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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,	)	
	)	
v.	)	
	)	
STATE OF IDAHO; C.L. "BUTCH" OTTER,	)	
Governor of the State of Idaho; LAWRENCE G.	)	
WASDEN, Attorney General of the State of	)	
Idaho; IDAHO DEPARTMENT OF WATER	)	
RESOURCES; and DAVID TUTHILL, Director,	)	
Idaho Department of Water Resources	)	
	)	
Defendants.	)	

AFFIDAVIT OF SHARON
STRICKLAND IN SUPPORT OF
IDAHO POWER COMPANY'S
RESPONSE MEMORANDUM IN
OPPOSITION TO STATE'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT

STATE OF IDAHO)
) ss.
County of)

SHARON STRICKLAND, being first duly sworn upon oath, deposes and states as follows:

1. I am employed in the position of paralegal with Barker Rosholt & Simpson, LLP, one of the law firms representing Plaintiff Idaho Power Company ("Idaho Power") in the above-entitled action, and I make the following statements upon my personal knowledge of the facts and circumstances set forth herein below. I have been employed by Barker Rosholt & Simpson, LLP, as a paralegal since 2001, and was previously employed as paralegal for the firm of Rosholt, Robertson & Tucker for approximately fifteen years. In that capacity, I am familiar with the records of the Department of Water Resources (IDWR) and the Snake River Basin Adjudication (SRBA) Court.

2. Based upon a search and review of the records of IDWR and the SRBA evidencing water rights held by Idaho Power, the following is a true and accurate recitation of the priority dates and license issue dates for the water rights of Idaho Power that are identified in the Swan Falls Agreement:

<u>Project</u>	<u>W/R</u>	<u>Priority Date</u>	<u>License Issue Date</u>
Thousand Springs	36-2013	Nov. 20, 1912	July 5, 1923
Lower Malad	37-2128	Nov. 25, 1908	July 16, 1920
Lower Malad	37-2472	May 14, 1946	Sept. 29, 1950
Upper Malad	37-2471	May 14, 1946	Oct. 26, 1948
Clear Lake	36-2018	Jan. 18, 1919	Dec. 28, 1938
Sand (1,000) Spgs	36-2026	May 1, 1916	Oct. 27, 1921
Upper Salmon	02-2057	April 2, 1929	Dec. 7, 1937
Lower Salmon	02-2001A	May 11, 1908	Oct. 31, 1919
Lower Salmon	02-2001B	July 2, 1908	Oct. 31, 1919
Lower Salmon	02-2059	March 20, 1935	Aug. 20, 1937
Lower Salmon	02-2060	Aug. 8, 1946	Sept. 29, 1950
Bliss	02-2064	Sept. 4, 1947	Sept. 29, 1950
Bliss	02-2065	Dec. 11, 1947	Sept. 29, 1950
Twin Falls	02-2056	April 2, 1929	Aug. 20, 1937
Shoshone Falls	02-2036	Aug. 9, 1920	Dec. 10, 1925
Swan Falls	02-2032	July 29, 1919	May 26, 1920
Swan Falls	02-4000	Jan. 17, 1900	Aug. 4, 1911

Affidavit of Sharon Strickland in Support of
Idaho Power Company's Memorandum in
Opposition to State's Motion for Summary Judgment

Swan Falls
Swan Falls

02-4001
02-100

April 17, 1900
Jan. 17, 1900

Aug. 16, 1911
Decreed in Trade Dollar Consol. Mining v.
Cruzen, dated 4-2-1907

3. Affiant has attached hereto collectively as Exhibit "A," true and correct copies of Partial Decrees entered in the Snake River Basin Adjudication, decreeing water rights 36-2013, 36-2018 and 36-2026, in the name of Idaho Power. Each of these decrees reflects the owner of the water right as Idaho Power.

4. A search and review of the records of IDWR and the SRBA indicates:

(a) That the State of Idaho did not file a Notice of Claim to a water right for any of the water rights identified in paragraph 2 above;

(b) That the State of Idaho did not file an objection to the Basin 36 Director's Report recommendations which recommended that claims 36-2013, 36-2018 and 36-2026, be decreed as set forth in attached Exhibit "A," nor did the State of Idaho file any appeals of the Partial Decrees.

