3. Dismissal of various defendants by the Plaintiff Company.

IT IS FURTHER ORDERED that plaintiff and defendant may pursue all necessary judicial action with respect to the state's discovery.

DATED this 2 day of ^{JAN}~~December~~, 1985.


District Judge

JIM JONES
Attorney General
State of Idaho
Room 210, Statehouse
Boise, Idaho 83720
(208) 334-2400

PATRICK J. KOLE
Deputy Attorney General
Chief, Natural Resource Division

CLIVE J. STRONG
Deputy Attorney General
Natural Resources Division

PHILLIP J. RASSIER
DAVID J. BARBER
Deputy Attorneys General
Department of Water Resources

NO. _____
FILED 4:35
A.M. P.M.

JAN 03 1985

JOHN BASTIDA, CLERK
BY Danna Green
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IDAHO POWER COMPANY,
Plaintiff,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, an Executive Agency
of the State of Idaho; IDAHO
WATER RESOURCE BOARD, an
Executive Agency of the State of
Idaho; IDAHO PUBLIC UTILITIES
COMMISSION, an Executive Agency
of the State of Idaho, et al.,

Defendants.

Case No. 81375

ORDER

This matter having come on duly and regularly for
hearing in open court on the 11th day of December, 1984,

ORDER-1

BRS004888

the Defendant Idaho Department of Water Resources appearing by and through its attorney of record, and the Plaintiff Idaho Power Company appearing by and through its attorney of record, on their motions for stay,

IT IS THEREFORE ORDERED that all further proceedings in this action be stayed until seven (7) days following the adjournment of the first regular session of the 48th Idaho Legislature, except as to:

1. Preservation of testimony pursuant to Idaho Rules of Civil Procedure.

2. Completion of discovery designated by the State defendants; and

3. Dismissal of various defendants by the Plaintiff Company.

IT IS FURTHER ORDERED that plaintiff and defendant may pursue all necessary judicial action with respect to the state's discovery.

DATED this 32 day of ^{Jan.} ~~December~~, 1985.


District Judge

EXHIBIT H

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER

Chartered
ATTORNEYS AT LAW

1020 MAIN STREET
SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

Twin Falls Office
142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER
TERRY T. UHLING
TERRY R. McDANIEL
F. BRUCE COVINGTON
JERRY JENSEN
GARY D. SLETTE
CAROLYN M. MINDER
VICKI L. YRAZABAL
BRUCE M. SMITH
G. RICHARD BEVAN
BRAD M. PURDY
GARY L. QUIGLEY

April 5, 1989

Mr. Clive Strong
Attorney General's Office
Statehouse Mail
Boise, Idaho 83720

Re: IPC v. State (Case No. 81375 and Case No. 62237)

Dear Clive:

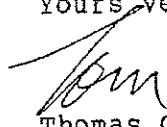
Enclosed herewith are copies of a revised Consent Judgment. Basically I have changed your draft by going back to the language used in the settlement agreement. We have some problem in trying now to revise the language which was negotiated at that time. While the definition of the water right could arguably be only the two numbers, (3,900 and 5,600 cfs) the definitions also include certain rights of the Company which should be included in the statement of the rights.

So far as the dismissal with or without prejudice is concerned, there were certain peripheral issues involved in the cases which we did not make any attempt to resolve in negotiating the agreement. For example, we had raised an issue about enjoining the PUC from interfering with our moratorium and so forth. Another such issue was the authority of the Water Resource Board to construct Shoestring Dam. While neither of those issues needs to survive the resolution of the water rights controversy, neither do they need to be dismissed with prejudice in the event they arise in some different context.

Therefore, as I said, you will find my version of the Consent Judgment to be back to a bare-bones compliance with the agreement in stating the Company's rights as resolved by the agreement.

If you have any questions or comments, feel free to give me a call.

