

RECEIVED

APR 02 2008

DEPARTMENT OF
WATER RESOURCES

James S. Lockhead
Michael A. Gheleta
Mark Mathews
Michelle C. Kaler
BROWNSTEIN HYATT FARBER SCHRECK, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
(303) 223-1100 – Telephone
(303) 223-1111 – Facsimile

John K. Simpson, ISB No. 4242
Shelley M. Davis, ISB No. 6788
BARKER RSHOLT & SIMPSON LLP
205 North Tenth St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 – Telephone
(208) 344-6034 – Facsimile

James C. Tucker, ISB No. 2038
Senior Attorney
IDAHO POWER COMPANY
1221 West Idaho Street
Boise, ID 83702-3627
(208) 388-2112 – Telephone
(208) 388-6935 – Facsimile

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

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.

Consolidated Subcase No. 92-00023

AFFIDAVIT OF
MICHAEL A. GHELETA IN SUPPORT
OF IDAHO POWER COMPANY'S
MOTION TO COMPEL THE STATE
DEFENDANTS' RESPONSES TO
PLAINTIFF'S SECOND SET OF
DISCOVERY REQUESTS

STATE OF COLORADO

)

55.

CITY AND COUNTY OF DENVER

)

Michael A. Gheleta, being fully sworn upon oath, deposes and states as follows:

1. I am one of the attorneys representing Plaintiff Idaho Power Company in the

2. Attached hereto as Exhibit A is a true and correct copy of Plaintiff's March 25,

3. Attached hereto as Exhibit B is a true and correct copy of Idaho Power's Second

4. Attached hereto as Exhibit C is a true and correct copy of the Defendants'

5. Attached hereto as Exhibit D is a true and correct copy of Idaho Power's First Set

6. Attached hereto as Exhibit E is a true and correct copy of the State's March 31,

7. Attached hereto as Exhibit F is a true and correct copy of the October 25, 1984

8. Attached hereto as Exhibit G is a true and correct copy of the State's Responses to

9. On March 19, 2008, I had a telephone conversation with the State's counsel,

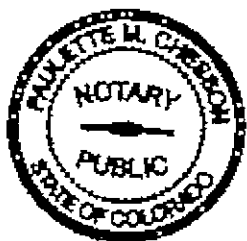
overbroad or sought information which the State believes is irrelevant to the action. The State's counsel also indicated that the State would file a motion for protective order with the Court in conjunction with its responses to Idaho Power's discovery requests. During this conversation, while the parties continued to disagree regarding the nature and scope of this action, I attempted to confer with the State's counsel regarding the State's objections unrelated to such disagreement, including their concerns that certain requests were overbroad, in an effort to address the State's concerns. Other than identifying one example, the State's counsel declined to discuss the specific requests at issue, indicating that Idaho Power should wait to see the State's objections and motion for protective order, which the State intended to file on March 24.

10. Following the State's March 24, 2008 filing of its motion for protective order and discovery responses with objections, one week later on March 31, 2008, I received a call from Mr. Olsen. In that call, Mr. Olsen indicated that the State would now be willing to discuss the State's objections related to specific requests being overbroad or vague, and suggested that we discuss this matter later in the week. I agreed to have that discussion, and also informed Mr. Olsen that Idaho Power intended to file a motion to compel in order to ensure timely resolution of the discovery disputes between the parties.

Dated this 31st day of March 2008.

Michael A. Gheleta
Michael A. Gheleta

SUBSCRIBED AND SWORN to before me by Michael A. Gheleta this 31st day of March 2008.



My Commission Expires Feb. 12, 2011

Paulette M. Cheson
Notary Public

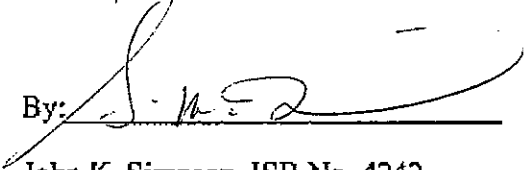
Commission Expires: 5/19/2011

DATED: April 11, 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.
Mark J. Mathews, Esq.
Michelle C. Koles, Esq.
Brownstein Hyatt Farber Schreck, P.C.
410 17th Street, Twenty-Second Floor
Denver, CO 80202

By: 

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

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April 2008, I caused to be served a true and correct copy of the foregoing document entitled **AFFIDAVIT OF MICHAEL A. GHELETA IN SUPPORT OF IDAHO POWER COMPANY'S MOTION TO COMPEL THE STATE DEFENDANTS' RESPONSES TO PLAINTIFF'S SECOND OF DISCOVERY REQUESTS** via the method indicated below, and addressed to each of the following:

Filed with the Court via Hand Delivery.

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

☒ Electronic 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

☐ Hand Delivered

☐ Overnight Mail

☐ Facsimile

Randall C. Budge

Candice M. McHugh

Racine Olson Nye Budge & Bailey, Chtd.

P.O. Box 1391

Pocatello, ID 83204-1391

☒ U.S. Mail

☐ Hand Delivered

☐ Overnight Mail

☐ Facsimile

Josephine Beeman

Beeman & Associates, P.C.

409 W. Jefferson Street

Boise, ID 83702

☒ U.S. Mail

☐ Hand Delivered

☐ Overnight Mail

☒ Facsimile

EXHIBIT A

Brownstein Hyatt
Farber Schreck

March 25, 2008

Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, Colorado 80202-4437
T 303.223.1100 F 303.223.1111

James S. Lockhead
Attorney at Law
T 303.223.1155
F 303.223.0955
jlockhead@bhfs.com

VIA FACSIMILE AND MAIL

Michael C. Orr
Deputy Attorney General
Natural Resources Division
700 W. State Street, 2nd Fl.
P.O. Box 44449
Boise, ID 83711-4449

RE: *Idaho Power Co. v. State of Idaho, et al.*

Dear Mr. Orr:

I am writing regarding the Defendants' responses to Idaho Power Company's ("Idaho Power") Second Set of Discovery Requests. Your responses fall far short of your client's obligations to respond to interrogatories and produce documents under the Idaho Rules of Civil Procedure. As discussed herein, we believe that many of the arguments you make to withhold the production of information and documents are without merit. We therefore ask you to reconsider your position and contact the undersigned by no later than March 31, 2008. If the State does not alter any of its discovery positions, Idaho Power will have no choice but to file a motion to compel in response to your protective order.

The State's discovery position is particularly unreasonable because, as you know, the State has consistently pushed for the most aggressive discovery schedule possible in this litigation. Accordingly, the case is on a very fast timeline, with trial scheduled for February 2, 2009, and with expert reports due by June 16, 2008, less than three months from now. Due to this expedited schedule, Idaho Power needs to obtain full production now in order to determine and prepare for depositions of numerous fact witnesses, and prepare expert reports by the June 16 deadline. Yet rather than provide a full and fair response to Idaho Power's discovery requests, the State has instead chosen to rely upon inappropriate and irrelevant objections, as set forth below. We further note that you did not advise us of or consult on your objections to Idaho Power's discovery requests until one day before your responses were due.

Defendants' General Objections to Idaho Power's Discovery Requests

The State is obligated under the Idaho Rules of Civil Procedure ("IRCP") to provide all non-privileged information that is responsive to Idaho Power's discovery requests. See IRCP 26(b)(1). Courts consistently interpret Rule 26(b)(1) to allow the broadest possible discovery, and the only limitation on discovery of unprivileged material is that it be relevant to the subject matter of the litigation. See *Caldero v. Tribune Publishing Co.*, 98 Idaho 288, 306 (Idaho, 1977) (Standard for the scope of discovery "is such a broad standard that at the discovery stage a party may in fact engage in a fishing expedition."). Thus, it is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the

EXHIBIT A

discovery of admissible evidence. See *Lester v. Salvino*, 141 Idaho 937, 941 (Idaho Ct. App., 2005).

The State propounds six general objections to Idaho Power's Second Set of Discovery, none of which justify the State's apparent decision to withhold information otherwise relevant and responsive to Idaho Power's interrogatories and requests for production.

State's Objections No. 1:

The State's first objection is based on the State's improper and inaccurate characterization of the purpose of Idaho Power's discovery requests as seeking information solely related to administration of the Swan Falls Agreement and the Swan Falls Legislation. Idaho Power recognizes that the Court in its July 23, 2007 Order stayed Idaho Power's claims against the Director of IDWR and IDWR. The Court also made clear, however, that it had exclusive jurisdiction to determine the ownership, validity and scope of the disputed water rights in this litigation and, accordingly, refused to dismiss Idaho Power's Complaint. Order at 9. The Court recognized that "[t]here can be significant amount of overlap between an administrative provision and the definition of a water right," and stated that the Swan Falls Agreement "in part defines the ownership, nature and extent of the subject hydropower rights and how they are to be administered relative to the rights on the same or connected sources." Order at 10. The Court concluded that "upon review of Idaho Power's allegations, it is clear that the dispute goes beyond the administration or enforcement of the Swan Falls Agreement. Issues exist over fundamental terms, which define the nature, scope and extent of Idaho Power's hydropower rights and should be decided in the SRBA." Order at 12.

Accordingly, the Court has already rejected the State's efforts to withhold otherwise relevant information by characterizing it as solely pertaining to administrative or enforcement matters. In fact, as shown below, each of Idaho Power's interrogatories and document requests that the State objects to on this ground pertain to the nature, extent and validity of the water rights at issue in this litigation.

State's Objections Nos. 2-3:

The State's second and third objections also misconstrue the purpose of Idaho Power's discovery requests as improperly seeking information from the Director and IDWR "to develop or support claims involving judicial review" of the administrative actions of these entities. Again, to the extent that any of Idaho Power's requests also seek information pertaining to IDWR's actions, the Court has already ruled that overlap between administrative provisions and definitions of a water right is inevitable and not a proper basis for the State's withholding otherwise relevant information. Moreover, as discussed more specifically below, Idaho Power is not seeking information from the files of the Director or IDWR for the purpose of pursuing or developing claims against these non-parties related to their administrative actions. Idaho Power instead seeks this information as it pertains to the nature, scope and extent of Idaho Power's water rights at issue in this action.

State's Objection No. 4:

The State's fourth objection that Idaho Power improperly seeks discovery from non-parties is similarly without merit. All of Idaho Power's discovery requests were propounded to the "State Defendants," including the State of Idaho. Although the Director and IDWR are no longer parties to this action, they are agents of the State, and the State has control over and possession of documents within the files of the Director and IDWR. I.C. § 42-170(1). If the State's argument was a viable one, virtually any substantive request to the State of Idaho would be deemed objectionable if the agency that was the expert in the issue at the root of the request was not a party to the case.

As such, the State is obligated to produce documents from the files of these entities that are responsive to Idaho Power's discovery requests.

State's Objection No. 5:

The State also makes a procedural objection that Idaho Power's Second Set of Interrogatories exceeds the limitation of 40 interrogatories established by IRCP 33(a)(3). This is not a good faith objection under Idaho's discovery rules. The State's objection is based on its position that Idaho Power's sole interrogatory in its First Set of Discovery, asking the State to explain its grounds for denying any of Idaho Power's 54 requests for admissions, constitutes a separate interrogatory for each request for admission requiring an explanation, and thus Idaho Power exceeded the 40-interrogatory limit with just this one question. No Idaho court has ever found this to be true, and, in fact, such a ruling would run contrary to IRCP 36(a)(1). Although IRCP 33 limits the number of interrogatories a party can serve to 40, IRCP 36(a)(1) sets no such limit on the number of requests for admission and further requires, as Idaho Power requested, that a party denying a request for admission provide the reasons for such denial. Thus, the State has no legitimate basis on which to claim that Idaho Power has exceeded the number of interrogatories allowed under Rule 33.

State's Objection No. 6:

By making this objection, the State impermissibly seeks to repeat the argument in its summary judgment briefing that the "relevant" legislative history is limited to the legislative record of the 1985 and 1986 legislative sessions, a notion that is without legal support. As an initial matter, the Court has not yet ruled on the State's Motion for Summary Judgment, and the State therefore has no bases upon which to limit discovery on this ground. Absent such a ruling, the State is not entitled to determine what is and is not at issue in the action. Rather, it is obligated to respond with information and documents on any matter that may lead to the discovery of admissible evidence.

Second, this is a contract dispute as to the interpretation of the Swan Falls Agreement. The State's objection ignores this fact by focusing exclusively on the parameters of the relevant legislative history. Until such time as the Court rules that the Agreement is completely irrelevant to this proceeding, the State must produce relevant evidence as to the intent of the parties to the Agreement and with respect to any subsequent act that informs the interpretation of the Agreement.

Finally, contrary to the State's position, there is no "official" legislative history or record and, even if there was, it would not be limited to the record of the 1985 and 1986 legislative sessions. See *Bruderer v. PacifiCorp*, 2007 US Dist. LEXIS 42907, * 27 (D. Idaho 2007) (defining the scope of information relevant to interpreting the meaning of a statute more broadly than just the official legislative record).