(c) That on or about the 31st day of August 2005, IDWR filed its preliminary director's report of Basin 37 water rights, including the Basin 37 water rights identified in paragraph 2 above. Each of said preliminary recommendations identifies the owner of the water right as Idaho Power.

(d) That on or about the 16th day of September 2005, Idaho Power filed Notice of Error Replies to the preliminary recommendations of Basin 37 water rights identified in paragraph 2 above. Each of said Notice of Error Replies identifies the owner of the water right as Idaho Power.

(e) That on or about the 1st day of November 2005, IDWR filed its final director's report of recommendations for water rights in Basin 37, including the Basin 37 water

rights identified in paragraph 2 above. Each of said recommendations identifies the owner of the water right as Idaho Power.

(f) That on or about the 19th day of November 2005, IDWR filed its preliminary director's report of Basin 2 water rights, including the Basin 2 water rights identified in paragraph 2 above. Each of said preliminary recommendations identifies the owner of the water right as Idaho Power.

(g) That on or about the 2nd day of December 2005, Idaho Power filed Notice of Error Replies to the preliminary recommendations of Basin 2 water rights identified in paragraph 2 above. Each of said Notice of Error Replies identifies the owner of the water right as Idaho Power.

(h) That on or about the 10th day of March 2006, Idaho Power filed its objections to the final recommendations of the Basin 37 water rights identified in paragraph 2 above.

(i) That on or about the 22nd day of December 2006, the State of Idaho filed with the IDWR Notices of Change in Water Right Ownership for water rights 02-2001A; 02-2001B; 02-2032; 02-2036; 02-2056; 02-2057; 02-2059; 02-2060; 02-2064; 02-2065; 02-10135; 36-2013; 36-2018; 36-2026; 37-20709; 37-20710; 02-4000; and 02-4001. True and correct copies of those Notices of Change in Water Right Ownership are attached hereto collectively as Exhibit "B."

(i) That on or about the 28th day of December 2006, IDWR filed its final director's report of recommendations for water rights in Basin 2, including the Basin 2 water rights identified in paragraph 2 above. Said recommendations identify the owner

of the water right as set forth in the Notices of Change in Water Right Ownership attached hereto as Exhibit "B."

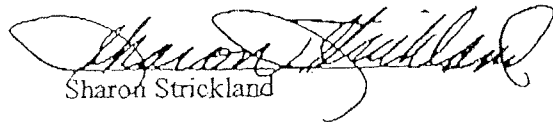
(j) That on or about the 2nd day of January 2007, the State of Idaho filed with the IDWR additional Notices of Change in Water Right Ownership for water rights 37-2128; 37-2471 and 37-2472. True and correct copies of those Notices of Change in Water Right Ownership are attached hereto collectively as Exhibit "C."

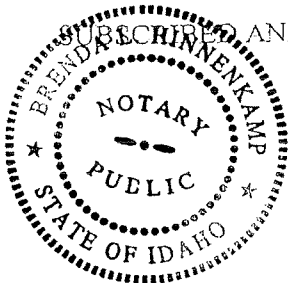
(k) That on or about the 20th day of February 2007, IDWR filed amended director's reports for the Basin 37 water rights identified in paragraph 2 above. Those amended recommendations identify the owner of the water right as set forth in the Notices of Change in Water Right Ownership attached hereto as Exhibit "C."

(l) That on or about the 1st day of May 2007, Idaho Power filed its Motion to File Late Objections to the amended director's report for the Basin 37 water rights identified in paragraph 2 above. Together with said motion, Idaho Power lodged its proposed objections to those amended director's reports.

(m) That on or about the 5th day of December 2007, Idaho Power filed its objections to the final recommendations of the Basin 02 water rights identified in paragraph 2 above.

Dated this 7th day of February, 2008


Sharon Strickland



SUBSCRIBED AND SWORN to before me this 7 day of February, 2008.

Brenda L. Hunnenkamp
Notary Public for Idaho
Residing at: Bose, Idaho
Commission Expires: 9/2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of February 2008, I caused to be served a true and correct copy of the foregoing **AFFIDAVIT OF SHARON STRICKLAND IN SUPPORT OF IDAHO POWER COMPANY'S RESPONSE MEMORANDUM IN OPPOSITION TO THE STATE'S MOTION FOR PARTIAL SUMMARY JUDGMENT** by the method indicated below, and addressed to each of the following:

Filed with the Court via Federal Express, Overnight Delivery.