Yours very truly,


Thomas G. Nelson

TGN/sj
enc./19161
cc: Bob Stahman

IPC003797

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

* * * * *

IDAHO POWER COMPANY,	)	Case No. 62237
a corporation,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u>CONSENT JUDGMENT</u>
	)	
STATE OF IDAHO, IDAHO DEPARTMENT	)	
OF WATER RESOURCES, et al.	)	
	)	
Defendants.	)	

* * * * *

Upon stipulation of Plaintiff and the State
Defendants, with an opportunity for signature given to other
interested Defendants, and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Idaho Power Company's water rights shall be as
follows (bracketed names below refer to Company projects):

- A. State Water License Numbers 36-2013
(Thousand Springs), 37-2128 & 37-2472 (Lower
Malad), 37-2471 (Upper Malad), 36-2018
(Clear Lake), 36-2026 (Sand Springs),
02-2057 (Upper Salmon), 02-2001A, 02-2001B,
02-2059, 02-2060 (Lower Salmon), 02-2064,
02-2065 (Bliss), 02-2056 (Twin Falls),

1 02-2036 (Shoshone Falls), 02-2032, 02-4000,
2 02-4001, and Decree Number 02-0100 (Swan
3 Falls) entitle the Company to an
4 unsubordinated right of 3900 c.f.s. average
5 daily flow from April 1 to October 31, and
6 5600 c.f.s. average daily flow from November
7 1 to March 31, both to be measured at the
8 Murphy U.S.G.S. gauging station immediately
9 below Swan Falls. These flows are not
subject to depletion. The Murphy gauging
station is located at latitude 43°17'31",
Longitude 116°25'12", in NW1/4 NE1/4 SE1/4
of Section 35 in Township 1 South, Range 1
West, Boise Meridian, Ada County Hydrologic
Unit 17050103, on right bank 4.2 miles
downstream from Swan Falls Power Plant, 7.5
miles NE of Murphy, at river mile 453.5.

10 B. The Company is also entitled to use the
11 flow of the Snake River at its facilities to
12 the extent of its actual beneficial use, but
13 not to exceed those amounts stated in State
14 Water License Numbers 36-2013 (Thousand
15 Springs), 37-2128 & 37-2472 (Lower Malad),
16 37-2471 (Upper Malad), 36-2018 (Clear Lake),
17 36-2026 (Sand Springs), 02-2057 (Upper
18 Salmon), 02-2001A, 02-2001B, 02-2059,
19 02-2060 (Lower Salmon), 02-2064, 02-2065
20 (Bliss), 02-2056 (Twin Falls), 02-2036
21 (Shoshone Falls), 02-2032, 02-4000, 02-4001,
22 and Decree Number 02-0100 (Swan Falls), but
23 such rights in excess of the amounts stated
24 in 1(A) shall be subordinate to subsequent
25 beneficial upstream uses upon approval of
26 such uses by the State in accordance with
27 State law unless the depletion violates or
28 will violate paragraph 1(A). Company
retains its right to contest any
appropriation of water in accordance with
State law. Company further retains the
right to compel State to take reasonable
steps to insure the average daily flows
established by this Agreement at the Murphy
U.S.G.S. gauging station. 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. This
paragraph shall constitute a subordination
condition.

C. The Company's rights listed in
paragraph 1(A) and 1(B) are also subordinate

1 to the uses of those persons dismissed from
2 Ada County Case No. 81375 pursuant to the
3 contract executed between the State and
4 Company implementing the terms of Idaho Code
5 §§61-539 and 61-540.

6 D. The Company's rights listed in
7 paragraph 1(A) and 1(B) are also subordinate
8 to those persons who have beneficially used
9 water prior to October 1, 1984, and who have
10 filed an application or claim for said use
11 by June 30, 1985.

12 E. Company's ability to purchase, lease,
13 own, or otherwise acquire water from sources
14 upstream of its power plants and convey it
15 to and past its power plants below Milner
16 Dam shall not be limited by this agreement.
17 Such flows shall be considered fluctuations
18 resulting from operation of Company
19 facilities.

20 2. The above-captioned case is hereby dismissed
21 without prejudice as to all nonsignatory defendants in this
22 proceeding who have not been dismissed.

23 3. The above-captioned case is hereby dismissed
24 without prejudice as to all remaining issues.

