

DEPARTMENT OF
WATER RESOURCES

COPY

Orr, Deputy Attorney General, 700 W. Jefferson, Room 210, P.O. Box 44449, Boise, Idaho 83711-4449, within thirty (30) days from the date on which these requests for production are served on you. Your responses must conform to the Idaho Rules of Civil Procedure, including without limitation Rules 26 and 34.

PRELIMINARY STATEMENT AND DEFINITIONS

1. Subject matter of your Complaint. As used herein, the phrase “subject matter of your Complaint” refers only to the subjects discussed in the First, Second, Third, Fourth, and Fifth Claims for Relief set forth in Idaho Power’s Complaint and Petition for Declaratory and Injunctive Relief (“Complaint”). The Complaint’s Sixth and Seventh Claims for Relief address subjects beyond the scope and ownership of the disputed water rights, involve compliance with and enforcement of the Swan Falls Agreement and/or its implementing statutes, challenge and seek judicial review of the administrative actions of the Director and/or the Department, and otherwise exceed the scope of permissible discovery in the Snake River Basin Adjudication under applicable Idaho law and as impliedly limited by the Court’s July 23, 2007 Order Granting in Part, Denying in Part Motion to Dismiss; Consolidating Common Issues Into Consolidated Subcase; And Permitting Discovery; And Notice of Scheduling Conference.

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

“Document” includes all Documents in your possession, custody, or control, including Documents that you have the legal right to obtain from other persons or entities.

3. The Documents requested must be produced as they are kept in the usual course of business or must be organized and labeled to correspond with the categories of this request. Any and all electronically stored Documents should be provided in a form that includes all data and metadata and, to the extent possible, is readable and searchable in Microsoft Word (or Excel for spreadsheets).

4. All of the Requests herein are deemed continuing. If, after responding to this request you acquire any Documents requested herein, or any information related to any Document herein, which is not reflected by any Documents produced or any response to these requests, you must file a supplemental response or indicate to counsel for the party propounding this Request of the existence of such Documents. Such supplementation is required by the Rule 26 of the Idaho Rules of Civil Procedure upon this request.

5. If any Document or any portion of any Document which is requested herein is or will be withheld from production, inspection or copying (whether because it is claimed to be work product, communication from attorney to client, or is entitled to be withheld for any other reason), please fully identify each such Document or portion thereof by providing the following information as to each such Document withheld:

- a. The identity of the Document;
- b. The subject matter of the Document;
- c. The date the Document was prepared;
- d. The identity of the person(s) preparing the Document;
- e. The identity of each person to whom the Document was sent or given;

- f. The identity of each person possessing a copy of the Document;
- g. The privilege(s) claimed;
- h. The facts upon which each claim of privilege is based; and
- i. The identity of the current custodian of the Document.

In addition, if any Document is practically impossible for you to produce, or for us to inspect and copy, please fully identify such Document and explain why the Document is practically impossible for you to produce or for us to inspect and copy.

DESIGNATED DOCUMENTS

REQUEST FOR PRODUCTION NO. 2: To the extent not already produced, all Documents that you identified or relied upon in responding to the State's interrogatories and/or requests for admissions.

REQUEST FOR PRODUCTION NO. 3: Any and all Documents seen, reviewed, considered, maintained or generated by any expert witness who will testify on your behalf in these proceedings concerning the subject matter of your Complaint, including without limitation all Documents which reflect, document or otherwise describe facts known and/or opinions held by any such expert witness.

REQUEST FOR PRODUCTION NO. 4: Paragraph 31 of the Complaint and Petition for Declaratory and Injunctive Relief ("Complaint") contends, in pertinent part, that the parties to the Agreement reached a "mutual understanding in 1984 that Trust Water existed for future development...." Please produce all Documents upon which you base this contention.

REQUEST FOR PRODUCTION NO. 5: Paragraph 31 of the Complaint contends, in pertinent part: "Contrary to the assumption of the parties to the Agreement, ground water withdrawals from the ESPA that had occurred prior to 1984 caused depletions in the hydrologic system, which were not manifested in reduced flows in the

Snake River in 1984 when the Agreement was reached.” Please produce all Documents upon which you base this contention.

REQUEST FOR PRODUCTION NO. 6: Paragraph 34 of the Complaint contends, in pertinent part: “Based on hydrologic conditions in the Snake River Basin that have manifested since the Settlement, it is apparent that at the time of the Agreement, the Snake River Basin was over appropriated to the extent of the Swan Falls Daily Minimum Flows.” Please produce all Documents upon which you base this contention.

REQUEST FOR PRODUCTION NO. 7: Paragraph 61 of the Complaint contends, in pertinent part: “when the Swan Falls Agreement was executed in 1984, the Snake River Basin Tributary to the Murphy Gage, including surface water and tributary ground water in the ESPA, was over appropriated; (b) on account of such over appropriation, there was no unappropriated water available in this portion of the Snake River Basin on a firm, average daily basis above the average daily minimum flows provided for in the Agreement, i.e., there was no ‘Trust Water.’” Please produce any and all Documents which you contend show that when the Swan Falls Agreement was executed in 1984, the Snake River Basin Tributary to the Murphy Gage, including surface water and tributary ground water in the ESPA, was over appropriated.

