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

In Re SRBA	)	Consolidated Subcase no. 92-23
	)	
Case No. 39576	)	STATE OF IDAHO'S MOTION
	)	FOR PROTECTIVE ORDER
	)	
	)	

The State of Idaho, by and through its attorneys of record, moves this Court under Rule 26(c) of the Idaho Rules of Civil Procedure for a protective order as follows:

- (1) That no discovery may be had in this matter on issues of compliance with or enforcement of the water rights at issue, including but not limited to

Interrogatories Nos. 3 and 4 of “Idaho Power Company’s Second Set of Discovery to State Defendants,” and those portions of any other Interrogatory or Request for Production therein that require the State to provide information regarding such matters;

- (2) That no discovery may be had in this matter concerning any action, order or administrative rule of the Director of the Department of Water Resources or of the Department of Water Resources that is subject to judicial review or declaratory judgment under the provisions of chapter 52, title 67, Idaho Code, including but not limited to Interrogatories Nos. 3 through 9 and Request for Production No. 7 of “Idaho Power Company’s Second Set of Discovery to State Defendants,” and those portions of any other Interrogatory or Request for Production therein that require the State to provide information regarding such matters;

- (3) That no discovery may be had in this matter concerning any action or order of the Director of the Department of Water Resources or of the Department of Water Resources that is subject to the requirement of exhaustion of administrative remedies, including but not limited to Interrogatories Nos. 3 through 9 and Request for Production No. 7 of “Idaho Power Company’s Second Set of Discovery to State Defendants,” and those portions of any other Interrogatory or Request for Production therein that require the State to provide information regarding such matters;

- (4) That discovery in this matter on any question of the intent of the Legislature with respect to the legislation enacted to implement the Swan Falls settlement, and/or any question of the contractual intent of the parties with respect to the Swan Falls Agreement, is limited to the legislative record of the 1985 and 1986 legislative sessions, and therefore the State need not respond to Request for Production No. 4 in "Idaho Power Company's Second Set of Discovery to State Defendants," and those portions of any other Interrogatory or Request for Production therein that require the State to provide information regarding such matters;
- (5) That the Director of the Department of Water Resources or from the Department of Water Resources need not respond to any discovery requests as parties to this matter.

The grounds for this motion are that justice requires the requested order to protect the State from annoyance, oppression, or undue burden and expense arising from Idaho Power's discovery requests to the State, which are improper because:

1. The Court's order of July 23, 2007¹ ("Order") separated and stayed Idaho Power's claims against the Director of the Department of Water Resources ("Director") and the Department of Water Resources ("Department"), and provided that following the determination of the preliminary issues of the ownership and scope of the water rights, the Court will transfer issues of compliance and enforcement of the water rights to an administrative body or court of appropriate jurisdiction. Order at 13-14.

¹ "Order Granting in Part, Denying in Part Motion to Dismiss; Consolidating Common Issues Into Consolidated Subcase; and Permitting Discovery Pending Objection Period in Basin 02; and Notice of Scheduling Conference."

2. Under Idaho law, the Director and the Department are not and cannot be parties to the SRBA. Idaho Code §§ 42-1401B(3), 42-1401A(3); *Twin Falls Canal Co. v. IDWR*, 127 Idaho 688, 905 P.2d 89 (1995).

3. Under Idaho law, review of actions of the Director or the Department that are subject to judicial review under chapter 52, title 67, Idaho Code, may not be heard in the SRBA. Idaho Code § 42-1401D.

4. Under Idaho law, judicial review of actions of the Director or the Department may not be had unless administrative remedies have been exhausted. Idaho Code § 67-5271; *American Falls Res. Dist. No. 2 v. IDWR*, 143 Idaho 862, 154 P.3d 433 (2007).

5. The questions of the ownership, nature, scope and extent of the water rights that the Director has recommended be decreed with legal title in the State are matters of law controlled by Idaho Code § 42-203B.

6. The questions of legislative intent and contractual intent that Idaho Power seeks to raise in this consolidated subcase must be resolved on the basis of the official legislative record for the Swan Falls settlement.

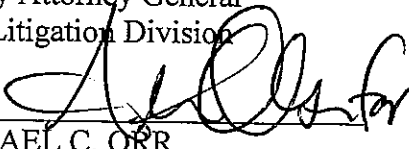
These grounds will be more fully explained in a supporting memorandum to be filed with the Court in accordance with Rule 7(b)(3)(C) of the Idaho Rules of Civil Procedure. The State requests oral argument on this motion.

Dated this 24th day of March, 2008.

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CERTIFICATE OF SERVICE

I certify that on this 24th day of March 2008, I caused to be served a true and correct copy of the foregoing STATE OF IDAHO'S MOTION FOR PROTECTIVE ORDER, to the following parties by the indicated methods:

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

- ☒ U.S. Mail
- ☐ Hand Delivery
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IDWR Document Depository
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