25 4. The Swan Falls Agreement, dated October 25, 1984,
26 shall not be merged into nor integrated with this Judgment, but
27 shall remain in full force and effect independent of this
28 Judgment.

5. Each and all parties shall bear their own costs.

DATED this ____ day of _____, 1989.

DISTRICT JUDGE

1
2
3
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7
8
9 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
10 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

11 * * * * *

12 IDAHO POWER COMPANY,) Case No. 81375
13 a corporation,)
14 Plaintiff,)
15 vs.) CONSENT JUDGMENT
16 STATE OF IDAHO, IDAHO DEPARTMENT)
17 OF WATER RESOURCES, et al.)
18 Defendants.)

18 * * * * *

19 Upon stipulation of Plaintiff and the State
20 Defendants, with an opportunity for signature given to other
21 interested Defendants, and good cause appearing;

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

23 1. Idaho Power Company's water rights shall be as
24 follows (bracketed names below refer to Company projects):

25 A. State Water License Numbers 36-2013
26 (Thousand Springs), 37-2128 & 37-2472 (Lower
27 Malad), 37-2471 (Upper Malad), 36-2018
28 (Clear Lake), 36-2026 (Sand Springs),
02-2057 (Upper Salmon), 02-2001A, 02-2001B,
02-2059, 02-2060 (Lower Salmon), 02-2064,
02-2065 (Bliss), 02-2056 (Twin Falls),

02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls) entitle the Company to an unsubordinated right of 3900 c.f.s. average daily flow from April 1 to October 31, and 5600 c.f.s. average daily flow 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. The Murphy gauging station is located at latitude 43°17'31", Longitude 116°25'12", in NW1/4 NE1/4 SE1/4 of Section 35 in Township 1 South, Range 1 West, Boise Meridian, Ada County Hydrologic Unit 17050103, on right bank 4.2 miles downstream from Swan Falls Power Plant, 7.5 miles NE of Murphy, at river mile 453.5.

B. The Company is also entitled to use the flow of the Snake River at its facilities to the extent of its actual beneficial use, but not to exceed those amounts stated in State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad), 37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls), but such rights in excess of the amounts stated in 1(A) shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the State in accordance with State law unless the depletion violates or will violate paragraph 1(A). Company retains its right to contest any appropriation of water in accordance with State law. Company further retains the right to compel State to take reasonable steps to insure the average daily flows established by this Agreement at the Murphy U.S.G.S. gauging station. 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. This paragraph shall constitute a subordination condition.

C. The Company's rights listed in paragraph 1(A) and 1(B) are also subordinate

1 to the uses of those persons dismissed from
2 this case pursuant to the contract executed
3 between the State and Company implementing
4 the terms of Idaho Code §§61-539 and 61-540.

5 D. The Company's rights listed in
6 paragraph 1(A) and 1(B) are also subordinate
7 to those persons who have beneficially used
8 water prior to October 1, 1984, and who have
9 filed an application or claim for said use
10 by June 30, 1985.

11 E. Company's ability to purchase, lease,
12 own, or otherwise acquire water from sources
13 upstream of its power plants and convey it
14 to and past its power plants below Milner
15 Dam shall not be limited by this agreement.
16 Such flows shall be considered fluctuations
17 resulting from operation of Company
18 facilities.

19 2. The above-captioned case is hereby dismissed
20 without prejudice as to all nonsignatory defendants in this
21 proceeding who have not been dismissed.

22 3. The above-captioned case is hereby dismissed
23 without prejudice as to all remaining issues.

24 4. The Swan Falls Agreement, dated October 25, 1984,
25 shall not be merged into nor integrated with this Judgment, but
26 shall remain in full force and effect independent of this
27 Judgment.

28 5. Each and all parties shall bear their own costs.

DATED this ____ day of _____, 1989.

DISTRICT JUDGE

EXHIBIT I

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are included at the end of this form. Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case IDWR will produce new water right number(s) for the split(s).