Idaho Power's Second Set of Interrogatories to Defendants

Interrogatories Nos. 3 and 4:

Idaho Power's Interrogatory No. 3 asks the State to identify the lowest average daily minimum flow into the Snake River that has occurred at the Murphy Gage as calculated pursuant to the Swan Falls Agreement. Similarly, Interrogatory No. 4 asks the State to describe its basis and methodology for measuring and calculating flows at the Murphy Gage, including the lowest average daily minimum flow referenced in Interrogatory No. 3. The State makes a blanket objection to these Interrogatories by referencing the reasons explained its general Objections Nos. 1-6 (discussed above), and fails to provide any further explanation as to how these general objections specifically apply to Interrogatories Nos. 3 and 4. Despite its objections, the State then goes on to answer these Interrogatories by providing that "Idaho Power has been operating and monitoring the Murphy

Gage since April 2004." This response is meaningless because, as the State well knows, the determination of flow numbers, including low flow numbers, at the Murphy Gage requires a calculation by the State based on factors including flow regulation in the Snake River, releases of water from upstream reservoirs, and other upstream water withdrawals, and is not determined simply by taking a measurement at the Gage. Both Interrogatories Nos. 3 and 4 seek information regarding how the State identifies and calculates these flows, and the State has failed entirely to provide any meaningful answer to Interrogatories Nos. 3 and 4.

Contrary to the State's general Objections, the information requested by these Interrogatories does not relate solely to issues of administration or issues directed to the development of claims involving judicial review of administrative actions of the Director or IDWR. The State's calculation of low flows at the Murphy Gage and how the State makes flow calculations is directly relevant to the question raised in the Complaint as to how much water exists, if any, above the Swan Falls minimum flows and Idaho Power's unsubordinated rights that is available for appropriation, and whether the parties operated under a mutual mistake of fact regarding Trust Water availability at the time the parties entered into the Agreement. How the State calculates average daily minimum flows would further shed light on the State's contention in response to Idaho Power's Request for Production No. 22 that flows in the Snake River at the Murphy Gage did not drop below 3900 cfs in 2003. Accordingly, Interrogatories Nos. 3 and 4 are reasonably calculated to lead to the discovery of admissible evidence, and the State is obligated pursuant to IRCP 26(b)(1) and 33 to respond to these Interrogatories.

Interrogatories Nos. 5 and 6:

Idaho Power's Interrogatories Nos. 5 and 6 ask the State to describe the process and bases it used for defining the area described as the "Tributary Area" depicted in Appendix A of the IDWR water appropriation rules (otherwise known as the trust water map), and further identify all persons employed or consulted by the State involved with or having knowledge concerning the definition of the Tributary Area. In responding to these Interrogatories, the State notes that Idaho Power did not include Appendix A as described in Interrogatory No. 5. The State, however, cannot seriously contend that it does not have access to Appendix A, as this document is attached to the State's own rules and regulations. Nevertheless, Idaho Power has included a copy of Appendix A with this letter for the State's reference.

The State also makes a blanket objection to these Interrogatories by referencing the reasons explained in its general Objections Nos. 1-6, and fails to provide any further explanation as to how these general objections specifically apply to Interrogatories Nos. 5 and 6. For the same reasons set forth above with respect to Interrogatories Nos. 3 and 4, none of the State's general objections support the State's decision to withhold all information in response to Interrogatories Nos. 5 and 6. These Interrogatories seek information regarding how the State developed the Tributary Area. This information is directly relevant to the question raised in the Complaint as to how much water exists, if any, above the Swan Falls minimum flows and Idaho Power's unsubordinated water right that is available for appropriation, and whether the parties operated under a mutual mistake of fact regarding Trust Water availability at the time the parties entered into the Agreement. As such, these Interrogatories are reasonably calculated to lead to the discovery of admissible evidence. Accordingly, the State is obligated pursuant to IRCP 26(b)(1) and 33 to respond to these Interrogatories.

Interrogatory No. 7:

Idaho Power's Interrogatory No. 7 asks the State to describe the basis for the regulatory definition of "trust water flows" as set forth in the IDWR water appropriation rules. The State again responds with a blanket objection by referring only to the reasons explained in its general Objections Nos.

1-6. None of these general objections support the State's decision to withhold all information in response to this Interrogatory. Interrogatory No. 7 seeks information directly relevant to the issue of whether the res of the trust established by the Swan Falls Agreement constitutes water, as Idaho Power contends, or water rights, as the State contends. The State's regulatory definition of "trust water flows" appears to support Idaho Power's position, and Idaho Power has requested that the State explain the basis for this regulatory definition. Accordingly, Interrogatory No. 7 is reasonably calculated to lead to the discovery of admissible evidence, and the State is obligated pursuant to IRCP 26(b)(1) and 33 to respond to this Interrogatory.

Interrogatories Nos. 8 and 9:

Idaho Power's Interrogatories Nos. 8 and 9 ask the State to describe information related to assumptions and determinations made by the IDWR Director in its April 30, 1993 IDWR Amended Moratorium Order regarding the effect of future water use on existing water rights and the impact of historic water use on ground water aquifers. As with every other Interrogatory proffered by Idaho Power, the State again responds to Interrogatories Nos. 8 and 9 by referring only to its general Objections Nos. 1-6. None of these general objections supports the State's decision to withhold all information in response to these Interrogatories.

Contrary to the State's Objections, these Interrogatories do not seek information solely regarding administration issues or issues directed to the development of claims involving judicial review of administrative actions of the Director or IDWR. These Interrogatories seek technical information directly relevant to the question raised in the Complaint as to how much water exists, if any, above the Swan Falls minimum flows and Idaho Power's unsubordinated water right that is available for appropriation, and whether the parties operated under a mutual mistake of fact regarding Trust Water availability at the time the parties entered into the Agreement. These are issues currently pending before the Court in this action, and thus these Interrogatories are reasonably calculated to lead to the discovery of admissible evidence. Accordingly, the State is obligated pursuant to IRCP 26(b)(1) and 33 to respond to these Interrogatories.

Idaho Power's Second Set of Requests for Production of Documents

As a general matter, the State's responses to Idaho Power's Second Set of Requests for the Production of Documents universally invoke some combination of the State's General Objections 1-6, without explaining why each objection is applicable to the relevant request. As discussed above, the State's general objections do not constitute a reasonable or adequate basis for refusing to produce responsive documents. At a minimum, the State must specify why its general objections entitle the State to withhold relevant documents specific to each of Idaho Power's requests.

The State also repeatedly invokes an attorney-client privilege and attorney work product objection to each of Idaho Power's requests. Please confirm that the State will produce a privilege log that identifies all documents the State is withholding on attorney-client privilege or work product grounds.

Finally, each of the State's responses indicates that the State has produced "all responsive documents . . . that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to" each request. The State also indicates that it has produced additional responsive documents that are not relevant to the question of intent. The State has no legitimate basis for limiting its document production to documents concerning the parties' intent (and based on the State's own narrow view of what is relevant to intent). The State is required to provide all non-privileged information responsive to Idaho Power's requests and is not entitled to unilaterally limit its document production in this fashion. It is unclear from the State's

responses, however, whether the State has in fact withheld otherwise responsive documents to Idaho Power's requests based on its objections. We therefore ask that you clarify whether the State is withholding responsive documents based on its objections, as more specifically discussed below.

Requests for Production Nos. 1-3:

Idaho Power's Requests for Production Nos. 1-3 request the production of certain indexes from the State, including (a) indexes created by or on behalf of IDWR that reflect documents maintained in IDWR's files from 1970-1989; (b) indexes created by or on behalf of the Idaho Public Utilities Commission that reflect documents maintained in IPUC's files from 1970-1989; and (c) indexes created by or on behalf of the Idaho Attorney General's office that reflect documents maintained in the Attorney General's files from 1970-1989. The State essentially objects to these requests on the same grounds: primarily, that the term "index(ices)" is vague and ambiguous and that the request is overbroad and unreasonably burdensome. Ultimately, the State responds that it has produced all responsive documents that are "relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request." The State indicates that it has produced additional responsive documents that are not relevant to the question of intent.

We do not believe Idaho Power's request for indexes from specific State agencies is vague: Idaho Power is seeking all lists, files, or catalogues that reflect documents in the possession of these agencies during the relevant time period. For example, we are aware that IDWR, and possibly the PUC and the Attorney General's office, sent numerous boxes of documents related to the Swan Falls controversy to the Idaho State Historical Society Public Archives, but these documents are not indexed. Request No. 1 seeks an index of the documents sent to archives, and any similar indexes in the State's possession. We are, however, willing to meet and confer with the State to reach a consensus on the meaning of this term.

Regarding the State's overbreadth and burdensomeness objections, Idaho Power is seeking indexes from these State agencies specifically so that Idaho Power may review the documents in the agencies' possession and identify the documents that may be relevant to the case at bar. In other words, Idaho Power has specifically narrowed this request to take the burden off the State. Without knowing how the agencies maintain their files, we are unable to narrow this request further, but we are willing to meet and confer to see if the request can be appropriately narrowed. We restate our concerns regarding the State's apparent limitation of its production to documents relevant to intent and ask that you clarify whether the State is withholding responsive documents based on its objections.

Request for Production No. 4:

Idaho Power's Request for Production No. 4 requests all documents relating to the Swan Falls Agreement or the Swan Falls Legislation. The State seeks a protective order for this discovery to the extent the request seeks documents relevant to the intent of the Legislature or the parties to the Swan Falls Agreement other than documents in the legislative record of the 1985 and 1986 legislative sessions. Notwithstanding these objections, the State responds that it has produced all responsive documents that are "relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request." The State indicates that it has produced additional responsive documents that are not relevant to the question of intent.

We restate our objection to the State's general Objection No. 6 (discussed above), which attempts to limit the relevant documents in this case to documents in the legislative record from the 1985 and

1986 legislative sessions. Again, the discovery rules require the State to produce all non-privileged information which is responsive to Idaho Power's request and is reasonably calculated to lead to the discovery of admissible evidence. The State may not unilaterally determine what is and is not at issue in this case. We also restate our concerns regarding the State's apparent limitation of its production to documents relevant to intent and ask that you clarify whether the State is withholding responsive documents based on its objections.

Requests for Production Nos. 6, 9, 10 and 11:

Idaho Power's Request for Production Nos. 6, 9, 10 and 11 seek technical information related to (i) the effect of ground water development in the Eastern Snake Plain Aquifer ("ESPA") upon surface flows in the Milner to Murphy reach of the Snake River as of October 1984, (ii) the determination of the geographic location and nature of waters that are hydrologically connected to the surface flows of the Snake River between Milner and Murphy Gauge; (iii) the determination or agreement by the State of an irrigation season low flow of 4500 cfs at the Murphy Gauge on an average daily basis, as referenced in the Framework; and (iv) the determination of the basis for all IDWR moratoriums placed on the processing of applications for permits for the appropriation of ground water. The State objects to these Requests on grounds of overbreadth and undue burden, but makes the representation that it has produced "all responsive documents . . . that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request." The State also indicates that it has produced additional responsive documents that are not relevant to the question of intent.

Each of these Requests properly seeks all documents relating to the determination by the State of the amount and availability of Trust Water, seeks documents directly related to the nature and validity of the water rights at issue in this litigation, as well as the issue of mutual mistake over the existence of Trust Water at the time the Swan Falls Agreement was formed. We restate our concerns regarding the State's apparent limitation of its production to documents relevant to intent and ask that you clarify whether the State is withholding responsive documents based on its objections.

Request for Production No. 7:

Idaho Power's Request for Production No. 7 requests all documents used, considered, consulted, or relating to the determination by the State Defendants of the amount and availability of Trust Water. For the purposes of its requests, Idaho Power defines "Trust Water" as "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." The State seeks a protective order for this discovery to the extent the request seeks documents concerning actions, orders, or administrative rules of IDWR that are subject to judicial review or declaratory judgment or actions or orders of IDWR that are subject to the exhaustion of administrative remedies. The State also objects on burdensomeness grounds and on the grounds that Idaho Power's definition of "Trust Water" is ambiguous and does not define "Trust Water" in accordance with Idaho law. Nevertheless, the State responds that it has produced all responsive documents that are "relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request." The State indicates that it has produced additional responsive documents that are not relevant to the question of intent.

We restate our objection to the State's basis for its protective order and the State's general Objections 1 and 2. As discussed above, the State has improperly characterized the purpose of Idaho Power's discovery requests as seeking information solely related to administration of the

Swan Falls Agreement and the Swan Falls Legislation. Request No. 7, which seeks all documents relating to the determination by the State of the amount and availability of Trust Water, seeks documents directly related to the nature and validity of the water rights at issue in this litigation, as well as the issue of mutual mistake over the existence of Trust Water at the time the Swan Falls Agreement was formed. With regard to the State's objection to Idaho Power's definition of "Trust Water," we believe Trust Water is clearly defined in Idaho Power's discovery requests, and Idaho Power is not obligated to adopt the State's definitions or theory of the case for purposes of its discovery requests. If the State believes this definition is vague, however, we are willing meet and confer to discuss an appropriate resolution.

We also restate our concerns regarding the State's apparent limitation of its production to documents relevant to intent. We ask that you clarify whether the State is withholding any responsive documents based on its objections.

Request for Production No. 8:

Idaho Power's Request for Production No. 8 seeks all documents relating to or supporting the proposition that a "600 cfs block of water," as measured at the Murphy Gage, was available as of October 1984 for future appropriations without reducing the Snake River flows below the Swan Falls Daily Minimum Flows. The State objects on burdensomeness grounds and claims the request is vague and ambiguous because it mischaracterizes "600 cfs block of water" as a term in the Swan Falls Settlement, citing to IDAPA 37.03.08.010. Nevertheless, the State responds that it has produced all responsive documents that are "relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request." The State indicates that it has produced additional responsive documents that are not relevant to the question of intent.