Lawrence Wasden	☐ U.S. Mail, Postage Prepaid
Steven Olsen	☐ Hand Delivered
Karl T. Klein	☒ Overnight Mail
Michael C. Orr	☐ Facsimile
700 W. Jefferson, Room 210	☐ Federal Express, Overnight Delivery
P.O. Box 44449	
Boise, ID 83711-4449	
Attorneys for Defendant, State of Idaho	

IDWR Document Depository	☐ U.S. Mail, Postage Prepaid
PO Box 83720	☐ Hand Delivered
Boise, ID 83720-0098	☒ Overnight Mail
	☐ Facsimile

United States Department of Justice	☐ U.S. Mail, Postage Prepaid
Environment & Nat'l Resources Div	☐ Hand Delivered
550 W Fort Street, MSC 033	☒ Overnight Mail
Boise, ID 83724	☐ Facsimile

Chief, Natural Resources Division	☐ U.S. Mail, Postage Prepaid
Office of Attorney General	☐ Hand Delivered
PO Box 44449	☒ Overnight Mail
Boise, ID 83711-4449	☐ Facsimile

Randall C. Budge	☐ U.S. Mail
Candice M. McHugh	☐ Hand Delivered
Racine Olson Nye Budge & Bailey, Chtd.	☒ Overnight Mail
P.O. Box 1391	☐ Facsimile
Pocatello, ID 83204-1391	

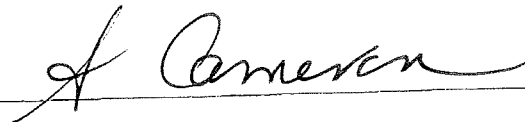


EXHIBIT A

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

In Re SRBA
Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-02013

1997 NOV 25 AM 10:53

DISTRICT COURT
TWIN FALLS, IDAHO

NAME & ADDRESS: IDAHO POWER CO
PO BOX 70
BOISE ID 83707

SOURCE: THOUSAND STRINGS
SNOW BANK SPRINGS

TRIBUTARY: SNAKE RIVER
SNAKE RIVER

QUANTITY: 600.00 CFS

PRIORITY DATE: 11/20/1912

POINT OF DIVERSION: T085 R14E S03

SUNWSE
NESHSE
WASWSE
SESWSE

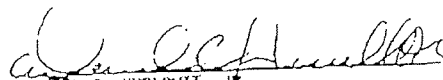
Within GOODING County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE
POWER

PERIOD OF USE
01-01 12-31

QUANTITY
600.00 CFS

PLACE OF USE: POWER
T085 R14E S03 Lot 3 (NESH) Within GOODING County


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-02013

PAGE 1
NOV-20-1997

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

In Re SRBA)
Cane No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-02018

1997 NOV 25 AM 10:58

DISTRICT COURT
TWIN FALLS, IDAHO
FILED _____

NAME & ADDRESS: IDAHO POWER CO
PO BOX 70
BOISE ID 83707

SOURCE: CLEAR LAKES

TRIBUTARY: SNAKE RIVER

QUANTITY: 526.00 CFS

PRIORITY DATE: 01/10/1919

POINT OF DIVERSION: T09S R14E S02 LOT 7 (WESWSE)

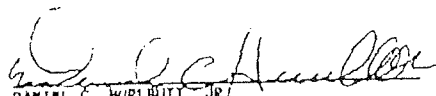
Within GOODING County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE
POWER

PERIOD OF USE
01-01 12-31

QUANTITY
526.00 CFS

PLACE OF USE: POWER Within GOODING County
T09S R14E S02 Lot 7 (SWSE)


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-02018

PAGE 1
NOV-20-1997

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

In Re SRBA)
)
Case No. 37576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-02026

1997 NOV 25 AM 10:53

DISTRICT COURT
TWIN FALLS, IDAHO
FILED

NAME & ADDRESS: IDAHO POWER CO
PO BOX 70
BOISE ID 83707

SOURCE: SAMO SPRINGS CREEK

TRIBUTARY: SNAKE RIVER

QUANTITY: 100.00 CFS

PRIORITY DATE: 05/01/1916

POINT OF DIVERSION: T085 R14E S17

SENSE

Within GOODING County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE
POWER

PERIOD OF USE
01-01 12-31

QUANTITY
100.00 CFS

PLACE OF USE: POWER Within GOODING County
T085 R14E S08 Lot 3 (NWSW)


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

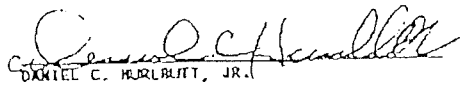

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

EXHIBIT B



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

RECEIVED

DEC 22 2006

Department of Water Resources
Adjudication Bureau

December 22, 2006

Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Re: Notices of Change in Water Right Ownership Under Swan Falls
Agreement and Implementing Legislation.