Water Right No(s)	Adjudication Claim No(s)	Split(s)	Water Right No(s)	Adjudication Claim No(s)	Split(s)
02-4000		X			
02-4001		X			
02-2032		X			

2. The following **REQUIRED** information must be submitted with this form:

A. The appropriate **FILING FEE**. See instructions for fee amounts.

B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.

C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions): **PLAT OF PROPERTY** or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are on file with the county Planning and Zoning or Recorder's Office).

OR

D. If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency or equivalent **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) Idaho Power Company
P.O. Box 70, Boise, ID 83707
4. New Owner/Claimant(s) State of Idaho (Acquired legal title in trust for the benefit of Idaho Power Co. and the people of the State of Idaho, pursuant to the Swan Falls Agreement, ratified by Idaho Code § 42-203B (See Attachments))
- New Mailing Address P.O. Box 83720
City, State and ZIP Code Boise, ID 83720
- New Telephone Number (208) 334-2400
5. Date you acquired the property May 25, 1988 (Final effective date of Federal Energy Regulatory Commission Order – Re: Swan Falls Agreement)
6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in line 1, then skip this line and go to line 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (you may copy this page, if necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right will not be split, skip this area and proceed to line 7)		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Water Right and/or Adjudication Claim Number 02-4000		
Irrigation		
Stock		
Domestic		
Other - Power	90 cfs from 4/1 to 10/31	Swan Falls Power Plant
Water Right and/or Adjudication Claim Number 02-4001		
Irrigation		
Stock		
Domestic		
Other - Power	1,460 cfs from 4/1 to 10/31	Swan Falls Power Plant

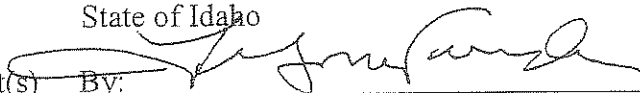
Water Right and/or Adjudication Claim Number <u>02-2032</u>		
Irrigation		
Stock		
Domestic		
Other - Power	4,000 cfs from 4/1 to 10/31	Swan Falls Power Plant
	3,850 cfs from 11/1 to 3/31	

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

State of Idaho

7. Signature(s) of New Owner(s) or Claimant(s)

By:



Lawrence G. Wasden

Its: Attorney General

IT IS IMPORTANT TO FILE THIS COMPLETED FORM AT THE APPROPRIATE IDWR OFFICE, WITH PAYMENT OF THE FILING FEE AND THE OWNERSHIP DOCUMENT(S), AS REFERRED TO IN LINE 2.

For IDWR Office Use Only:

Received by _____ Date _____ Receipt Amt. _____
 Receipted by _____ Date _____ Receipt No. _____
 Processed by _____ AJ Date _____ WR _____ Date _____

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

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Water Right No(s)	Adjudication Claim No(s)	Split(s)	Water Right No(s)	Adjudication Claim No(s)	Split(s)
02-2001A			02-2064		
02-2001B			02-2065		
02-2036			02-10135		
02-2056			36-2013		
02-2057			36-2018		
02-2059			36-2026		
02-2060			37-20709		
			37-20710		

2. The following **REQUIRED** information must be submitted with this form:

A. The appropriate **FILING FEE**. See instructions for fee amounts.

B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.

C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions): **PLAT OF PROPERTY** or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are on file with the county Planning and Zoning or Recorder's Office).

OR

D. If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency or equivalent **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) Idaho Power Company
P.O. Box 70, Boise, ID 83707
4. New Owner/Claimant(s) State of Idaho (Acquired legal title in trust for the benefit of Idaho Power Co. and the people of the State of Idaho, pursuant to the Swan Falls Agreement, ratified by Idaho Code § 42-203B (See Attachments))
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- New Telephone Number (208) 334-2400
5. Date you acquired the property May 25, 1988 (Final effective date of Federal Energy Regulatory Commission Order – Re: Swan Falls Agreement)
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DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right will not be split, skip this area and proceed to line 7)		
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Water Right and/or Adjudication Claim Number _____		
Irrigation		
Stock		
Domestic		
Other - Power		Swan Falls Power Plant
Totals		
Water Right and/or Adjudication Claim Number _____		
Irrigation		
Stock		
Domestic		
Other		
Totals		