With regard to the State's objection to Idaho Power's definition of "600 cfs block of water," again, Idaho Power is not obligated to adopt the State's definition or theory of the case for purposes of its discovery requests. The State is well aware that at the time of the negotiation of the Swan Falls Agreement, there was discussion before the Legislature and elsewhere of the difference between the then-apparent low flow in the river of 4500 cfs and the Company's unsubordinated right of 3900 cfs, and of the characterization of this difference as the "600 cfs block of water." The fact that the term is not codified does not render the request for production objectionable. Request No. 8 is directly relevant to the question raised in the Complaint as to how much water exists, if any, above the Swan Falls minimum flows and therefore relevant to the issue of – at a minimum – mutual mistake over the existence of trust water at the time of formation of the Swan Falls Agreement. We also restate our concerns regarding the State's apparent limitation of its production to documents relevant to intent and ask that you clarify whether the State is withholding responsive documents based on its objections.

Request for Production Nos. 12 and 13:

Idaho Power's Request for Production No. 12 requests all documents that reflect the total surface and groundwater flows proposed to be diverted by those persons who were dismissed from Ada County Civil No. 81375 pursuant to 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 in paragraphs 2(a) and 2(b) of the Contract. Request for Production 13 seeks all documents that reflect the total surface and groundwater 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. The State objects

to these requests on the grounds that the requests are vague and ambiguous, overly burdensome, and that these records are in Idaho Power's possession or otherwise available from the Fourth Judicial District Court. Without waiving these objections, the State again responds that it has produced all responsive documents that are "relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request." The State also indicates that it has produced additional responsive documents that are not relevant to the question of intent.

We fail to understand the State's vagueness objection and are willing to meet and confer to resolve this issue. With respect to the State's burdensomeness objection and the representation that these documents are available through other sources, we agree that the State does not need to produce responsive documents that are otherwise available from the Fourth Judicial District Court. We do, however, seek responsive documents in the State's possession that are not publicly available in the judicial record. We also restate our concerns regarding the State's apparent limitation of its production to documents relevant to intent and ask that you clarify whether the State is withholding responsive documents based on its objections.

Request for Production No. 14:

Idaho Power's Request for Production 14 requests all documents related to discussions between the State Defendants and Idaho Power involving any assertion by the State Defendants of legal title to a portion of Idaho Power's water rights. The State objects to this request on the grounds that it is unduly burdensome and, *inter alia*, to the extent it seeks disclosure of information regarding settlement negotiations. Without waiving these objections, the State responds that it has produced all responsive documents that are "relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request." The State also indicates that it has produced additional responsive documents that are not relevant to the question of intent.

We respect to the State's objection re the production of information regarding settlement negotiations, the State has no legitimate grounds for withholding these documents. Again, the relevant discovery standard is not whether the documents themselves would be admissible in trial; rather, it is whether these documents are reasonably calculated to lead to the discovery of admissible evidence. To the extent these documents are responsive, they must be produced. We also restate our concerns regarding the State's apparent limitation of its production to documents relevant to intent and ask that you clarify whether the State is withholding responsive documents based on its objections.

Request for Production No. 15:

Idaho Power's Request for Production 15 seeks 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. The State objects to this request on the grounds that it is vague and ambiguous and unduly burdensome. Without waiving these objections, the State responds that it has produced all responsive documents that are "relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request." The State also indicates that it has produced additional responsive documents that are not relevant to the question of intent.

We believe this request is narrowly tailored and we fail to understand the State's vagueness and undue burden objections. We propose the parties meet and confer to resolve these objections.

We also restate our concerns regarding the State's apparent limitation of its production to documents relevant to intent and ask that you clarify whether the State is withholding responsive documents based on its objections.

Request for Production No. 16:

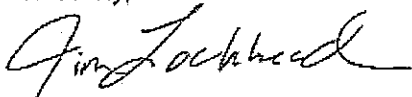
Idaho Power's Request for Production 16 seeks all documents consulted, reviewed or otherwise considered in compiling the State's responses to Idaho Power's interrogatories. The State objects to this request on the grounds that it is unduly burdensome and, *inter alia*, to the extent it seeks disclosure of information regarding settlement negotiations. Without waiving these objections, the State responds that it has produced all responsive documents that are "relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request." The State also indicates that it has produced additional responsive documents that are not relevant to the question of intent.

We respect to the State's objection re the production of information regarding settlement negotiations, the State has no legitimate grounds for withholding these documents. Again, the relevant discovery standard is not whether the documents themselves would be admissible in trial; rather, it is whether these documents are reasonably calculated to lead to the discovery of admissible evidence. To the extent these documents are responsive, they must be produced. We also restate our concerns regarding the State's apparent limitation of its production to documents relevant to intent and ask that you clarify whether the State is withholding responsive documents based on its objections.

Conclusion

For the reasons set forth above, it is our firm belief that the Defendants have failed to fulfill their obligation to respond to discovery, and we believe that the Court will take a dim view of the Defendants' position and its refusal to cooperate with Idaho Power on discovery matters. Thus, unless we have a commitment from you on or before March 31 that you will immediately respond to these requests in good faith, we will file a motion to compel the Defendants' responses next week. If the Defendants force Idaho Power to file a motion to compel, we will also seek to recover costs and fees, pursuant to IRCP 37(a)(4), incurred by Idaho Power in preparing and presenting the motion to the Court.

Sincerely,


James S. Lochhead

APPENDIX A

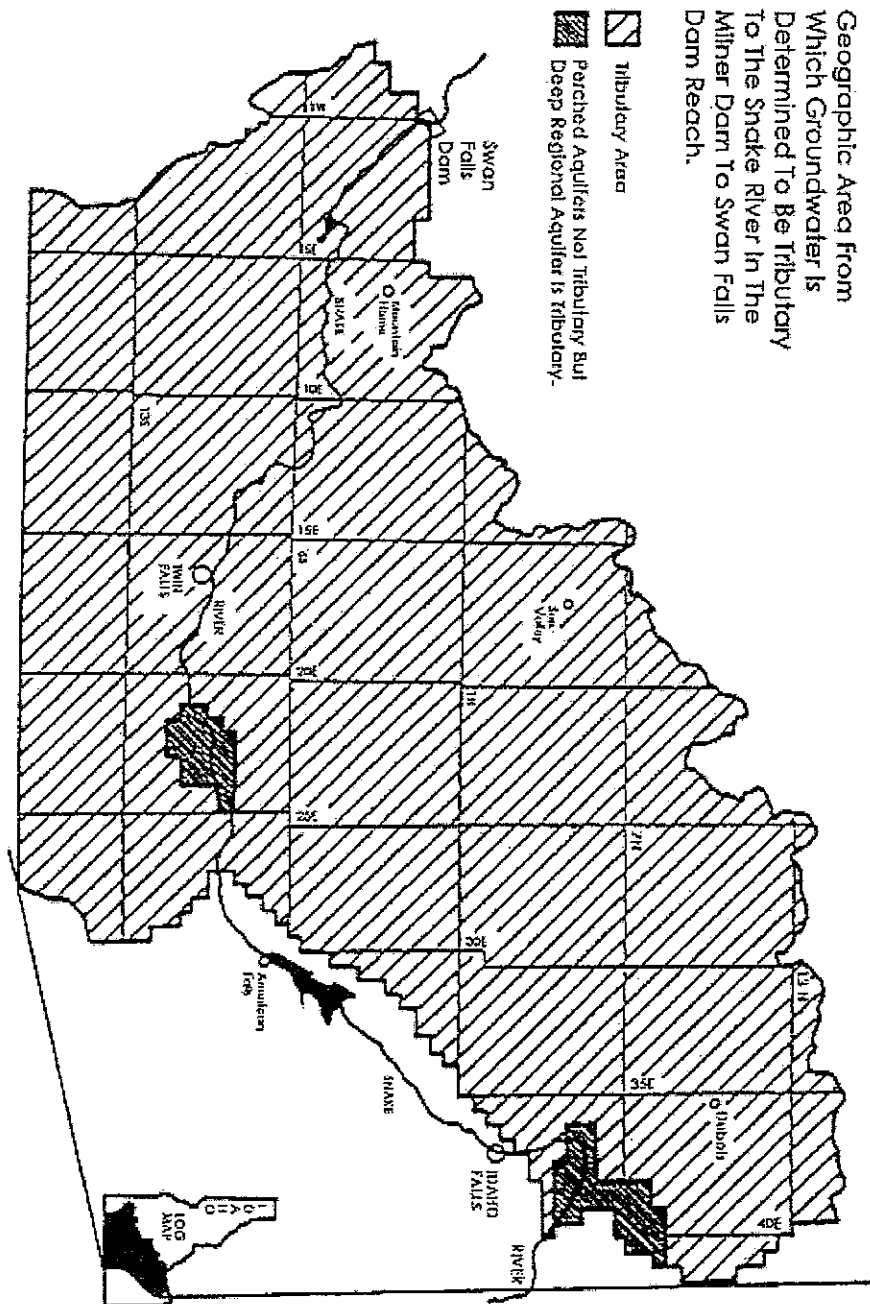


EXHIBIT B

James S. Lochhead
Michael A. Gheleta
Mark J. Mathews
Michelle C. Kales
BROWNSTEIN HYATT FARBER SCHRECK, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
(303) 223-1100 – Telephone
(303) 223-1111 – Facsimile

John K. Simpson, ISB No. 4242
Shelley M. Davis, ISB No. 6788
BARKER ROSHOLT & SIMPSON LLP
205 North Tenth Street, Suite 520
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 – Telephone
(208) 344-6034 – Facsimile

James C. Tucker, ISB No. 2038
Senior Attorney
IDAHO POWER COMPANY
1221 West Idaho Street
Boise, ID 83702-5627
(208) 388-2112 – Telephone
(208) 388-6935 – Facsimile
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,	)	IDAHO POWER COMPANY'S
	)	SECOND SET OF DISCOVERY
v.	)	REQUESTS TO STATE
	)	DEFENDANTS
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.	)	

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

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

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

By: Michael A. Gheleta

James S. Lochhead, Esq.

Michael A. Gheleta, Esq.

Mark J. Mathews, Esq.

Michelle C. Kales, Esq.

BROWNSTEIN HYATT FARBER

SCHRECK, LLP

410 17th Street, Twenty-Second Floor

Denver, CO 80202

Attorneys for Idaho Power Company

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:

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

X U.S. Mail, Postage Prepaid

X E-mail

IDWR Document Depository

PO Box 83720

Boise, ID 83720-0098

X 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

X 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

X U.S. Mail, Postage Prepaid

 Hand Delivered

 Overnight Mail

 Facsimile

Randall C. Budge

Candice M. McHugh

Racine Olson Nye Budge & Bailey, Chtd.

P.O. Box 1391

Pocatello, ID 83204-1391

X U.S. Mail, Postage Prepaid

 Hand Delivered

 Overnight Mail

 Facsimile

Josephine Beeman

Beeman & Associates, P.C.

409 W. Jefferson Street

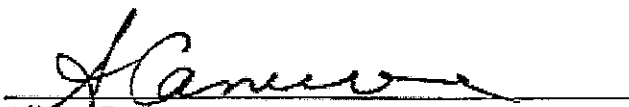
Boise, ID 83702

X U.S. Mail, Postage Prepaid

 Hand Delivered

 Overnight Mail

 Facsimile



Alison Cameron

EXHIBIT C

COPY

LAWRENCE G. WASDEN
Attorney General

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

KARL T. KLEIN (ISB # 5156)
Deputy Attorney General
Civil Litigation Division

MICHAEL C. ORR (ISB # 6720)
Deputy Attorney General
Natural Resources Division

700 West State Street, 2nd Floor
P.O. Box 44449
Boise, ID 83711-4449
(208) 334-2400
Attorneys for The State of Idaho

**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	)	RESPONSES TO IDAHO
	)	POWER COMPANY'S SECOND
	)	SET OF DISCOVERY REQUESTS
	)	

The State of Idaho, Governor C.L. "Butch" Otter, and Attorney General Lawrence G. Wasden (collectively, "the State"), hereby submit their responses to "Idaho Power Company's Second Set of Discovery Requests to State Defendants" (hereinafter, "Second Set of Discovery Requests"). The State has made good faith inquiries into the matters raised by the Second Set of Discovery Requests in the time allotted, is continuing such inquiries, and will supplement these responses, if necessary, to the extent required by the Idaho Rules of Civil Procedure.

OBJECTIONS

1. **Objection To Idaho Power Company's Second Set of Discovery Requests As Contravening The Scope Of The Order of July 23, 2007.**

The State objects to Idaho Power's Second Set of Discovery Requests to the extent it contravenes the Order Granting in Part, Denying in Part Motion to Dismiss; Consolidating Common Issues Into Consolidated Subcase; And Permitting Discovery; And Notice of Scheduling Conference (July 23, 2007) ("Order"). The Order separates and stays Idaho Power's claims against the Director and the Department, Order at 14, and provides that after making preliminary determinations of the ownership and scope of the water rights at issue, the Court will transfer issues of compliance with and enforcement of the partial decrees to an administrative body or court of appropriate jurisdiction. Order at 13. Idaho Power's Second Set of Discovery Requests contravenes the Order by seeking discovery on claims against the Director and the Department, on challenges to their permitting and administration of water rights, and on matters of compliance with and enforcement of the water rights at issue in this consolidated subcase.

