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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.	)	IDAHO POWER COMPANY'S
	)	SECOND SET OF DISCOVERY
STATE OF IDAHO; C.L. "BUTCH" OTTER,	)	REQUESTS TO STATE
Governor of the State of Idaho; LAWRENCE G.	)	DEFENDANTS
WASDEN, Attorney General of the State of	)	
Idaho; IDAHO DEPARTMENT OF WATER	)	
RESOURCES; and DAVID TUTHILL, Director,	)	
Idaho Department of Water Resources	)	
Defendants.	)	

Plaintiff Idaho Power Company ("Idaho Power"), by and through its undersigned attorneys, hereby submits its Second Set of Discovery Requests in this action, to be answered by all State Defendants in this action in accordance with the Idaho Rules of Civil Procedure.

Your responses to these Discovery Requests are due thirty (30) calendar days after service in accordance with the Idaho Rules of Civil Procedure, absent an agreed upon extension.

I. INSTRUCTIONS

1. The following definitions apply to each of these Discovery Requests:

a. **Communication.** The term "communication" means any contact between two or more persons, including but not limited to, (a) written contact by such means as electronic mail, letter, memoranda, telegrams, telex, or by any document, and (b) oral contact by means such as face-to-face meetings and telephone conversations.

b. **State Defendants.** The term "State Defendants" means the Defendants in this action, collectively and individually: the State of Idaho, C.L. "Butch" Otter, Lawrence G. Wasden, the Idaho Department of Water Resources ("IDWR"), and David Tuthill. In addition, Defendant State of Idaho encompasses all State agencies and officials, including IDWR and its Director David Tuthill.

c. **Document.** The term "document" is defined to be synonymous in meaning and equal in scope to the usage of the term in I.R.C.P. Rule 34(a), including, without limitation, electronic or computerized data compilations and other information stored in electronic form, which should be produced in the form of a CD or DVD disk. A draft or non-identical copy is a separate document within the meaning of this term.

d. **ESPA** means Idaho's "Eastern Snake Plain Aquifer."

e. **Framework.** The term "Framework" means the Framework for Final Resolution of Snake River Water Right Controversy signed on October 1, 1984 by Idaho Power Company's Chairman of the Board and Chief Executive Officer James E. Bruce, Idaho Governor John V. Evans, and Idaho Attorney General Jim Jones.

f. **Identify (with respect to persons).** When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, present or last known telephone number, and when referring to a natural person, the person's present or last known place of employment and title. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requests requesting the identification of that person.

g. **Identify (with respect to documents).** When referring to documents, "to identify" means to give, to the extent known, the (i) type of document (e.g., letter, memorandum, email); (ii) the general subject matter; (iii) the date of the document; and (iv) the author(s), addressee(s) and recipient(s).

h. **IDWR** means the Idaho Department of Water Resources.

i. **Person.** The term "person" is defined as any natural person or any business, legal or governmental entity or association.

j. **Relating to.** The term "relating to" means concerning, touching, referring or having reference to, or in any manner whatsoever, whether directly or indirectly.

k. **Swan Falls Contract to Implement.** The term "Swan Falls Contract to Implement" or "Contract" means the Contract signed on October 25, 1984 by Idaho Power Company Secretary Paul L. Jauregui, Idaho Governor John V. Evans, and Idaho Attorney General Jim Jones

l. **Swan Falls Daily Minimum Flows.** The term "Swan Falls Daily Minimum Flows" means average daily minimum stream flows in the Snake River of 3,900 c.f.s. in the summer (April 1 to October 31) and 5,600 c.f.s. in the winter (November 1 to March 31) measured at the Murphy Gage, as set forth in Paragraph 7(A) of the Swan Falls Agreement.

m. **Swan Falls Agreement.** The terms "Swan Falls Agreement" or "Agreement" mean the Agreement signed on October 25, 1984 by Idaho Power Company's Chairman of the Board and Chief Executive Officer James E. Bruce, Idaho Governor John V. Evans, and Idaho Attorney General Jim Jones.

n. **Swan Falls Legislation.** The term "Swan Falls Legislation" means the legislation enacted to implement the Swan Falls Agreement as codified at [need to insert cites].

o. **Trust Water.** The term "Trust Water" means the amount of water in the Snake River Basin, including ground water in the ESPA, over and above the Swan Falls Daily Minimum Flows, available for use by new appropriations subsequent to October 1, 1984.

p. **You/Yours.** The terms "you" and "yours" refer to the State Defendants, and anyone acting on their behalf, including, but not limited to, their employees, representatives, attorneys, investigators, and expert witnesses.

2. The following rules of construction apply to each of these Discovery Requests:

a. **All/Each.** The terms "all" and "each" shall be construed as all and each.

b. **And/Or.** The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Discovery Requests all responses that might otherwise be construed to be outside the scope of the Discovery Requests.

c. **Singular/Plural.** The use of the singular form of any word includes the plural and vice versa.