Dear Sir/Madam:

Please find attached two Notices of Change In Water Right Ownership for water rights nos. 02-2001A, 02-2001B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-10135, 36-2013, 36-2018, 36-2026, 37-20709, 37-20710, 02-4000, 02-4001, and 02-2032. These notices and the supporting documentation are submitted in accordance with and pursuant to the terms of the Swan Falls Agreement. This submission is ministerial in character and required under the agreement and the implementing legislation.

As you know, the Swan Falls Agreement was executed on October 25, 1984, to resolve a lawsuit between the State of Idaho and Idaho Power Company regarding the nature and extent of Idaho Power's hydropower water rights at Swan Falls dam on the Snake River. At issue was whether Idaho Power had subordinated its hydropower rights to junior upstream water rights. The lawsuit and the underlying controversy raised questions of the utmost importance to the State and water users throughout the Snake River basin.

The Swan Falls Agreement and the legislation enacted to implement it settled many of these questions by recognizing unsubordinated water rights for seasonal minimum flows measured at the Murphy gauge for Idaho Power Company, and by vesting the State with legal title to the remainder of the hydropower water rights for projects covered by the agreement. The State holds these water rights in trust for the

benefit of both Idaho Power and people of the State of Idaho, as the Swan Falls Agreement itself, the implementing legislation and the legislative history make quite clear.

Indeed, the Swan Falls Agreement requires the State to "assert the existence of water rights held in trust by the State,"¹ and was expressly conditioned on the passage of legislation providing that flows exceeding the unsubordinated minimums "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."² This proposed legislation was enacted and codified as Idaho Code § 42-203B(2).

The legislative history of the legislation implementing the Swan Fall Agreement confirms the State's ownership of these hydropower water rights. The Senate unanimously adopted the "Statement of Legislative Intent" for the centerpiece of the Swan Falls legislation, which was read into the record in the Senate on February 6, 1985. In reference to the provision of the legislation that ultimately became Idaho Code § 42-203B, the Statement of Legislative Intent states that:

this section establishes a trust in which title to certain specified water rights will be held. The trust pertains to water rights for power purposes which are in excess of minimum stream flows established by state action. . . Any portion of such water rights above the established minimum flows will be held in trust by the State of Idaho, by and through the Governor of the State of Idaho. This trust will hold these water rights for the benefit of the power user so long as they are not appropriated as provided by law by future upstream beneficial users. The trust also operates, however, for the use and benefit of the people of the State of Idaho, to assure that water is made available for appropriation by future upstream users who satisfy the criteria of Idaho law for reallocation of the water rights held in trust. .

Hydropower rights in excess of such flows will be held in trust by the State and are subject to subordination to, and to depletion by lawful beneficial uses . . .³

The Statement of Legislative Intent goes on to state that:

¹ Swan Falls Agreement of October 25, 1984 ("Swan Falls Agreement") at 1 ¶ 4. A copy of the Swan Falls Agreement is included in the "Attachments to Notices of Change of Water Right Ownership" ("Attachments") at Tab 1.

² Swan Falls Agreement at Exhibit 7B ¶ 4; Attachments at Tab 1.

³ Journal of the State Senate, 1st Reg. Sess., 48th Leg., 1985 at 59 (Feb. 6, 1985). A copy of the portion of the Senate Journal containing the Statement of Legislative Intent is included in the Attachments at Tab 4 a.