2. **Objection To Idaho Power Company's Second Set of Discovery Requests As Exceeding The Scope Of The Snake River Basin Adjudication As Established By Idaho Law.**

The State objects to Idaho Power's Second Set of Discovery Requests to the extent it seeks to develop or support claims for judicial review of the administrative actions of the Director and/or the Department. Claims for judicial review of administrative actions of the Director or Department may not be heard in the Snake River Basin Adjudication. Idaho Code § 42-1401D. Idaho Power's Second Set of Discovery Requests violates this provision by seeking discovery on claims for judicial review of agency actions of the Department and/or the Director in the Snake River Basin Adjudication.

3. **Objection To Idaho Power Company's Second Set of Discovery Requests As Contrary To The Requirement Of Exhaustion Of Administrative Remedies.**

The State also objects to Idaho Power's Second Set of Discovery Requests to the extent it seeks to develop or support claims involving judicial review of the administrative actions of the Director and/or the Department prior to the exhaustion of administrative remedies. Claims for judicial review of administrative actions or decisions of the Director or the Department may not be raised in court prior to the exhaustion of administrative remedies. *American Falls Res. Dist. No. 2 v. IDWR*, 143 Idaho 862, 154 P.3d 433 (2007); Idaho Code § 67-5271. Idaho Power's Second Set of Discovery Requests seeks discovery on claims for judicial review of administrative actions of Director and the Department without first exhausting administrative remedies.

4. **Objection To Idaho Power Company's Second Set of Discovery Requests To The Extent They Are Propounded To Non-Parties.**

The State objects to Idaho Power's Second Set of Discovery Requests to the extent they are propounded to the Idaho Department of Water Resources ("the Department") and David Tuthill, the Director of the Department ("the Director"). The Idaho Rules of Civil Procedure provide that Requests for Admissions, Interrogatories and Requests for Production of Documents are available only as to a "party" to a case. See I.R.C.P. 33(a), 34(a), 36(a). The Department and the Director are not parties to the Snake River Basin Adjudication. Idaho Code §§ 42-1401B(2); 42-1401A(3); *Twin Falls Canal Co. v. IDWR*, 127 Idaho 688, 905 P.2d 89 (1995). Without waiving this objection, however, the State of Idaho has provided documents from the Department that are responsive to the requests.

5. **Objection To Idaho Power Company's Second Set of Discovery Requests For Exceeding the Forty (40) Interrogatory Limitation Established By Rule 33(a) Of The Idaho Rules Of Civil Procedure.**

The State objects to Idaho Power's Second Set of Discovery Requests as exceeding the limitation of forty (40) interrogatories established in Rule 33(a)(3) of the Idaho Rules of Civil Procedure. Idaho Power already exceeded the forty (40) interrogatory limit in the Company's First Set of Discovery Requests, as discussed in Objection No. 2 on page 2 of the State's "Responses to Idaho Power Company's First Set of Discovery Requests," served November 13, 2007. The State incorporates said objection herein in its entirety by this reference.

6. **Objection To Idaho Power Company's Second Set Of Discovery Requests As Exceeding The Permissible Scope Of Discovery Under Rule 26(b)(1).**

The State also objects to Idaho Power's Second Set of Discovery Requests on the ground that it impermissibly seeks to supplement the legislative record for the Legislature ratification of the Swan Falls Agreement, endorsement of the overall Swan Falls settlement, and enactment 1985 Idaho Session Laws chapters 14-19, 162, 204, and 1986 Idaho Session Laws chapter 117. *Gillihan v. Gump*, 140 Idaho 264, 92 P.3d 914 (2004). Idaho Power's Second Set of Discovery Requests thus are not reasonably calculated to lead to the discovery of admissible evidence and exceed the permissible scope of discovery under Rule 26(b)(1).

RESPONSES TO 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.

RESPONSE TO INTERROGATORY NO. 1: The State objects to this Interrogatory for the reasons explained in Objections Nos. 1-6, above, which are incorporated herein by this reference. The State further objects because this Interrogatory is vague and ambiguous. Further, Idaho Power's definition of "Trust Water" contradicts Idaho law by defining "trust water" as a quantity of "water." IDAPA 37.03.08.010 defines "trust water" as "[t]hat portion of an unsubordinated water right used for hydropower generation purposes which is in excess of a minimum stream flow established by state action either with agreement of the holder of the hydropower right as provided by Section 42-203B(5), Idaho Code or without an agreement as provided by Section 42-203B(3), Idaho Code." (emphasis added). Idaho Power's definition of "trust water" is also contrary to the Swan Falls settlement. The State further objects to this Interrogatory's use of the phrase "the negotiations leading up to the negotiation of the Swan Falls Agreement" as vague and ambiguous. Without waiving these objections, the State responds that it has no knowledge of any such persons because the water supply issue resolved in the pre-agreement negotiations was not a determination of "Trust Water" as defined by Idaho Power but rather a determination of the new seasonal minimum flow levels for the Murphy Gage that the parties intended to propose for purposes of amending the State Water Plan. To the extent that this Interrogatory seeks identification of persons the State employed or consulted with, and were involved with or had knowledge of this determination, the State incorporates herein its response to Interrogatory No. 2, below.

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.

RESPONSE TO INTERROGATORY NO. 2: The State objects to this Interrogatory for the reasons explained in Objections Nos. 1-6, above, which are incorporated herein by this reference. Without waiving these objections, the State responds that it has no knowledge of such persons because there was no reference on the October 1, 1984 "Framework for Final Resolution of Snake River Water Rights Controversy" ("Framework") to a "determination of or an agreement to an irrigation season low flow of 4500 cfs at the Murphy Gage on an average daily basis." Rather, the "Framework" simply stated that "[t]he best available hydrologic data indicate that existing uses result in a potential irrigation season low flow of approximately 4,500 c.f.s. at the Murphy Gage on an average daily basis." To the extent that this Interrogatory seeks identification of persons the State employed or consulted with, and were involved with or had knowledge of the basis for this statement, the State identifies the following:

Patrick Costello

University of Idaho, College of Law, Moscow, ID 83844
208-885-4628

A. Kenneth Dunn	44640 S. Heritage Palms Drive, Indio, CA 92201 760-360-2931
John V. Evans	
Wayne Haas	3315 Manchester, Boise, ID 83704 208-322-8912
Bob Sutter	824 E. Bannock Street, Boise, ID 83712 208-345-3599
Jim Jones	Idaho Supreme Court; PO Box 83720, Boise ID 83720; 208-334-3186
Patrick Kole	Idaho Potato Commission; PO Box 1670, Eagle, ID 83616- 9104; 208-334-2350
Alan Robertson	6486 Kaniksu Shores Circle, Sandpoint, ID 83864 208-263-9537
Glen Saxton	7823 West Apache Way, Boise, ID 83714; 208-853-2743
Clive J. Strong	Office of the Attorney General; PO Box 83720, Boise, ID 83720; 208-334-4126
David Tuthill	Idaho Department of Water Resources; PO Box 83720, Boise, ID 83720; 208-287-4803
Norm Young	ERO Resources Corporation; 3314 Grace Street, Boise, ID 83703; 208-373-7983

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.

RESPONSE TO INTERROGATORY NO. 3: The State objects to this Interrogatory for the reasons explained in Objections Nos. 1-6, above, which are incorporated herein by this reference. Without waiving these objections, the State responds that Idaho Power Company has been operating and monitoring the Murphy Gage since April, 2004.

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.

RESPONSE TO INTERROGATORY NO. 4: The State objects to this Interrogatory for the reasons explained in Objections Nos. 1-6, above, which are incorporated herein by this reference. Without waiving these objections, the State responds that Idaho Power Company has been operating and monitoring the Murphy Gage since April, 2004.

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.

RESPONSE TO INTERROGATORY NO. 5: The State objects to this Interrogatory for the reasons explained in Objections Nos. 1-6, above, which are incorporated herein by this reference. The State also notes that the copy of Idaho Power Company's Second Set of Discovery Requests served on the State did not include "Exhibit A" as described in this Interrogatory.

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.

RESPONSE TO INTERROGATORY NO. 6: The State objects to this Interrogatory for the reasons explained in Objections Nos. 1-6, above, which are incorporated herein by this reference.

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.

RESPONSE TO INTERROGATORY NO. 7: The State objects to this Interrogatory for the reasons explained in Objections Nos. 1-6, above, which are incorporated herein by this reference.

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."

RESPONSE TO INTERROGATORY NO. 8: The State objects to this Interrogatory for the reasons explained in Objections Nos. 1-6, above, which are incorporated herein by this reference.

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.

RESPONSE TO INTERROGATORY NO. 9: The State objects to this Interrogatory for the reasons explained in Objections Nos. 1-6, above, which are incorporated herein by this reference.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Produce any index(ices) created by 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: The State objects to this Request for Production for the reasons explained in Objections Nos. 2-4 and 6, above, which are incorporated herein by this reference. The State further objects to this request on the ground that the term "index(ices)" is vague and ambiguous, on the ground that this request is overbroad and unreasonably burdensome, and to the extent it seeks disclosure of documents that are protected by the attorney-client privilege and/or the attorney work-product doctrine. Without waiving these objections, the State responds that it has already produced to Idaho Power all responsive documents in the State's possession, custody, and control that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Additional

documents responsive to the elements of this request not relevant to intent are included herewith.

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: The State objects to this Request for Production for the reasons explained in Objections Nos. 2-3 and 6, above, which are incorporated herein by this reference. The State further objects to this request on the ground that the term "index(ices)" is vague and ambiguous, on the ground that this request is overbroad and unreasonably burdensome, and to the extent it seeks disclosure of documents that are protected by the attorney-client privilege and/or the attorney work-product doctrine. Without waiving these objections, the State responds that it has already produced to Idaho Power all responsive documents in the State's possession, custody, and control that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Additional documents responsive to the elements of this request not relevant to intent are included herewith.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: The State objects to this Request for Production for the reasons explained in Objections Nos. 2-3 and 6, above, which are incorporated herein by this reference. The State further objects to this request on the ground that the term "index(ices)" is vague and ambiguous, on the ground that this request is overbroad and unreasonably burdensome, and to the extent it seeks disclosure of documents that are protected by the attorney-client privilege and/or the attorney work-product doctrine. Without waiving these objections, the State responds that it has already produced to Idaho Power all responsive documents in the State's possession, custody, and control that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Additional documents responsive to the elements of this request not relevant to intent are included herewith.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: The State objects to this Request for Production for the reasons explained in Objections Nos. 2-4 and 6, above, which are incorporated herein by this reference. The State further objects to this request on the grounds that it is overbroad and unreasonably burdensome. The State further objects to this request to the extent it seeks disclosure of documents that are protected by the attorney-client privilege, the attorney work-product doctrine, and/or information concerning settlement negotiations. Without waiving these objections, the State responds that it has already produced to Idaho Power all responsive documents in the State's possession, custody, and control that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Additional documents responsive to the elements of this request not relevant to intent are included herewith.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5 The State responds that it has performed a reasonable search and has been unable to locate the requested document. Based on the date of the letter the State believes that the request is likely objectionable for the reasons explained in Objections Nos. 1-3 and 6, above, which are incorporated herein by this reference.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: The State objects to this Request for Production for the reasons explained in Objections Nos. 2-4 and 6, above, which are incorporated herein by this reference. The State further objects to this request on the ground that it is overbroad and unreasonably burdensome, and to the extent it seeks disclosure of documents that are protected by the attorney-client privilege and/or the attorney work-product doctrine. Without waiving these objections, the State responds

that it has already produced to Idaho Power all responsive documents in the State's possession, custody, and control that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Additional documents responsive to the elements of this request not relevant to intent are included herewith.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: The State objects to this Request for Production for the reasons explained in Objections Nos. 2-4 and 6, above, which are incorporated herein by this reference. The State further objects that this request is vague and ambiguous because Idaho Power's definition of "Trust Water" contradicts Idaho law by incorrectly defining "trust water" as a quantity of "water" rather than as "[t]hat portion of an unsubordinated water right used for hydropower generation purposes which is in excess of a minimum stream flow established by state action either with agreement of the holder of the hydropower right as provided by Section 42-203B(5), Idaho Code or without an agreement as provided by Section 42-203B(3), Idaho Code." IDAPA 37.03.08.010. The State further objects to this request on the ground that it is overbroad and unreasonably burdensome, and to the extent it seeks disclosure of documents that are protected by the attorney-client privilege and/or the attorney work-product doctrine. Without waiving these objections, the State responds that it has already produced to Idaho Power all responsive documents in the State's possession, custody, and control that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Additional documents responsive to the elements of this request not relevant to intent are included herewith.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: The State objects to this Request for Production for the reasons explained in Objections Nos. 2-4 and 6, above, which are incorporated herein by this reference. The State further objects to this request on the ground that it is overbroad and unreasonably burdensome, and to the extent it seeks disclosure of documents that are protected by the attorney-client privilege and/or the attorney work-product doctrine. Additionally, the State objects that this request is vague and ambiguous because it mischaracterizes "600 cfs block of water" as a term of the Swan Falls settlement. In fact, while the parties for convenience at times referred to

water above the minimum flow as 600 cfs, the water available for future development consisted of “[t]hat portion of an unsubordinated water right used for hydropower generation purposes which is in excess of a minimum stream flow established by state action either with agreement of the holder of the hydropower right as provided by Section 42-203B(5), Idaho Code or without an agreement as provided by Section 42-203B(3), Idaho Code.” IDAPA 37.03.08.010. Without waiving these objections, the State further responds that it has already produced to Idaho Power all responsive documents in the State’s possession, custody, and control that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Additional documents responsive to the elements of this request not relevant to intent are included herewith.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: The State objects to this Request for Production for the reasons explained in Objections Nos. 2-4 and 6, above, which are incorporated herein by this reference. The State further objects to this request on the ground that it is overbroad and unreasonably burdensome, and to the extent it seeks disclosure of documents that are protected by the attorney-client privilege and/or the attorney work-product doctrine. Without waiving these objections, the State responds that it has already produced to Idaho Power all responsive documents in the State’s possession, custody, and control that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Additional documents responsive to the elements of this request not relevant to intent are included herewith.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: The State objects to this Request for Production for the reasons explained in Objections Nos. 2-4 and 6, above, which are incorporated herein by this reference. The State further objects to this request on the ground that it is overbroad and unreasonably burdensome, and to the extent it seeks disclosure of documents that are protected by the attorney-client privilege and/or

the attorney work-product doctrine. Without waiving these objections, the State responds that it has already produced to Idaho Power all responsive documents in the State's possession, custody, and control that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Additional documents responsive to the elements of this request not relevant to intent are included herewith.