Water Right and/or Adjudication Claim Number _____		
Irrigation		
Stock		
Domestic		
Other - Power		
Totals		

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

7. Signature(s) of New Owner(s) or Claimant(s) State of Idaho
 By: 
 Lawrence G. Wasden
 Its: Attorney General

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For IDWR Office Use Only:

Received by _____	Date _____	Receipt Amt. _____
Received by _____	Date _____	Receipt No. _____
Processed by _____ AJ	Date _____	WR _____ Date _____

EXHIBIT J



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720

Swan Falls Project
(208) 327-7900

c: W W Anderson
J W Marshall
L E Lanham
C E Bissell
R W Stahman
S L Herndon

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

March 15, 1989

Mr. Robert J. O'Connor, Chairman
of the Board and Chief Executive Officer
Idaho Power Company
Box 70
Boise, ID 83707

Dear Mr. O'Connor:

The February 17, 1989 letter from Mr. David W. Meyers of your company provided a copy of the October 1981 license application and supplemental information for the authorization to build a new powerhouse and upgrade the capacity of the Swan Falls Project (FERC No. 503) to 25 MW. The letter requested that we expedite the review and comment period and provide a "waiver of further consultation: if appropriate, as soon as possible.

Officials of the company requested and were granted the opportunity to inform the Idaho Water Resource Board of their proposed actions at a work session of the board on March 2, 1989. In addition, Mr. Lanham briefed me on the company's proposed action on March 1, 1989.

It will be necessary for the company to obtain a water right for the additional flow for the increased generating facility. The company applied for a water right (#02-7379) in 1982. Protests filed in response to the application have been resolved and the department can act on the application. If approved, I understand the company will possess sufficient water rights to operate the Swan Falls hydropower generating plant at the proposed 25 MW capacity.

It will be necessary to condition the water right to reflect the terms accepted by the company and state in the Swan Falls Agreement. I would propose to condition the right to be subordinate to all future upstream uses. My understanding is the company will agree to such a condition.

BRS000035

Mr. Robert J. O'Connor
March 15, 1989
Page 2

It is important that FERC understand the position of both the state and company relative to the condition to be placed on the water right. I suggest the company inform FERC of their acceptance of the subordination for the water right and request that the FERC license acknowledge this fact.

Plans and specifications for modification to the dam are to be filed with IDWR for review and approval prior to commencing construction. IDWR's dam safety section will appreciate receiving the consultant's studies identifying the problems with the dam which have prompted the implementation of this project.

Please let me know if this letter reflects your understanding of this matter and is acceptable to the company.

Sincerely,


R. Keith Higginson,
Director

RKH:ky

cc: Governor's Office
IWRB

BRS000036

EXHIBIT K

JOHN V. EVANS
GOVERNOR



102
JRE/gle

OFFICE OF THE GOVERNOR

STATE CAPITOL
BOISE 83720

May 9, 1984

Mr. James Bruce
Chief Executive Officer
Idaho Power Company
P. O. Box 70
Boise, Idaho 83707

Dear Mr. Bruce:

I appreciate your offer to enter into a contract for the dismissal of certain defendants in Ada County Civil No. 81375. I share your desire to limit the necessity for and extent of litigation over Snake River water rights. I, too, would favor a negotiated settlement of this dispute.

However, rather than the partial settlement contemplated by the contract you have offered, I propose that we enter into serious discussions of a complete settlement agreement. To that end, I offer the following observations.

I firmly believe that the issue of Snake River water rights allocation is the major resource policy issue which will face Idaho for the balance of this century. The resolution of this issue will greatly affect economic development and economic opportunity for all of Southern Idaho for generations to come. Such a fundamental public policy question ought to be resolved by the most careful and thorough public processes, and not necessarily in the context of litigation.