As applied to the agreement between Idaho Power Company, the Governor and the Attorney General, this trust arrangement results in the State of Idaho possessing legal title to all water rights previously claimed by Idaho Power Company above the agreed minimum stream flows and Idaho Power Company holds equitable title to those water rights subject to the trust.⁴

The parties' statements before various legislative committees likewise confirm the State's ownership of the hydropower water rights referenced in the agreement. They demonstrate that the parties viewed the agreement and the legislation as creating a trust in which legal title to the water rights for flows exceeding the minimums was held by the State, for the benefit of Idaho Power and the people of the State of Idaho. As Idaho Power's attorney stated before the Senate Resources and Environment Committee on January 18, 1985:

In the course of the negotiations, in the final stages, we were "laugerheaded" on the question of whether the Company's water rights above the minimum flow, would be immediately subordinated by implementation of the agreement or remain in place unsubordinated until such time as the state permitted that water to someone elses use. . . . The trust concept was adopted to get around it so that water was placed in trust. The agreement clearly says it is unsubordinated, so far as the agreement goes, it is an unsubordinated block of water. **The state then takes that water and places it in the trust, subject to reallocation.** This does two things; it makes clear the state's control of the allocation of the water and it left the water unsubordinated. . . . The state then does not have to allow the water to go to the first guy who comes down the pike. The trust got around that problem and I think tied it together to a point where it is a little more effective mechanism to accomplish the purchase⁵ of the agreement.⁶

At the same hearing, the Governor's attorney observed that the trust "simply was a mechanism to cut the legal and equitable title to the water immediately so there is some immediate change in position of the parties. Soon as this agreement becomes binding this statute takes effect. Legal title to the water will go to the state and the Company maintains the beneficial use of the

⁴ Journal of the State Senate, 1st Reg. Sess., 43rd Leg., 1985 at 60 (Feb. 6, 1985); Attachments at Tab 4.a.

⁵ So in original. Presumably, this word was intended to be "purpose."

⁶ Minutes of the Senate Resources & Environment Comm., Jan. 18, 1985, at 3 (Tom Nelson) (emphasis added). A copy of these minutes is included in the Attachments at Tab 4.b.iii.

water as long as the trusts last."⁷ Idaho Power's attorney concurred in this observation,⁸ and further explained to the committee, on February 1, 1985:

The Company said it didn't want to be watermaster; the state said OK, then take yourself totally out of vestige of any control over the rights that you have defined. We said alright, but if you are going to be the watermaster then you get out and you take care of it The trust provision was an idea I think of the state. I seized upon it because it filled what I saw as a major problem the Company had in this thing throughout, which was we could get the state to sign, but how did we get the state to live up to what they said they would do and that was a major problem from our side. The trust provision could get us around the subordinated versus subordinatable nature of the water above minimum flow. It remains unsubordinated but its held in trust by the state. . . .⁹

In sum, the trust severed legal and equitable title to the rights to flows above the agreed-upon minimums, with legal title vesting in the State. This solved an impasse that had developed: Idaho Power had demanded that the rights to the excess flows should only be subject to subordination at some future time, while the State had demanded that the rights be subordinated immediately. The trust put the State in immediate control of the excess flows while allowing such flows to remain available for power generation until such time as future upstream beneficial uses were approved in accordance with State law.

Although the Swan Falls legislation provides that the rights are held by the State of Idaho "by and through the Governor," the legislative history makes clear that the legislature has the ultimate control over the trust:

This is strictly a passive trust over which the Governor will not exert any active discretions. . . . The Governor is named as trustee just because you need an individual to be sued in the event of some scrabble over the trust assets. Beyond that it is automatic that water rights flow out of the trust into private hands in accordance with state law.¹⁰

⁷ Minutes of the Senate Resources & Environment Comm., Jan. 18, 1985, at 11 (Pat Costello); Attachments at Tab 4.b.iii.

⁸ Minutes of the Senate Resources & Environment Comm., Jan. 18, 1985, at 11-12 (Tom Nelson); Attachments at Tab 4.b.iii.

⁹ Minutes of the Senate Resources & Environment Comm., Feb. 1, 1985, at 4-5 (Tom Nelson); Attachments at Tab 4.b.vii.

¹⁰ Minutes of the Senate Resources & Environment Comm., Jan. 18, 1985, at 11 (Pat Costello); Attachments at Tab 4.b.iii.

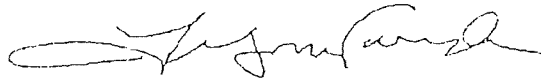
The Governor of course is a passive trustee. The intent here was that the Director would be the individual who would make the re-allocation determination. . . .