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).

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: The State objects to this Request for Production for the reasons explained in Objections Nos. 1-4 and 6, above, which are incorporated herein by this reference. The State further objects to this request on the ground that it is overbroad and unreasonably burdensome, and to the extent it seeks disclosure of documents that are protected by the attorney-client privilege and/or the attorney work-product doctrine. Without waiving these objections, the State responds that it has already produced to Idaho Power all responsive documents in the State's possession, custody, and control that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Additional documents responsive to the elements of this request not relevant to intent are included herewith.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: The State objects to this Request for Production for the reasons explained in Objections Nos. 1-4 and 6, above, which are incorporated herein by this reference. The State further objects to this request on the ground that it is vague and ambiguous, overbroad and unreasonably burdensome, and to the extent it seeks disclosure of documents that are protected by the attorney-client privilege and/or the attorney work-product doctrine. Without waiving these objections, the State responds that it has already produced to Idaho Power all responsive documents in the State's possession, custody, and control that are relevant to determining the intent

of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Moreover, such records are part of Ada County Civil No. 81375, and are public records in the possession of Idaho Power Company or otherwise available from the Fourth Judicial District Court. Additional documents responsive to the elements of this request not relevant to intent are included herewith.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13: The State objects to this Request for Production for the reasons explained in Objections Nos. 1-4 and 6, above, which are incorporated herein by this reference. The State further objects to this request on the grounds that it is vague and ambiguous, overbroad and unreasonably burdensome, and to the extent it seeks disclosure of documents that are protected by the attorney-client privilege and/or the attorney work-product doctrine. Without waiving these objections, the State responds that it has already produced to Idaho Power all responsive documents in the State's possession, custody, and control that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Moreover, such records are part of Ada County Civil No. 81375, and are public records in the possession of Idaho Power Company or otherwise available from the Fourth Judicial District Court. Additional documents responsive to the elements of this request not relevant to intent are included herewith.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: The State objects to this Request for Production for the reasons explained in Objections Nos. 2-4 and 6, above, which are incorporated herein by this reference. The State further objects to this request on the grounds that it is overbroad and unreasonably burdensome. The State further objects to this request to the extent it seeks disclosure of documents that are protected by the attorney-client privilege, the attorney work-product doctrine, and/or information concerning settlement negotiations. Without waiving these objections, the State responds that it has already produced to Idaho Power all responsive documents in the State's possession, custody, and control that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the

parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Additional documents responsive to the elements of this request not relevant to intent are included herewith.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15: The State objects to this Request for Production for the reasons explained in Objections Nos. 1-4 and 6, above, which are incorporated herein by this reference. The State further objects to this request on the grounds that it is vague and ambiguous, overbroad and unreasonably burdensome, and to the extent it seeks disclosure of documents that are protected by the attorney-client privilege and/or the attorney work-product doctrine. Without waiving these objections, the State responds that it has already produced to Idaho Power all responsive documents in the State's possession, custody, and control that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Additional documents responsive to the elements of this request not relevant to intent are included herewith.

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.

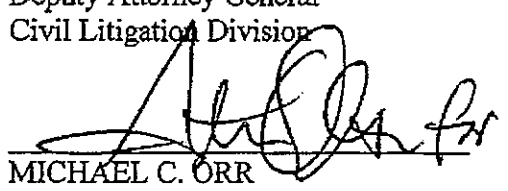
RESPONSE TO REQUEST FOR PRODUCTION NO. 16: The State objects to this Request for Production for the reasons explained in Objections Nos. 1-4 and 6, above, which are incorporated herein by this reference. The State further objects to this request on the grounds that it is overbroad and unreasonably burdensome. The State further objects to this request to the extent it seeks disclosure of documents that are protected by the attorney-client privilege, the attorney work-product doctrine, and/or information concerning settlement negotiations. Without waiving these objections, the State responds that it has already produced to Idaho Power all responsive documents in the State's possession, custody, and control that are relevant to determining the intent of the Legislature with respect to the Swan Falls settlement and the contractual intent of the parties with respect to the Swan Falls Agreement, as well as other documents responsive to this request. Additional documents responsive to the elements of this request not relevant to intent are included herewith.

Dated this 24th day of March, 2008.

LAWRENCE G. WASDEN
Attorney General

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

KARL T. KLEIN
Deputy Attorney General
Civil Litigation Division



MICHAEL C. ORR
Deputy Attorney General
Natural Resources Division

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 RESPONSES TO IDAHO POWER COMPANY'S SECOND SET OF DISCOVERY REQUESTS, to the following parties by the indicated methods:

Idaho Power Company

Represented by:

James C. Tucker

P.O. Box 70

1221 W. Idaho

Boise, ID 83707

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____

Idaho Power Company

Represented by:

James S. Lochhead

Adam T. DeVoe

Mark J. Mathews

Michael A. Gheleta

Michelle C. Kales

Brownstein Hyatt Farber Shreck

410 17th Street, Ste. 2200

Denver, CO 80202-4432

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: 303-223-0904
- ☒ E-mail: MGheleta@BHFS.com

Idaho Power Company

Represented by

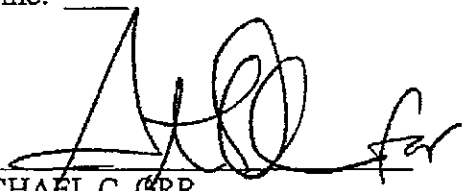
John K. Simpson

Shelley M. Davis

1010 W. Jefferson, Suite 102

Boise, ID 83701-2139

- ☐ U.S. Mail
- ☒ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____



MICHAEL C. ORR
Deputy Attorney General

EXHIBIT D

10-9-07

James S. Lochhead
Michael A. Gheleta
Mark J. Mathews
Michelle C. Kales
Adam T. DeVoe
BROWNSTEIN HYATT FARBER SCHRECK, P.C.
410 Seventeenth Street, Suite 2200
Denver, CO 80202
(303) 223-1100 – Telephone
(303) 223-1111 – Facsimile

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
(208) 336-0700 – Telephone
(208) 344-6034 – Facsimile

James C. Tucker, ISB No. 2038
Senior Attorney
IDAHO POWER COMPANY
1221 West Idaho Street
Boise, ID 83702-5627
(208) 388-2112 – Telephone
(208) 388-6935 – Facsimile

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,	)	IDAHO POWER COMPANY'S FIRST
	)	SET OF DISCOVERY REQUESTS TO
v.	)	STATE DEFENDANTS
	)	
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.	)	

Plaintiff Idaho Power Company ("Idaho Power"), by and through its undersigned attorneys, hereby submits its First Set of Discovery Requests to the State Defendants 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. **Complaint.** The term "Complaint" means Plaintiff's Complaint and Petition for Declaratory and Injunctive Relief in this matter.

c. **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.

d. **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.

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

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. **Mediator's Term Sheet.** The term "Mediator's Term Sheet" means the document titled "Mediator's Term Sheet" dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03-10022 and SRBA Consolidated Subcase 67-13701, with all appendices to the document, which is referred to as the "Agreement" in Section 3(1) of Title X ("Snake River Water Rights Act of 2004"), 118 Stat. 3431.

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

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

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. **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 Requests for Admission: If a denial is made, the answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify an answer or deny only a part of the matter of which an admission is requested, you shall specify so much of it as is true and qualify or deny the remainder.

8. 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.

9. 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.

10. 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. REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that if the quantity of water rights in a basin exceeds the physical supply of water available during all or portions of a year, that basin is considered "over appropriated."

REQUEST FOR ADMISSION NO. 2: Admit that the concept of "over appropriation" applies both to surface and interconnected ground water.

REQUEST FOR ADMISSION NO. 3: Admit that when a basin is "over appropriated," there is no unappropriated water available for new appropriation.

REQUEST FOR ADMISSION NO. 4: Admit that the water rights listed in Paragraph 22 of the Complaint are the only Idaho Power water rights which the State contends are subject to the Swan Falls Agreement, and that Idaho Power owns other water rights at other facilities, including hydropower projects, which are not subject to the terms of the Swan Falls Agreement.

REQUEST FOR ADMISSION NO. 5: Admit that the Swan Falls Agreement acknowledges and preserves Idaho Power's right and ability to purchase, lease, own, or otherwise acquire additional water for power purposes over and above the Swan Falls Daily Minimum Flows provided for in the Agreement.

REQUEST FOR ADMISSION NO. 6: Admit that additional water purchased, leased, owned, or otherwise acquired by Idaho Power for use below the Murphy Gage is not limited by or subject to the Swan Falls Agreement and must be administered and accounted for by the State of Idaho at the Murphy Gage in addition to the Swan Falls Daily Minimum Flows.

REQUEST FOR ADMISSION NO. 7: Admit that for 2006 and all years prior to 2006 during which the Bureau of Reclamation had a flow augmentation program, the State calculated the Swan Falls Daily Minimum Flows without taking into account additional water which was acquired by the Bureau of Reclamation and released into the Snake River as flow augmentation to aid migrating salmon pursuant to obligations under the Endangered Species Act.

REQUEST FOR ADMISSION NO. 8: Admit that the State's practice of including the Bureau of Reclamation flow augmentation water in the calculation of the Swan Falls Daily Minimum Flows in 2007 is a departure from its prior practice.

REQUEST FOR ADMISSION NO. 9: Admit that through the "Mediator's Term Sheet" agreement of the Snake River Water Rights Act of 2004, 118 Stat. 3431, the State agreed that the minimum flows established by the Swan Falls Agreement, designated in the "Mediator's Term Sheet" agreement as Tier 1 – Minimum Flow, shall be decreed in the SRBA to the Idaho Water Resource Board.

REQUEST FOR ADMISSION NO. 10: Admit that through the "Mediator's Term Sheet" agreement, the State, through IDWR, committed to regulate the Tier 1 - Minimum Flow established by the "Mediator's Term Sheet" agreement in accordance with the Swan Falls Agreement.

REQUEST FOR ADMISSION NO. 11: Admit that the State as a party to the "Mediator's Term Sheet" agreement contemplated that the Tier 2 - Flow Augmentation instream flows would be in addition to the Tier 1 - Minimum Flow instream flows described in the "Mediator's Term Sheet" agreement.

REQUEST FOR ADMISSION NO. 12: Admit that the trustee of any trust established under the Swan Falls Agreement is the State of Idaho, acting by and through the Governor.

REQUEST FOR ADMISSION NO. 13: (a) Admit that the Swan Falls Agreement is premised on an assumption by the parties to the Agreement that then existing water uses in the Snake River basin above Swan Falls Dam resulted in a potential irrigation season low flow of approximately 4,500 c.f.s. at the Murphy Gage on an average daily basis. (b) Admit that based on such assumption, the Swan Falls Agreement set the minimum irrigation season low flow at 3,900 c.f.s., 600 c.f.s. below the assumed minimum of 4,500 c.f.s., in order to allow the State to authorize further development of consumptive water uses in the Snake River Basin including the ESPA without violating the 3,900 c.f.s. minimum flow established by the Agreement.

REQUEST FOR ADMISSION NO. 14: Admit that prior to the execution of the Swan Falls Agreement, all trust water had been previously appropriated under Idaho Power's water rights described in Paragraph 7 of the Agreement.

REQUEST FOR ADMISSION NO. 15: Admit that prior to the execution of the Swan Falls Agreement, there was not 600 c.f.s. of unappropriated water to constitute the trust water described in Paragraph 7 of the Agreement.

REQUEST FOR ADMISSION NO. 16: Admit that under the Swan Falls Agreement, the State is obligated to take reasonable steps to insure the Swan Falls Daily Minimum Flows.