3. If you consider the content of any communication or document responsive to these Discovery Requests to be privileged or not otherwise subject to discovery in these proceedings, you are required to provide a complete privilege log for these communications or documents.

4. Each Discovery Request shall be answered fully in writing, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the Discovery Request is not objectionable. If an objection is made, the reasons for that objection shall be stated with specificity.

5. Your answer to each Discovery Request must be as complete and straightforward as the information reasonably available to you permits. If a Discovery Request cannot be answered completely, answer to the greatest extent possible.

6. If you do not have enough personal knowledge to answer a Discovery Request, please state so specifically. You must make a reasonable and good faith effort to answer each Discovery Request by asking other persons who may have knowledge of the issue, unless the information is reasonably available to you.

7. With respect to Interrogatories: Each Interrogatory shall be answered fully in writing and under oath. The answers are to be signed and verified by the person making them, and the objections signed by the attorney making them.

8. With respect to Requests for Production: You are required to produce all documents in your possession, custody, or control. If you are unable to produce any document(s), state the reasons you are unable to produce the document(s) with as much specificity as possible. Please produce all documents for inspection either as they are kept in the usual course of business or organize and label them to correspond with the categories in the Requests for Production and related Requests for Admission.

9. These Discovery Requests are continuing and require supplemental responses up to the date of trial in accordance with I.R.C.P. 26(e). If any response is determined to be incomplete or incorrect, you have a continuing duty to supplement or change answers previously submitted.

II. INTERROGATORIES

INTERROGATORY NO. 1: Identify all persons employed or consulted by the State Defendants involved with or having knowledge concerning the determination of the availability of Trust Water in the negotiations leading up to the negotiation of the Swan Falls Agreement in October, 1984.

INTERROGATORY NO. 2: Identify all persons employed or consulted by the State Defendants involved with or having knowledge concerning the determination of or agreement to an irrigation season low flow of 4500 cfs at the Murphy Gage on an average daily basis, as referenced in the Framework.

INTERROGATORY NO. 3: Identify the lowest average daily minimum flow in the Snake River that has occurred at the Murphy Gage as calculated pursuant to the Swan Fall Agreement.

INTERROGATORY NO. 4: Describe the basis and method used to measure, calculate, and determine average daily flows at the Murphy Gage, including the lowest average daily minimum flow referenced in Interrogatory No. 3.

INTERROGATORY NO. 5: Describe the process used and basis for defining the area described as the "Geographic Area From Which Groundwater Is Determined To Be Tributary To The Snake River In The Milner Dam To Swan Falls Dam Reach" (the "Tributary Area"), as depicted in Appendix A of the IDWR Water Appropriation Rules, IDAPA 37.03.08 (July 1, 1993), attached hereto as Exhibit A.

INTERROGATORY NO. 6: Identify all persons employed or consulted by the State Defendants involved with or having knowledge concerning the definition of the Tributary Area referenced in Interrogatory No. 5.

INTERROGATORY NO. 7: Describe the basis for the following regulatory definition of "trust water flows" as originally set forth in the IDWR Water Appropriation Rules and Regulations, IDAPA 37.0, Rule 1,5,1,3 (adopted Oct. 8, 1986), and unchanged in IDAPA 37.03.08, Rule 030.01.c.:

Trust water flows under the Snake River water rights agreement [the Swan Falls Agreement] are those occurring in the Snake River and tributaries in the geographic area designated in Rule 1,5,1,1. [now Rule Subsection 030.01.a.] which exceed the established minimum stream flows but are less than the water rights for hydropower generating facilities in the Swan Falls Dam to Milner Dam reach of Snake River, to the extent such rights were unsubordinated prior to the Snake River water rights agreement.

INTERROGATORY NO. 8: Describe the process used and the factors, analysis, and any assumptions employed by the IDWR Director in determining, in accordance with the terms of the April 30, 1993 IDWR Amended Moratorium Order, whether "the development and use of water pursuant to an application will have no effect on prior surface and ground water rights because of its location."

INTERROGATORY NO. 9: Describe the basis for the IDWR Director's determination in the April 30, 1993 IDWR Amended Moratorium Order that ground water aquifers had, after six consecutive years of drought, become stressed by a reduction in natural recharge due to changes in diversion and use of surface waters and by the increased volume of ground water pumping then occurring, including any reports, analyses, or other documentation showing what portion of the aquifer decline was attributable to changes in diversion and use of surface waters, and what portion was attributable to the increased volume of ground water pumping.

III. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Produce any index(ices) created by or on behalf of IDWR that reflects documents maintained in IDWR's files during the period of 1970-1989, whether said documents are currently located at IDWR or in another location.

REQUEST FOR PRODUCTION NO. 2: Produce any index(ices) created by or on behalf of the Idaho Public Utilities Commission ("IPUC") that reflects documents maintained in IPUC's files, during the period of 1970-1989, whether said documents are currently located at IPUC or in another location.

REQUEST FOR PRODUCTION NO. 3: Produce any index(ices) created by or on behalf of the Idaho Attorney General's Office that reflects documents maintained in the files of the Attorney General's office during the period of 1970-1989, whether said documents are currently located at the Attorney General's office or in another location.