On that trust provision, it should be noted that the ultimate control over those trusts does rest with the Legislature. They created those trusts and of course they can alter them or take whatever steps are necessary¹¹

As the preceding discussion demonstrates, the attached notices of change in water right ownership do not of themselves affect any change in the water rights that are subject to the Swan Falls Agreement. Rather, the notices simply recognize that the agreement and the implementing legislation vested legal title to the rights for the flows above the agreed-upon minimums in the State, to be held in trust for the benefit of Idaho Power Company and the people of the State of Idaho. Now that the SRBA has reached the portion of the Snake River that includes the Swan Falls dam, filing the notices is necessary to discharge a portion of the State's contractual and statutory obligations, and to protect the interests that the people of the State of Idaho acquired under the agreement and the implementing legislation.

The supporting attachments submitted with the notices include copies of the documents and transcripts quoted herein, as well as additional legislative history and other supporting documentation. In the interests of keeping this package as compact as possible, the attachments do not include survey maps or plats because this matter does not involve a change in ownership of land or any changes in points of diversion or places or purposes of use. Please contact us if you need any further information or have any questions. Thank you.

Very Truly Yours,



LAWRENCE G. WASDEN
Attorney General, State of Idaho

LGW/olv

Enclosures

¹¹ Minutes of the Senate Resources & Environment Comm., Jun. 18, 1985, at 11- 12 (Pat Kole); Attachments at Tab 4.b.iii.

RECEIVED

DEC 22 2006

Department of Water Resources
Adjudication Bureau

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

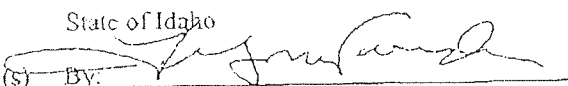
D. If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency or equivalent **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **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 <u>02-4000</u>		
Irrigation		
Stock		
Domestic		
Other - Power	<u>90 cfs from 4/1 to 10/31</u>	<u>Swan Falls Power Plant</u>
Water Right and/or Adjudication Claim Number <u>02-4001</u>		
Irrigation		
Stock		
Domestic		
Other - Power	<u>1,460 cfs from 4/1 to 10/31</u>	<u>Swan Falls Power Plant</u>

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

RECEIVED

DEC 22 2006

Department of Water Resources
Adjudication Bureau

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)
02-2001A			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))

New Mailing Address P.O. Box 83720
City, State and ZIP Code Boise, ID 83720

New Telephone Number (208) 334-2400

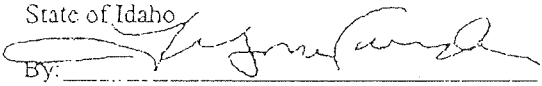
5. Date you acquired the property May 25, 1988 (Final effective date of Federal Energy Regulatory Commission Order - Re: Swan Falls Agreement)

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 _____		
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

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

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

ATTACHMENTS TO
NOTICES OF CHANGE IN WATER RIGHT OWNERSHIP

Water Right Nos.:

02-2001A, 02-2001B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-10135, 36-2013, 36-2018, 36-2026, 37-20709, 37-20710, 02-4000, 02-4001, 02-2032

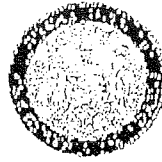
Tab

1. Swan Falls Agreement
2. FERC Docket No. EL85-38-000 (Idaho Power Company petition for declaratory order regarding effect of Swan Falls Agreement)
 - a. Order of March 25, 1988
 - b. Joint Agreement Regarding Fish & Wildlife Studies, filed May 25, 1988
3. Swan Falls Agreement Legislation
 - a. 1985 Sessions Laws
 - i. Chapter 14 -- SB 1005 (Findings, IPUC jurisdiction, statutory exemption)
 - ii. Chapter 16 -- SB 1007 (Allocation of gain on sale of water right)
 - iii. Chapter 17 -- SB 1008 (Trust and subordination provisions, public interest criteria)
 - iv. Chapter 224 -- HB 186 (amendments to SB 1008)
 - v. Chapter 204 -- SB 1205 (Ratification of Water Plan amendments)
 - b. 1986 Session Laws Chapter 116 -- SB 1358 (amendments to Idaho Code 42-203B)
 - c. Idaho Code Provisions:
 - i. Idaho Code § 42-203A
 - ii. Idaho Code § 42-203B
 - iii. Idaho Code § 42-203C
 - iv. Idaho Code § 42-203D
 - v. Idaho Code § 61-502B
4. Legislative History of Swan Falls Agreement Legislation
 - a. Senate Journal, February 6, 1985: Statement of Legislative Intent re: SB 1008
 - b. Committee Minutes:
 - i. Senate Resources & Environment: Jan. 1, 1985
 - ii. Senate Resources & Environment: Jan. 11, 1985 SB1008
 - iii. Senate Resources & Environment: Jan. 18, 1985 SB1008
 - iv. Senate Resources & Environment: Jan. 21, 1985 SB1008
 - v. Senate Resources & Environment: Jan. 25, 1985 SB1008