REQUEST FOR ADMISSION NO. 17: Admit that under the Swan Falls Agreement, the State is obligated to not issue any permits in the Snake River Basin for ground or surface water use after October 1, 1984, if the use of water under such permits would deplete the flow of the Snake River below the Swan Falls Daily Minimum Flows.

REQUEST FOR ADMISSION NO. 18: Admit that because of the hydrologic interconnectivity of the ESPA and the Snake River, withdrawals of ground water from the ESPA impact flows in the River, and vice-versa.

REQUEST FOR ADMISSION NO. 19: Admit that the depletive effect of withdrawals of ground water from the ESPA on Snake River flows is delayed for a period, often many years, depending upon various factors, including the distance from the well to the River.

REQUEST FOR ADMISSION NO. 20: Admit that existing water uses in the Snake River Basin above the Murphy Gage up to and including 1984 were causing depletions in the hydrologic system, which were not manifested in reduced flows in the Snake River at the Murphy Gage in 1984.

REQUEST FOR ADMISSION NO. 21: Admit that the total delayed depletive effect of ground water withdrawals from the ESPA occurring before 1984 is not yet reflected in Snake River flows at the Murphy Gage.

REQUEST FOR ADMISSION NO. 22: Admit that on July 12, 2003, average daily flows in the Snake River measured at the Murphy Gage and calculated under the Swan Falls Agreement fell below the Swan Falls Daily Minimum Flows.

REQUEST FOR ADMISSION NO. 23: Admit that the flows in the Snake River at the Murphy Gage on July 12, 2003 did not reflect the total delayed depletive effect of ground water withdrawals from the ESPA that had been allowed to occur by the State of Idaho prior to October 1, 1984.

REQUEST FOR ADMISSION NO. 24: Admit that the flows in the Snake River at the Murphy Gage on July 12, 2003 did not reflect the total delayed depletive effect of ground water withdrawals from the ESPA from trust water permit/license and non-trust water permit/license appropriations that have been allowed to occur by the State of Idaho since October 1, 1984.

REQUEST FOR ADMISSION NO. 25: Admit that at the time of the Swan Falls Agreement, the Snake River Basin was over appropriated after consideration of the Swan Falls Daily Minimum Flows.

REQUEST FOR ADMISSION NO. 26: Admit that the ESPA and the Snake River upstream from the Murphy Gage are currently over appropriated and threaten the Swan Falls Daily Minimum Flows insured by the Swan Falls Agreement.

REQUEST FOR ADMISSION NO. 27: Admit that there never was any trust water available for use by post-1984 water uses, there was no trust res, and there exists no trust under the Swan Falls Agreement.

REQUEST FOR ADMISSION NO. 28: Admit that IDWR has processed and approved numerous applications for new appropriations of trust water since 1984.

REQUEST FOR ADMISSION NO. 29: Admit that through the issuance of trust water permits, IDWR authorized the use of trust water that did, and does, not exist.

REQUEST FOR ADMISSION NO. 30: Admit that the water supply and public interest analyses which IDWR performed to issue trust water permits do not reflect the present hydrologic conditions of the ESPA and the Snake River.

REQUEST FOR ADMISSION NO. 31: Admit that Idaho Power owns the following water rights (bracketed names below refer to Company Projects): 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).

REQUEST FOR ADMISSION NO. 32: Admit that the Attorney General and IDWR have asserted that legal title to a portion of Idaho Power's water rights under the Swan Falls Agreement is held by the State of Idaho, and that equitable title to a portion of those water rights is held by Idaho Power and by the State of Idaho.

REQUEST FOR ADMISSION NO. 33: Admit that the Governor has never asserted that the State holds legal title to a portion of Idaho Power's water rights under the Swan Falls Agreement.

REQUEST FOR ADMISSION NO. 34: Admit that one purpose of the State in seeking legal title to a portion of Idaho power's water rights is to subordinate those water rights to ground water recharge.

REQUEST FOR ADMISSION NO. 35: Admit that the first notification provided by the Idaho Attorney General to Idaho Power that the Attorney General intended to file the Notices of Change in Water Right Ownership with IDWR was a telephone call from two members of the Attorney General's staff on December 22, 2006, the same day that the Attorney General filed the Notices with IDWR and that Idaho Power received them.

REQUEST FOR ADMISSION NO. 36: Admit that prior to the Attorney General's filing of the Notices of Change in Water Right Ownership, representatives of the Attorney General's Office discussed the State's claim of ownership to a portion of Idaho Power's water rights and its intent to file notices of change of ownership with the Director, or representatives, of IDWR.

REQUEST FOR ADMISSION NO. 37: Admit that representatives of the Attorney General's Office and the Director, or representatives, of IDWR coordinated the filing of the Notices of Change in Water Right Ownership and the issuance of the Director's Report for Basin 2.

REQUEST FOR ADMISSION NO. 38: Admit that neither the Director, nor representatives, of IDWR conducted any independent investigation of the validity of the Notices of Change in Water Right Ownership filed by the Attorney General or the basis for the claims of ownership asserted in such Notices.

REQUEST FOR ADMISSION NO. 39: Admit that the State has never filed a Notice of Claim to a Water Right in the SRBA pursuant to Idaho Code § 42-1409(4) with respect to any of Idaho Power's water rights listed in Paragraph 7 of the Swan Falls Agreement or any other water right held or claimed by Idaho Power.

REQUEST FOR ADMISSION NO. 40: Admit that the res of any trust created under the Swan Falls Agreement is water and not water rights.

REQUEST FOR ADMISSION NO. 41: Admit that Idaho Power's water rights were not to be available for distribution to new uses pursuant to the Swan Falls Agreement.

REQUEST FOR ADMISSION NO. 42: Admit that nowhere in the Swan Falls Agreement, or any documents related thereto, is there any reference made to the State of Idaho owning or claiming legal title to Idaho Power's water rights as trustee.

REQUEST FOR ADMISSION NO. 43: Admit that nowhere in the Swan Falls Agreement, or any documents related thereto, is there any reference made to Idaho Power conveying its water rights into a trust.

REQUEST FOR ADMISSION NO. 44: Admit that the State approved applications and issued permits for the use of trust water under new priority dates, not the priority dates of any water rights owned by Idaho Power.

REQUEST FOR ADMISSION NO. 45: Admit that until the actions of the State referenced in the Complaint, the State of Idaho has never claimed or asserted legal title to Idaho Power's water rights, requested conveyance of title, otherwise asserted that legal title was necessary for the State of Idaho to undertake its duties as trustee of the trust water, or otherwise contested ownership of Idaho Power's water rights.

REQUEST FOR ADMISSION NO. 46: Admit that the State of Idaho through IDWR submitted recommendations to the SRBA Court that water right decrees in Basins 2, 36 and 37 for water rights listed in Paragraph 7 of the Swan Falls Agreement be adjudicated in the name of Idaho Power as the owner of such water rights. (b) Admit that such recommendations were

based on IDWR's investigation of Idaho Power's Notices of Claim to a Water Right pursuant to Idaho Code § 42-1410 authorizing and requiring IDWR's investigation of water right claims.

REQUEST FOR ADMISSION NO. 47: Admit that the actions of the State, its officials, and its agencies following the execution of the Swan Falls Agreement through at least 2005 have been consistent with title to the water rights remaining with Idaho Power.

REQUEST FOR ADMISSION NO. 48: (a) Admit that on March 9, 2006, Attorney General Wasden, in response to questions in a February 27, 2006 letter from State House Speaker Bruce Newcomb, issued Attorney General Opinion 06-2 "Regarding Swan Falls Agreement and Idaho Code §§ 42-234(2) and 42-4201A(2)" (hereinafter "Attorney General Opinion 06-2"). (b) Admit that the Attorney General or members of his staff, before receiving such letter, discussed with Speaker Newcomb or other members of the legislature the preparation of an Attorney General opinion concerning the subordination of Idaho Power's hydropower water rights under the Swan Falls Agreement.

REQUEST FOR ADMISSION NO. 49: Admit that the water levels in the ESPA have progressively declined, and continue to decline, resulting in diminishing spring flows, reach gains and flows in the Snake River, and that a contributing factor in such hydrologic developments is the pumping of ground water.

REQUEST FOR ADMISSION NO. 50: Admit that diminishing spring flows, reach gains and flows in the Snake River have resulted in a number of water right "calls" made by senior priority appropriators utilizing surface and spring water from the Snake River, and that a contributing factor in such calls is the pumping of ground water under junior water rights.

REQUEST FOR ADMISSION NO. 51: Admit that ground water pumping from the ESPA has hydrologic impacts on the aquifer and interconnected surface waters beyond the year that pumping occurs.

REQUEST FOR ADMISSION NO. 52: Admit that to date IDWR has not taken into account the multiple year impacts of ground water pumping from the ESPA in its administration of junior ground water and senior surface water rights.

REQUEST FOR ADMISSION NO. 53: Admit that IDWR has curtailed or threatened to curtail ground water rights only on the basis of within-the-year or seasonal impacts of such pumping.

REQUEST FOR ADMISSION NO. 54: Admit that the State's failure to account for the multiple year impacts of ground water pumping, to the extent that that failure results in a violation of the Swan Falls Daily Minimum Flows, is unreasonable and constitutes a breach of the Swan Falls Agreement.

III. INTERROGATORIES

INTERROGATORY NO. 1: For each of your responses to Requests for Admission 1 through 54 above that is not an unqualified admission, state the number of the Request for Admission, state all facts upon which you base your response, identify each person who has knowledge of these facts, and identify all documents and other tangible things that support your response.

IV. REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Produce all documents identified in or related to your responses to Interrogatory No. 1 and Requests for Admission Nos. 1 through 54 above.

Dated this 9th day of October, 2007.

IDAHO POWER COMPANY

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

John K. Simpson, ISB No. 4242
Shelley M. Davis, ISB No. 6788
BARKER ROEHOLT & SIMPSON LLP
205 North Tenth St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139

By: Michael A. Gheleta
James S. Lochhead, Esq.
Michael A. Gheleta, Esq.
Mark J. Mathews, Esq.
Michelle C. Kales, Esq.
Adam T. DeVoe, Esq.
BROWNSTEIN HYATT FARBER
SCHRECK, P.C.
410 17th Street, Twenty-Second Floor
Denver, CO 80202

Attorneys for Idaho Power Company

CERTIFICATE OF MAILING

I certify that on October 9, 2007, I mailed copies of IDAHO POWER COMPANY'S FIRST SET OF DISCOVERY REQUESTS TO STATE DEFENDANTS to the following persons by U.S. Mail:

MICHAEL C. ORR
DEPUTY ATTORNEY GENERAL
NATURAL RESOURCES DIVISION
700 WEST STATE STREET
2ND FLOOR
P.O. BOX 83720
BOISE, IDAHO 83720-0010

DAVID HENSLEY, COUNSEL
OFFICE OF THE GOVERNOR
700 W. JEFFERSON
BOISE, ID 83720-0181

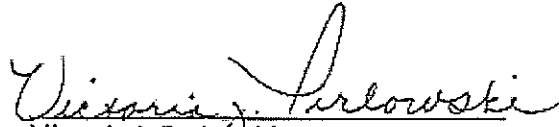

Victoria J. Perlowski

EXHIBIT E



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

March 31, 2008

James S. Lochhead
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202-4437

Re: Idaho Power Co. v. State of Idaho, et al.

Dear Mr. Lochhead:

I have received your letter of March 25th, regarding the State of Idaho's responses to your client's Second Set of Discovery Requests. I must admit surprise as to the tone and content of the letter, as I discussed the State's objections with your colleague, Michael Gheleta, prior to filing the State's Responses. At that time, I also advised Mr. Gheleta that the State would be filing a Motion for Protective Order on many of the same grounds as set forth in the State's Responses to Idaho Power's latest discovery requests.

It is clear that we disagree as to the scope of permissible discovery in the current litigation. In moving for a protective order, the State believes it has properly set this matter before the Court in an effort to resolve the issue so that discovery can continue in an expedient manner.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "M. C. Orr".

For, Michael C. Orr
Deputy Attorney General

MCO/olv

EXHIBIT E

EXHIBIT F

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

The foregoing is a true and certified copy of the document on file at the department of Water Resources

Signed this 4th day of January, 1980

Raymond A. Jones

SCANNED

JAN 29 2007

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.