Thus far, the debate over Swan Falls water rights has focused on the question of whether irrigated agriculture or hydropower generation offers the greatest economic benefit to our state. In my view, that is not the issue. I agree with you and your company that it is in the interests of both current rate-payers and our future economic growth to maintain a strong hydro-power base. I agree that in future allocations of water resources we cannot afford to ignore the implications such allocations have on hydro-power generation. However, I fundamentally disagree with the Idaho Power Company position that

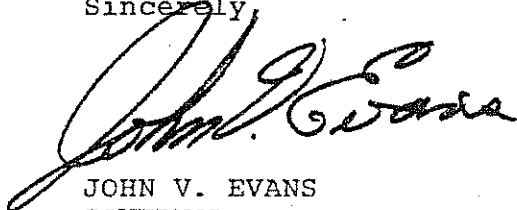
Mr. James Bruce
May 9, 1984
Page 2

the best way to assure adequate water for hydro-power generation is by recognizing the utility's power to veto future consumptive uses in the Snake River Basin. Such decision-making clearly should be a governmental responsibility, bounded only by broad public interest considerations, and not the prerogative of a private corporation.

I would propose that we utilize the minimum stream flow concept as the primary means of protecting hydro-power generation. In exchange for an assignment of Idaho Power Company's water rights on the Snake River to the State of Idaho, the State could establish a new higher minimum stream flow at a level mutually agreeable to the State and the power company. I would further suggest that the state establish a process by which future allocations of water on the Snake River could be reviewed against a set of criteria which reflect a balance of all the competing public and private interests: water requirements for new industry and agriculture, wildlife and conservation concerns, as well as preservation of our hydro-power base.

As you are keenly aware, the Idaho Power Company has a direct stake in the prosperity of all sectors of our Idaho economy. I would hope that you and I can now approach this challenge as partners in the pursuit of a common objective, and not as adversaries in a law suit in which there will be no winners.

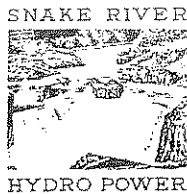
Sincerely,

A handwritten signature in dark ink, appearing to read "John V. Evans", written in a cursive style.

JOHN V. EVANS
GOVERNOR

JVE/pcs

EXHIBIT L



Nick Jim E

IDAHO POWER COMPANY

BOX 70 BOISE, IDAHO 83707

May 23, 1984

JAMES E. BRUCE
Chairman of the Board and
Chief Executive Officer

The Honorable John V Evans
Governor of the State of Idaho
Statehouse
Boise, Idaho

Re: Swan Falls

Dear Governor Evans:

Thank you for your letter of May 9, 1984. The Company would welcome a chance to discuss settlement, as opposed to litigation. We urgently request your reconsideration of signing the contract so that existing users will be relieved of expense and uncertainty while we attempt to resolve the Swan Falls issues.

In our view, the Company's decision to protect its water rights should not be considered as a "veto" of other development, because Idaho's constitution provides for acquisition of the Company's water for future development by the utilization of imminent domain proceedings.

In your letter, you mention an assignment as a vehicle for settlement. A better subject of discussion, in the Company's view, would be the approach embodied in HB 574, as amended. A copy is enclosed for ease of review by you. This allows protection of the ratepayer and preservation of the hydro base as a resource, while permitting viable development to proceed.

In any event, the Company's willingness to discuss resolution of the controversy is not conditioned on the discussion of any particular proposal. We hope you likewise will be receptive to the exploration of any reasonable approach. Company representatives will be available to meet with you at your convenience.

Sincerely,

James E Bruce
Chairman and CEO

JEB:mlm

Encl

IPC002325

EXHIBIT M

7.UG 8 1989

John Castella

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

* * * * *

IDAHO POWER COMPANY, a
corporation,

Plaintiff,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, an executive
agency of the State of Idaho;
et al.,

Defendants.

Case No. 81375

NOTICE OF HEARING

* * * * *

NOTICE IS HEREBY GIVEN that counsel for Plaintiff and
the office of the Attorney General, State of Idaho, as counsel
for the State Defendants, will bring their joint Motion for
Entry of Judgment before the Court for hearing on the 29th day
of August, 1989, at 9:00 o'clock a.m. at the Ada County
Courthouse.