REQUEST FOR PRODUCTION NO. 4: Produce any and all documents relating in any way to the Swan Falls Agreement and/or the Swan Falls Legislation, including without limitation, any and all documents (i) evidencing the intent or perceptions of any State Defendant regarding the Swan Falls Agreement and/or the Swan Falls Legislation; (ii) any and all transcripts, minutes, notes or similar documents reflecting meetings, hearings, or other discussions regarding the Swan Falls Agreement and/or Legislation; (iii) any and all drafts of the Swan Falls Agreement and/or Swan Falls Legislation and (iv) any and all correspondence regarding the Swan Falls Agreement and/or the Swan Falls Legislation.

REQUEST FOR PRODUCTION NO. 5: Produce the letter from Idaho Governor Dirk Kempthorne to the Secretary of the U.S. Department of Energy, dated December 21, 2000, referenced in Order No. 28605 issued by the Idaho Public Utilities Commission in case no. GNR-E-00-1.

REQUEST FOR PRODUCTION NO. 6: Produce any and all reports, studies, memoranda, or any and all similar documents quantifying, discussing, projecting, or otherwise analyzing and/or interpreting the effect of ground water development in the ESPA upon surface flows in the Milner to Murphy reach of the Snake River as of October, 1984, including appropriations then applied for but yet to be permitted.

REQUEST FOR PRODUCTION NO. 7: Produce all documents used, considered, consulted, or relating to the determination by the State Defendants of the amount and availability of Trust Water.

REQUEST FOR PRODUCTION NO. 8: Produce any and all documents relating to or supporting in any way the proposition that a "600 cfs block of water," as measured at the Murphy Gauge, was available as of October, 1984 for future appropriation without reducing Snake River flows below the Swan Falls Daily Minimum Flows.

REQUEST FOR PRODUCTION NO. 9: Produce any and all reports, studies, memoranda, or any and all similar documents relating in any way to hydrological models that were in existence in 1984 and that were known to exist by the State Defendants that were used or could have been used to determine the geographic location and nature (e.g., groundwater, surface water, non-tributary groundwater, etc.) of waters that are hydrologically connected to the surface flows of the Snake River between Milner and Murphy Gauge.

REQUEST FOR PRODUCTION NO. 10: Produce all documents used, considered, consulted or relating to the determination or agreement by the State Defendants of an irrigation season low flow of 4500 cfs at the Murphy Gage on an average daily basis, as referenced in the Framework.

REQUEST FOR PRODUCTION NO. 11: Produce all documents used, considered, consulted or relating to the determination of the basis for all IDWR moratoriums that have been placed on the processing of applications for permits for the appropriation of ground water both prior to and

since the announcement of the Idaho Supreme Court decision in *Idaho Power Company v. Idaho Dep't of Water Resources*, 104 Idaho 575, 661 P.2d 741 (1983).

REQUEST FOR PRODUCTION NO. 12: Produce any and all documents that quantify, list, describe, or otherwise reflect the total (in cubic feet per second) of surface and ground water flows proposed to be diverted by those persons who were dismissed from Ada County Civil No. 81375 pursuant to the terms of the Swan Falls Contract to Implement, by virtue of having previously made substantial investments in irrigation wells or equipment for use pursuant to a water right application filed prior to November 19, 1982, as defined and provided by paragraphs 2(a) and 2(b) of the Contract.

REQUEST FOR PRODUCTION NO. 13: Produce any and all documents that quantify, list, describe, or otherwise reflect the total (in cubic feet per second) of surface and ground water flows proposed to be diverted by those persons who had beneficially used water prior to October 1, 1984 and filed an application or claim for such use after October 25, 1985 but prior to June 30, 1985, pursuant to paragraph 7.D. of the Swan Falls Agreement.

REQUEST FOR PRODUCTION NO. 14: Produce all correspondence, memoranda, notes, or other documents relating to or evidencing discussions between State Defendants and Idaho Power involving any assertion by the State Defendants of legal title to a portion of Idaho Power's water rights.

REQUEST FOR PRODUCTION NO. 15: Produce any and all documents relating to or supporting IDWR's independent review and investigation of the water rights at issue in the Notices of Change in Water Right Ownership filed with IDWR by the Attorney General on December 22, 2006.

REQUEST FOR PRODUCTION NO. 16: Produce any and all documents consulted, reviewed, or otherwise considered in compiling the State Defendants' response to the Interrogatories submitted herewith.

Dated this 19th day of February, 2008.

IDAHO POWER COMPANY

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 19th day of February 2008, I caused to be served a true and correct copy of the foregoing **IDAHO POWER COMPANY'S SECOND SET OF DISCOVERY REQUESTS TO STATE DEFENDANTS** by the method indicated below, and addressed to each of the following:

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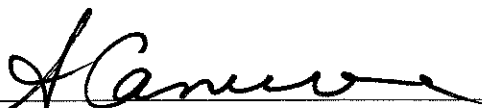
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