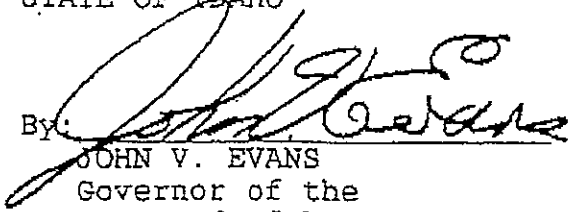
21. Multiple Originals

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

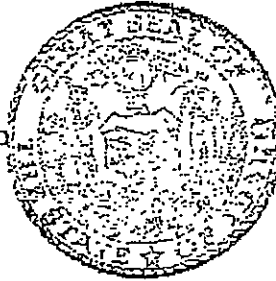
ATTEST:



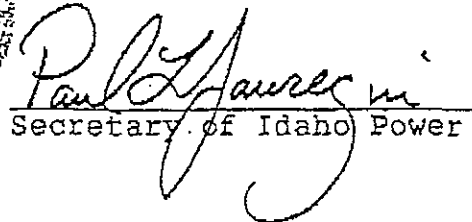
PETE T. CENARRUSA
Secretary of State

(Seal of the State of Idaho)

(Corporate Seal of Idaho
Power Company)



ATTEST:


Secretary of Idaho Power

CERTIFICATE OF SECRETARY

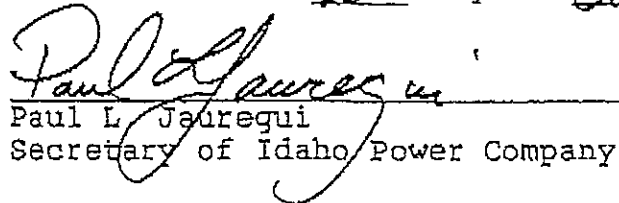
Paul L. Jauregui, as secretary of Idaho Power Company, a Maine Corporation, hereby certifies as follows:

(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.



A handwritten signature in cursive script, reading "Pete T. Cenarrusa", written over a horizontal line.

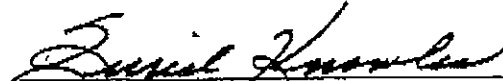
PETE T. CENARRUSA
Secretary of State
State of Idaho

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.

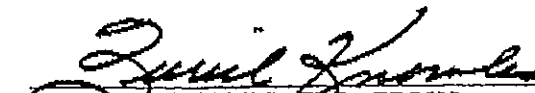
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


NOTARY PUBLIC FOR IDAHO
Residing at Boise, 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 Boise, 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, ~~if aggrieved~~ 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 42-1109, 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 42-2211, 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 (\$10/000)~~ 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 133/ Laws of 1977/ 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.

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.

The foregoing is a true and certified copy of the document on file at the department of Water Resources

Signed this 4th day of January, 2008
Ray Spackman

EXHIBIT G

COPY

LAWRENCE G. WASDEN
Attorney General

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

KARL T. KLEIN (ISB # 5156)
Deputy Attorney General
Civil Litigation Division

MICHAEL C. ORR (ISB # 6720)
Deputy Attorney General
Natural Resources Division

700 West Jefferson Street Room 210
P.O. Box 44449
Boise, ID 83711-4449
(208) 334-2400
Attorneys for The State of Idaho

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	) RESPONSES TO IDAHO POWER
	) COMPANY'S FIRST SET OF
	) DISCOVERY REQUESTS
	)

The State of Idaho, Governor C.L. "Butch" Otter, Attorney General Lawrence G. Wasden, the Idaho Department of Water Resources, and David Tuthill, Director of the Department of Water Resources (collectively, "the State"), hereby submit their responses to "Idaho Power Company's First Set of Discovery Requests to State Defendants"

(hereinafter, "First Set of Discovery Requests"). The State has made good faith inquiries into the matters raised by Idaho Power Company's First Set of Discovery Requests in the time allotted, is continuing such inquiries, and will supplement these responses, if necessary, as required by the Idaho Rules of Civil Procedure.

OBJECTIONS

1. Objection To First Set of Discovery Requests To The Extent They Are Propounded To Non-Parties.

The State objects to each and every request and interrogatory in Idaho Power Company's First Set of Discovery Requests to the extent they are propounded to the Idaho Department of Water Resources ("the Department") and David Tullhill, the Director of the Department ("the Director"). The Idaho Rules of Civil Procedure provide that Requests for Admissions, Interrogatories and Requests for Production of Documents are available only as to a "party" to a case. See LR.C.P. 33(a), 34(a), 36(a). The Department and the Director are not parties to the Snake River Basin Adjudication. Idaho Code §§ 42-1401B(2); 42-1401A(3). Without waiving these objections, the Department and the Director join in these responses.

2. Objection To Interrogatory No. 1 To The Extent It Applies To Requests for Admission Nos. 41-54.

The State objects to Idaho Power Company's "First Set of Discovery Requests to State Defendants" to the extent that they exceed the limitation of forty (40) interrogatories established in Rule 33(a) of the Idaho Rules of Civil Procedure. Idaho Power Company's discovery requests include an interrogatory requesting that "for each of your responses to Requests for Admission 1 through 54 that is not an unqualified admission, state the number of the Request for Admission, state all facts upon which you base your response, identify each person who has knowledge of these facts, and identify all documents and other tangible things that support your response."

Combining multiple Requests for Admission with a single interrogatory in this manner transforms each Request for Admission into a separate interrogatory. See *Safeco of America v. Rawstrom*, 181 F.R.D. 441, 445-46 (C.D. Cal. 1998). Further, the State has made no unqualified admissions in its responses to the fifty-four Requests for Admission in Idaho Power Company's First Set of Discovery Requests. Thus, Idaho Power Company's First Set of Discovery Requests includes fifty-four (54) separate interrogatories, in violation of the forty (40) interrogatory limit established by Rule 33(a) of the Idaho Rules of Civil Procedure. See *id*. Nonetheless, without waiving this objection, the State has responded to each of the fifty-four interrogatories.

3. Objection To Discovery Requests Nos. 7-11, 18-19, 21-24, 26, 28-30, 32, 35-38, 44, and 46-54 As Exceeding The Scope Of The Order of July 23, 2007.

The State also objects to Idaho Power Company's first set of discovery requests to the extent they contravene the Order Granting in Part, Denying in Part Motion to Dismiss; Consolidating Common Issues Into Consolidated Subcase; And Permitting Discovery; And Notice of

Scheduling Conference (July 23, 2007) ("Order"). This objection applies to Requests for Admission Nos. -11, 18-19, 21-24, 26, 28-30, 32, 35-38, 44, and 46-54, and the corresponding interrogatories and requests for production of documents.

The Order provides that "preliminary issues" of the scope and ownership of the disputed water rights will be addressed and resolved first. Following these determinations, "this Court will transfer issues of compliance and enforcement to an administrative body of appropriate jurisdiction." Order at 13. Requests for Admission Nos. -11, 18-19, 21-24, 26, 28-30, 32, 35-38, 44, and 46-54, and the corresponding interrogatories and requests for production of documents, seek discovery on issues of compliance with and enforcement of the Swan Falls "Agreement" (hereinafter, "Swan Falls Agreement" or "Agreement") and a claim that has been dismissed. Accordingly, these requests and interrogatories exceed the scope of the subject matter of the pending action, as limited by the Court, and therefore exceed the scope of discovery under Rule 26(b)(1) of the Idaho Rules of Civil Procedure.

4. Objection To Discovery Requests Nos. 7-8, 10-11, 18-19, 21-24, 26, 28-30, 32, 35-38, 44 and 46-54 As Exceeding The Scope Of The Snake River Basin Adjudication As Established By Idaho Law.

The State also objects to Idaho Power Company's first set of discovery requests to the extent they exceed the scope of the Snake River Basin Adjudication under applicable Idaho law. This objection applies to Requests for Admission Nos. 7-8, 10-11, 18-19, 21-24, 26, 28-30, 32, 35-38, 44 and 46-54, and the corresponding interrogatories and requests for production of documents.

The Idaho Code and controlling Idaho Supreme Court precedent provide that a claimant may not obtain review of agency actions of the Department of Water Resources in the Snake River Basin Adjudication. Idaho Code § 42-1401D, *Twain Falls Canal Co. v. IDWR*, 127 Idaho 688, 905 P.2d 89 (1995). Requests for Admission Nos. 7-8, 10-11, 18-19, 21-24, 26, 28-30, 32, 35-38, 44 and 46-54 contravene these limitations because they seek to develop or support claims that expressly seek, or would necessarily entail, judicial review of agency actions of the Department of Water Resources in the Snake River Basin Adjudication. These requests and interrogatories therefore exceed the scope of the Snake River Basin Adjudication under Idaho law and the scope of discovery under Rule 26(b)(1).

5. Objection To Discovery Requests Nos. 7-8, 18-19, 21-24, 26, 28-30, 35, 44, 47 and 49-54 As Contrary To The Requirement Of Exhaustion Of Administrative Remedies.

The State also objects to Idaho Power Company's first set of discovery requests to the extent they seek to develop or support claims seeking or requiring judicial review of the administrative actions of the Director and/or the Department. This objection applies to Requests for Admission Nos. 7-8, 18-19, 21-24, 26, 28-30, 35, 44, 47 and 49-54, and the corresponding interrogatories and requests for production of documents.

Claims for judicial review of the administrative actions or decisions of the Director and the Department may not be raised, heard or otherwise developed in a court or by the use of judicial procedures in the absence of a final agency action and a fully developed administrative

record, and until administrative remedies have been exhausted. *American Falls Res. Dist. No. 2 v. IDWR*, 143 Idaho 862, 154 P.3d 433 (2007); Idaho Code § 67-5271. Requests for Admission Nos. 7-8, 18-19, 21-24, 26, 28-30, 35, 44, 47 and 49-54, and the corresponding interrogatories and requests for production of documents, expressly seek or necessarily require judicial review of administrative actions of the Director and/or the Department in the absence of a final agency action and a fully developed administrative record, and prior to the exhaustion of administrative remedies. These requests and interrogatories are therefore in violation of the exhaustion requirement set forth in chapter 52, Title 67, Idaho Code and applicable decisions of the Idaho Supreme Court.

RESPONSES TO REQUESTS FOR ADMISSION AND INTERROGATORIES

REQUEST FOR ADMISSION NO. 1: Admit that if the quantity of water rights in a basin exceeds the physical supply of water available during all or portions of a year, that basin is considered "over appropriated."

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Objection. This Request for Admission seeks disclosure of confidential attorney work-product. Without waiving this objection, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 1: Objection. This Interrogatory and the corresponding Request for Production of Documents seeks disclosure of the confidential attorney work product. Without waiving this objection, the State responds that the concept of "over appropriation" as proposed and defined by Idaho Power Company is contrary to the prior appropriation doctrine as established by Idaho law.

REQUEST FOR ADMISSION NO. 2: Admit that the concept of "over appropriation" applies both to surface and interconnected ground water.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Denied.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 2: See the Response To Interrogatory – Request For Admission No.1, which the State incorporates herein by this reference.

REQUEST FOR ADMISSION NO.3: Admit that when a basin is "over appropriated," there is no unappropriated water available for new appropriation.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Denied.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 3: See the Response To Interrogatory – Request For Admission No.1, which the State incorporates herein by this reference.

REQUEST FOR ADMISSION NO. 4: Admit that the water rights listed in Paragraph 22 of the Complaint are the only Idaho Power water rights which the State contends are subject to the Swan Falls Agreement, and that Idaho Power owns other water rights at other facilities, including hydropower projects, which are not subject to the terms of the Swan Falls Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: The State denies this Request for Admission to the extent it implies that Idaho Power Company holds legal title to all of the water rights listed in Paragraph 22 of the Complaint. The State also denies that the water rights listed in Paragraph 22 of the Complaint are the only water rights that are subject to the Swan Falls Agreement. The State admits that Idaho Power Company owns other water rights at other facilities, including hydropower facilities, which are not subject to the Swan Falls Agreement.

RESPONSE TO INTERROGATORY NO. 1 -- REQUEST FOR ADMISSION NO. 4: In addition to the water rights listed in Paragraph 22 of the Idaho Power Company's "Complaint and Petition for Declaratory and Injunctive Relief" ("Complaint"), the Swan Falls settlement also encompasses water rights 02-2032A, 02-2032B, 02-4000A, 02-4000B, 02-4000A and 02-4000B, beneficial use water right claims 37-20709, 37-20710, and 02-10135, and any other claims for water rights for power purposes at any of the Idaho Power Company facilities referenced in Paragraph 7 of the Swan Falls Agreement. Further, it should be noted that the Agreement was only one component of the settlement of the Swan Falls controversy. The settlement also included amendments to the State Water Plan and the enactment of a number of pieces of implementing legislation. Among other things, this legislation establishes a trust and provides that "[a]ny portion of the water rights for power purposes in excess of [the minimum flows established at the Murphy Gage] shall be held in trust by the state of Idaho." Idaho Code § 42-203B(2), (5). Thus, it is incorrect to characterize the water rights as to which ownership is disputed in this consolidated subcase as "Idaho Power water rights" insofar as such a characterization implies that Idaho Power Company has legal ownership of the water rights held in trust. The State holds legal title to the water rights held in trust for the benefit of Idaho Power Company and the People of the State of Idaho. *Id.* As one of the beneficiaries of the trust, Idaho Power Company may use the water available at its facilities for power purposes to the extent of the water rights held in trust, "subject to subordination to and depletion by future upstream users whose rights are acquired pursuant to State law, including compliance with the requirements of Idaho Code § 42-203C." *Id.*

For purposes of identifying the documents that support this response, the State refers to documents previously provided to Idaho Power Company via hand delivery to James C. Tucker on December 22, 2006, and via service of the State of Idaho's First Set Of Requests For Admission And Requests For Production Of Documents To Idaho Power Company, dated October 18, 2007. The hand delivery to Idaho Power Company of December 22, 2006, included the following:

1. Notices of Change of Water Right Ownership;
2. A five-page letter from the Attorney General to the Department explaining the basis for the Notices of Change of Water Right Ownership;