REQUEST FOR PRODUCTION NO. 8: Paragraph 63 of the Complaint contends, in pertinent part: “to the extent that the Snake River Basin above Murphy Gage, including the ESPA, was over appropriated in 1984 as to the Swan Falls Daily Minimum Flows, the parties, who had assumed that Trust Water was available for new appropriations under the Swan Falls Agreement’s trust arrangement, were acting on the basis of a mutual mistake of fact regarding the existence of Trust Water.” Please produce any and all Documents upon which you base your contention that in 1984 the parties “assumed that Trust Water was available” and “were acting on the basis of a mutual mistake of fact regarding the existence of Trust Water.”

REQUEST FOR PRODUCTION NO. 9: At paragraph 65 your Complaint contends, in part, that to the extent a trust was created, “the trust *res* is water and not water rights....” Complaint ¶ 65. Please produce any and all Documents upon which you base this contention.

REQUEST FOR PRODUCTION NO. 10: Please produce all Documents referencing, discussing, or otherwise pertaining to the trust discussed in paragraph 65 of your Complaint.

REQUEST FOR PRODUCTION NO. 11: Paragraph 67 of the Complaint contends “that the State of Idaho’s claim of legal title to Idaho Power’s water rights is barred by doctrines of estoppel, waiver, and laches.” Please produce any and all Documents upon which you base your contention that the State’s claim of legal title to Idaho Power’s water rights is barred by the doctrine of estoppel.

REQUEST FOR PRODUCTION NO. 12: Paragraph 67 of the Complaint contends “that the State of Idaho’s claim of legal title to Idaho Power’s water rights is barred by doctrines of estoppel, waiver, and laches.” Please produce any and all Documents upon which you base your contention that the State’s claim of legal title to Idaho Power’s water rights is barred by the doctrine of waiver.

REQUEST FOR PRODUCTION NO. 13: Paragraph 67 of the Complaint contends “that the State of Idaho’s claim of legal title to Idaho Power’s water rights is barred by doctrines of estoppel, waiver, and laches.” Please produce any and all Documents upon which you base your contention that the State’s claim of legal title to Idaho Power’s water rights is barred by the doctrine of laches.

REQUEST FOR PRODUCTION NO. 14: Paragraph 69 of the Complaint contends: “Idaho Power’s water rights for hydropower generation are not, through the Swan Falls Settlement or otherwise, subordinate to use of water for ground water recharge.” Please produce any and all Documents upon which you base this contention.

REQUEST FOR PRODUCTION NO. 15: As noted above, paragraph 69 of the Complaint contends: “Idaho Power’s water rights for hydropower generation are not, through the Swan Falls Settlement or otherwise, subordinate to use of water for ground water recharge.” Please produce any and all Documents discussing or pertaining to whether the above-referenced water rights for hydropower generation are subordinated to the use of water for ground water recharge. Such production should include, without limitation, any and all Documents that tend to contradict the above contention.

REQUEST FOR PRODUCTION NO. 16: Any and all Documents in your possession, custody, or control referencing or describing the trust that is referenced in paragraph 4 of the Swan Falls Agreement.

REQUEST FOR PRODUCTION NO. 17: Any and all Documents obtained by you, your attorneys or representatives, or anyone acting on your or their behalf, from any person having knowledge of facts concerning the subject matter of your Complaint.

REQUEST FOR PRODUCTION NO. 18: Any and all Documents that you expect to introduce or use, or may use in depositions, hearings, at trial, or otherwise in these proceedings, which concern the subject matter of your Complaint.

REQUEST FOR PRODUCTION NO. 19: Any and all Documents concerning the events or happenings referred to in your Complaint’s First, Second, Third, Fourth, and Fifth Claims for Relief.

REQUEST FOR PRODUCTION NO. 20: Any and all correspondence, memos, emails or written communication of any type between Idaho Power and any persons identified in your answer to the State of Idaho’s Interrogatory No. 1 which concerns the subject matter of your Complaint.

REQUEST FOR PRODUCTION NO. 21: In your answer to the State of Idaho’s Interrogatory No. 4, you stated that “Plaintiff has compiled over 50,000 pages of documents relating in some manner to the Swan Falls Agreement, the implementing Swan Falls Legislation and the disputed issues set forth in the Complaint, many of which support

Plaintiff's contention in Paragraph 63 of the Complaint regarding mutual mistake." Please produce the portion of those "50,000 pages of documents" which, based on your review, are relevant to this case.

REQUEST FOR PRODUCTION NO. 22: In your answer to the State of Idaho's Interrogatory No. 5, you stated "Additionally, in various administrative proceedings before IDWR, numerous modeling and consultant studies were presented concerning the nature of the ESPA and the effect of the groundwater pumping on surface flows, spring flows, and reach gains in the Snake River. These studies are equally accessible to the Defendants as they are to the Plaintiffs." Please produce the modeling and consultant studies you referenced in that answer.

DATED this 8th day of February, 2008.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

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

CERTIFICATE OF SERVICE

I certify that on this 8th day of February, 2008, I caused to be served a true and correct copy of the foregoing STATE OF IDAHO'S SECOND SET OF REQUESTS FOR PRODUCTION TO IDAHO POWER COMPANY addressed as follows:

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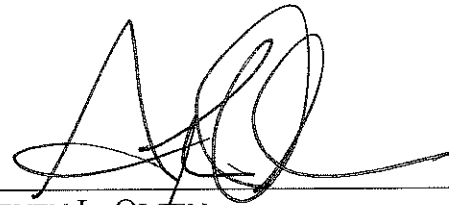
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A handwritten signature in black ink, appearing to read 'SLO', is written over a horizontal line.

STEVEN L. OLSEN
Deputy Attorney General