Pursuant to order of the Court, the hearing on the
Motion in the above captioned case has been consolidated with
the hearing on a similar motion filed in the case of Idaho
Power Company v. State of Idaho, Ada County Civil case
no. 62237. The consolidated hearing will be held before the
Honorable D. Duff McKee. Objections to entry of the judgment

1 must be filed with the clerk of the court and served on counsel
2 for the Plaintiff and the State Defendants at least seven (7)
3 days prior to the hearing.

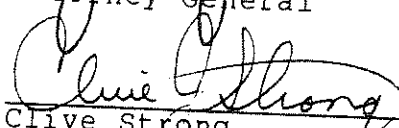
4 DATED this 21st day of July, 1989.

5 NELSON, ROSHOLT, ROBERTSON
6 TOLMAN & TUCKER

7 
8 Thomas G. Nelson

9
10 STATE OF IDAHO

11 
12 Jim Jones
13 Attorney General

14 
15 Clive Strong
16 Deputy Attorney General

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28 1812p

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

D. DUFF McKEE
DISTRICT JUDGE

August 29, 1989

COURT MINUTES

Idaho Power Company ,	)	
	)	
Plaintiff,	)	Case No. 81375/62237
	)	
v.	)	
	)	
Idaho Department of Water Resources	)	
et al,	)	
Defendant.	)	
	)	

TIME SET FOR JUDGMENT CONSOLIDATION

Appearances:	Tape No. L-847 0341 thru 0362
Thomas Nelson	Counsel for Plaintiff
NELSON & ROSHOLT	
Clive Strong	Counsel for Idaho Department
Deputy Attorney General	of Water Resources
William Ringert	Counsel for Mudd Flatt Canal Co.,
RINGERT & CLARK	et al

0341 CALL OF THE CASE:

Court reviews file.

0342 Mr. Nelson presents oral argument.

0344 Court addresses Mr. Ringert.

0346 Court notes that Mr. Ringert and Mr. Clark has filed an Objection.

0348 Court and Counsel comment.

Court grants Motion for Entry of Judgment as to all parties except those represented by Mr. Ringert and Mr. Clark.

0362 Court advises Mr. Nelson to prepare order.

Finish.

REPORTER: Pat Blaska
EST. COST: \$45.00
CLERK: Terri Stone
DATE: August 29, 1989

APPROVED BY:


D. DUFF McKEE
District Judge

EXHIBIT N

In Re the General)
Adjudication of Rights to the)
use of Water from the Snake)
River Drainage Basin Water)
System) Case No. 39576

The State of Idaho, ex rel.)
R. Keith Higginson in his)
official capacity as director)
of the Idaho Department of)
Water Resources,)

Petitioner,

vs.

United States; State of)
Idaho; and all unknown)
claimants to the use of water)
from the Snake River Drainage)
Basin Water Systems,)

Respondents.

October 31, 1990

BURNHAM, HABEL & ASSOCIATES, INC.

459 Main Street
Post Office Box 855
Boise, Idaho 83701

Reported By

COPY
Prepared for

Mr. James Tucker

Colleen P. Doherty, CSR

1 Q. Now, you stated the historic low flow at
2 that point in time was 4,500 c.f.s.; is that correct?

3 A. Yes.

4 Q. Then you agreed to a 3,900 c.f.s. minimum
5 flow in the Swan Falls agreement?

6 A. That's correct.

7 Q. If my calculations are correct, then that
8 means there were 600 c.f.s. of water that was not
9 currently being used by existing water development?

10 A. That's correct.

11 Q. How does the agreement address that 600
12 c.f.s.?

13 A. The agreement basically says in shorthand
14 that the water rights up to 3,900 and 5,600 are
15 unsubordinated and unsubordinatable. That the company
16 can defend it, and the state will recognize those water
17 rights in administering the river. Above 3,900 and
18 5,600, the company's water rights remain intact, but they
19 are subject to subordination to later approved uses which
20 meet the new criteria. So that the company's 1903 water
21 right, for example, could be used to block a 1995, which
22 does not meet the statutory criteria, or even a 1980
23 undeveloped filing which does not meet the statutory
24 criteria.

25 Q. Now, by statutory criteria, what are you