vi.	Senate State Affairs: Jan. 25, 1985	SB1005, SB1007
vii.	Senate Resources & Environment: Feb. 1, 1985	SB1008
viii.	Senate State Affairs: Feb.1, 1985	SB1005, SB1007
ix.	House Resources & Conservation: Feb. 1, 1985	SB1008
x.	House Resources & Conservation: Feb. 11, 1985	SB1005, SB1008
xi.	House Resources & Conservation: Feb. 11, 1985	SB1005, SB1008
xii.	House Resources & Conservation: Feb. 11, 1985	HB186
xiii.	House Resources & Conservation: Feb. 19, 1985	HB186
xiv.	Senate Resources & Environment: March 4, 1985	SB1205
xv.	House Resources & Conservation: March 7, 1985	SB1205
xvi.	Senate Resources & Environment: Feb. 19, 1986	SB1358
xvii.	House Resources & Conservation: March 13, 1986	SB1358

5. District Court Orders:
 - a. Consent Judgment in Ada County Case No. 81375
 - b. Consent Judgment in Ada County Case No. 62237
 - c. Order for Entry of Judgment in Ada County Case No. 62237
 - d. Stipulation for Entry of Judgment in Ada County Case No. 62237
6. 1180 Contract
7. 1180 Contract Legislation:
 - a. 1983 Session laws ch 259 (SB1180)
 - b. Idaho Code Provisions:
 - i. Idaho Code § 61-539
 - ii. Idaho Code § 61-540
8. 1180 Legislative History
 - a. Senate Resources & Environment: March 30, 1983
 - b. Senate Resources & Environment: April 4, 1983
 - c. House Resources & Conservation: April 8(A), 1983
 - d. House Resources & Conservation: April 8(B), 1983
9. Legal Descriptions

EXHIBIT C



RECEIVED

JAN 02 2007

DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

January 2, 2007

Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Re: Additional Notice of Change in Water Right Ownership Under Swan Falls
Agreement and Implementing Legislation

Dear Sir/Madam:

Please be advised that three water right numbers were inadvertently omitted from the Notices of Change in Water Right Ownership this office submitted on behalf of the State of Idaho on December 22, 2006. The three omitted water right numbers are 37-2128, 37-2471 and 37-2472. Please find enclosed a Notice of Change in Water Right Ownership for these three water rights.

This notice of change in ownership is supported by the Swan Falls Agreement and the implementing legislation, and thus is submitted for the same reasons as the notices filed on December 22, 2006 for water rights nos. 02-2001A, 02-2001B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-10135, 36-2013, 36-2018, 36-2028, 37-20709, 37-20710, 02-4000, 02-4001, and 02-2032. The enclosed notice is also supported by the same "Attachments" filed in connection with the notices of December 22, 2006. Please refer to the notices, the supporting "Attachments," and my letter of that date.

Please contact my office if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence G. Wasden".

LAWRENCE G. WASDEN
Attorney General

LGW/olv

Enclosures

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.

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Water Right No(s)	Adjudication Claim No(s)	Split(s)	Water Right No(s)	Adjudication Claim No(s)	Split(s)
37-2128					
37-2471					
37-2472					

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

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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
City, State and ZIP Code

P.O. Box 83720
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.

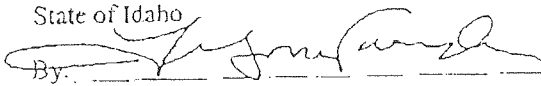
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Irrigation		
Stock		
Domestic		
Other - Power		Swan Falls Power Plant
Totals		
Water Right and/or Adjudication Claim Number _____		
Irrigation		
Stock		
Domestic		
Other		
Totals		
Water Right and/or Adjudication Claim Number _____		
Irrigation		
Stock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

Other - Power		
Totals		

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State of Idaho

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

By: 

Lawrence G. Wasden

Its: Attorney General

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