3. Copies of documents that were cited in the Attorney General's letter, or that otherwise supported the Notices of Change of Water Right Ownership, including the following:
 - a. The Swan Falls "Agreement" of October 25, 1984;
 - b. the Federal Energy Regulatory Commission ("FERC") order of March 25, 1988 in the proceedings on Idaho Power Company's petition for a declaratory order on the Swan Falls Agreement (FERC Docket EL-85-38-000);
 - c. the Joint Agreement Regarding Fish and Wildlife Studies (EL-85-38-000), between Idaho Power Company and the United States Marine Fisheries Service;
 - d. Legislation enacted to implement the Swan Falls settlement, including:
 - i. 1985 Idaho Session Laws, Chapter 14 (SB1005)
 - ii. 1985 Idaho Session Laws, Chapter 16 (SB1007)
 - iii. 1985 Idaho Session Laws, Chapter 17 (SB1008)
 - iv. 1985 Idaho Session Laws, Chapter 224 (HB186)
 - v. 1985 Idaho Session Laws, Chapter 204 (SB1205)
 - vi. 1986 Idaho Session Laws, Chapter 116 (SB1358)
 - vii. Idaho Code §§ 42-203A, 42-203B, 42-203C, 42-203D and 61-502B;
 - e. Legislative history of the legislation enacted to implement the Swan Falls settlement, including:
 - i. Pages 58-61 of the 1985 Journal of the State Senate (Statement of Legislative Intent for S1008);
 - ii. Minutes of the Senate Resources & Environment Committee for:
 1. January 1, 1985
 2. January 11, 1985
 3. January 21, 1985
 4. January 25, 1985
 5. February 1, 1985
 6. March 4, 1985
 7. February 19, 1986
 - iii. Minutes of the Senate State Affairs Committee for:
 1. January 25, 1985
 2. February 1, 1985
 - iv. Minutes of the House Resources & Conservation Committee for:
 1. February 1, 1985
 2. February 11, 1985
 3. February 19, 1985
 4. March 7, 1985
 5. March 13, 1986;

- f. District Court filings:
 - i. Consent Judgment in Ada County Case No. 81375
 - ii. Consent Judgment in Ada County Case No. 62237
 - iii. Order for Entry of Judgment in Ada County Case No. 62237
 - iv. Stipulation for Entry of Judgment in Ada County Case No. 62237;
- g. The Contract to Implement, Chap. 256, Sess. Laws 1983 of October 25, 1984 ("1180 Contract");
- h. 1983 Idaho Session Laws, chapter 259;
- i. Idaho Code §§ 61-539, 61-540;
- j. Legislative History for the 1180 Contract, including minutes of the following:
 - i. Senate Resources & Environment Committee, March 30, 1983
 - ii. Senate Resources & Environment Committee, April 4, 1983
 - iii. House Resources & Conservation Committee, April 8, 1983;
- k. Legal descriptions for points of diversion and places of use.

The documents previously provided to Idaho Power Company via service of the State of Idaho's First Set Of Requests For Admission And Requests For Production Of Documents To Idaho Power Company, dated October 18, 2007, included copies of the following:

<u>Exhibit No. in State's First Set of Discovery Requests</u>	<u>Document</u>
1.1	1984 House Bill 675 and its Statement of Purpose;
1.2	1984 House Bill 459 and its Statement of Purpose;
1.3	1984 House Bill 574 and its Statement of Purpose;
1.4	1985 Senate Bill 1008 and its Statement of Purpose;
1.5	1985 Senate Bill 1005 and its Statement of Purpose;
1.6	Complete set of minutes for the 1985 meetings of the Senate Resources and Environment Committee, including attachments;
1.7	Minutes of the meetings of the 1985 meetings House Resources and Conservation Committee, including attachments, for January 17, 21 and 31; February 1, 11, 13, 15, 19 and 25; and for March 7;

Exhibit No. in State's First
Set of Discovery Requests

Document

- 1.8 Minutes of the meetings Senate State Affairs Committee of January 25, 1985 and February 1, 1985;
- 1.9 Pages 22 and 58-61 of the Journal of the State Senate, Organizational Session and First Regular Session of the Forty Eighth Legislature of the State of Idaho, 1985;
- 2.1 1986 Senate Bill 1358, including amendment, and Statement of Purpose;
- 2.2 Minutes of the meetings of the Senate Resources and Environment Committee of February 5, 1986, and February 19, 1986;
- 2.3 Minutes of the meeting of the House Resources and Conservation Committee of March 13, 1986;
- 2.4 Complete set of the minutes of the 1986 Idaho Legislative Council (Interim) Committee on Ground Water Resources, including attachments and Final Report;
- 2.5 Complete set of the minutes of the 1993 Idaho Legislative Council Interim Committee on Aquifer Recharge, including attachments and Final Report;
- 2.6 1994 Senate Bills 1564, 1565, 1574, and 1575 and their Statements of Purpose;
- 2.7 Minutes of the Senate State Affairs Committee meeting of March 9, 1994;
- 2.8 Minutes of the meeting of the Senate Resources and Environment Committee, including attachments, of March 11, 1994;
- 2.9 Minutes of the meetings of the House Resources and Conservation Committee, including attachments, of March 21, 1994, and March 23, 1994;
- 2.10 Page 413 of the Journal of the House of Representatives, Second Regular Session of the Fifty Second Legislature of the State of Idaho, 1994;

Exhibit No. in State's First
Set of Discovery Requests

Document

- 2.11 Page 269 of the Journal of the State Senate, Second Regular Session of the Fifty Second Legislature of the State of Idaho, 1994;
- 3 The ratepayer complaint filed with the Idaho Public Utilities Commission in June 1977, initiating IPUC Case No. U-1006-124;
- 4 A letter to Governor Evans from Idaho Power Company Chief Executive Officer James Bruce dated April 11, 1984;
- 5 A letter to Idaho Power Company Chief Executive Officer James Bruce from Governor Evans dated May 9, 1984;
- 6 A letter to Governor Evans from Idaho Power Company Chief Executive Officer James Bruce dated May 23, 1984;
- 7 The "Framework for Final Resolution of Snake River Water Rights Controversy" of October 1, 1984;
- 8 The Swan Falls "Agreement" of October 25, 1984;
- 9 The "Contract to Implement Chapter 259, Sess. Laws, 1983" of October 25, 1984;
- 10 The Idaho Water Resources Board resolution of March 1, 1985, approving amendments to Policy 32 of the State Water Plan;
- 11 1985 Idaho Session Laws chapter 14;
- 12 1985 Idaho Session Laws chapters 15 and 16;
- 13 1985 Idaho Session Laws chapters 17, 18 and 19;
- 14 1985 Idaho Session Laws chapter 162;
- 15 1985 Idaho Session Laws chapter 204;
- 16 1985 Idaho Session Laws chapter 224;
- 17 1986 Idaho Session Laws chapter 117;

Exhibit No. in State's First
Set of Discovery Requests

Document

- | | |
|----|---|
| 18 | 1994 Idaho Session Laws chapter 274; |
| 19 | 1994 Idaho Session Laws chapter 433; |
| 20 | "Currents," November 1984, "Special Swan Falls Agreement Edition"; |
| 21 | "Currents," January 1985 "Special Swan Falls Edition II"; |
| 22 | "Currents," March 1985, Vol. 3, No. 3; |
| 23 | "Currents," October 1985, "Special Water Allocation Rules Edition"; |
| 24 | "Currents," December 1985, "Special Water Allocation Rules Edition II"; |
| 25 | "Currents," September 1986, "State Water Plan Draft" edition; |
| 26 | A letter dated June 13, 1985, from Thomas G. Nelson, of Nelson, Rosholt, Robertson, Tolman & Tucker, Chtd., to A. Kenneth Dunn, Director of the Idaho Department of Water Resources (including attachment); |
| 27 | A letter dated November 5, 1985, from Thomas G. Nelson, of Nelson, Rosholt, Robertson, Tolman & Tucker, Chtd., to Mr. Ken Dunn, Director of the Idaho Department of Water Resources (including attachments); |
| 28 | Idaho Power Company's "Petition for the Amendment of Rule 5.2. of the Water Appropriation Rules and Regulations Adopted April 8, 1986," filed with the Department of Water Resources on April 28, 1986; |
| 29 | Idaho Power Company's "Petition for Declaratory Judgment" filed in the District Court of the Fifth Judicial District of the State of Idaho, In and For the County of Twin Falls, Case No. 38256, on April 28, 1986; |
| 30 | Idaho Department of Water Resources Water Right Permit No. 01-7054; |

Exhibit No. in State's First
Set of Discovery Requests

Document

- | | |
|----|--|
| 31 | Idaho Department of Water Resources Water Right Permit No. 37-7842; |
| 32 | The Idaho Department of Water Resources' Policy and Implementation Plan for Processing Water Right Filings in the Swan Falls, issued November 3, 1988. |

Additional documents supporting the State's response are identified below. Copies of these documents are included with these responses.

Memorandum to James E. Bruce from Thomas G. Nelson regarding the possibility of using the Swan Falls water right to stop upstream depletion of the Snake River (June 22, 1976);

Minutes of the Legislative Council Committee on Water Rights (May 10, 1983);

Minutes of the Second Meeting of the Snake River Technical Advisory Committee (July 15, 1983);

Minutes of the Organizational Meeting of the Snake River Technical Advisory Committee (June 29, 1983);

Minutes of the Third Meeting of the Snake River Technical Advisory Committee (August 4-5, 1983);

"News Release" from the Office of the Governor (January 4, 1985);

Executive Order 84-19 (Office of the Governor)

Minutes of the First Meeting of the Snake River Studies Advisory Committee (Feb. 7, 1985);

Memorandum to Governor Evans from Keith Anderson regarding the third meeting of the Snake River Studies Advisory Committee (May 22, 1985);

Memorandum from Sheri Grow to Dick Gardner re: summary minutes of the Snake River Studies Advisory Committee (Dec. 11, 1986);

Memorandum to Governor Evans from Keith Anderson regarding the fifth and final meeting of the Snake River Studies Advisory Committee (Dec. 22, 1986);

Memorandum to the Snake River Advisory Committee from Dick Gardner regarding economic studies update (Aug. 12, 1986);

Testimony of Governor John V. Evans on Proposed Revisions to State Water Plan Policy Number 32 (Feb. 5, 1985);

Affirmation of Continuation of Agreement (May 15, 1985);

Letter to the Honorable John V. Evans from Attorney General Jim Jones (Oct. 25, 1984);

Letter to the Honorable John V. Evans from Attorney General Jim Jones (May 17, 1984);

Letter to the Honorable John V. Evans from Attorney General Jim Jones (Oct. 17, 1984);

Idaho Water Rights Defense New Letter (Oct. 19, 1984);

Mediator's Term Sheet;

Minutes of the Third Meeting of the Snake River Studies Advisory Committee (April 18, 1985);

Certified copy of case file, FERC Docket No. EL-85-38-000

Memorandum to Norm Young from Alan Robertson regarding tributary determination, Milner to Swan Falls (April 14, 1986);

Review of Flow at Swan Falls In Relation To Its Power Rights (Feb. 7, 1984);

Brief of Respondent Idaho Power Company on Rehearing, *Miles v. Idaho Power Company*, Idaho Supreme Court case no. 16614 (Feb. 21, 1989);

Brief of Respondent Idaho Power Company, *Miles v. Idaho Power Company*, Idaho Supreme Court case no. 16614 (Jan. 21, 1987);

Letter to Paul L. Janregul from Patrick Kolo (Jan. 19, 1984);

Exhibits 1-5 to Idaho Power Company's "Petition for Declaratory Judgment" filed in the District Court of the Fifth Judicial District of the State of Idaho, In and For the County of Twin Falls, Case No. 38256 (April 28, 1986);

Letter to Mark B. Clark from Thomas G. Nelson regarding Ada County case no. 81375 (August 29, 1989);

Memo to Norm from Ron regarding commencement of permit processing (May 2, 1988);

"Picking up the Pieces After Swan Falls," by Norm Young (Dec. 8-9, 1989);

Needed Water Resources Programs In The Snake River Basin by Snake River Technical Advisory Committee (Nov. 1983);

Water Resources Management Needs In The Snake River Basin Executive Summary by Snake River Technical Advisory Committee (Nov. 1983);

Commentary on Swan Falls Resolution by Patrick D. Costello and Patrick J. Kole (Summer 1985);

Letter to the Honorable John D. Dingell from Governor Cecil Andrus regarding H.R. 519 (Swan Falls Legislation): Idaho's Comments on Issues Raised by FERC and NMFS (July 24, 1987);

Legacy of Light, by Susan M. Stacy (1991);

Letter to R. Keith Higginson from Thomas G. Nelson regarding Swan Falls Policy and Implementation Plan (Oct. 14, 1988);

Copy of case file, Idaho Public Utilities Commission docket no. U-1006-244;

Memorandum to J. Vard Chatburn from Pat Costello regarding elements of the Swan Falls legislative package and their relation to overall agreement (Feb. 4, 1985);

Attendance sheets for Idaho Water Resources Board Public Hearings on Amendments To Policy 32 of the State Water Plan, including attachments, exhibits and testimony (Jan. & Feb., 1985);

Letter to Mr. Pat Costello from Sheri Chapman (Oct. 16, 1984);

Idaho State Water plan adopted by the Idaho Water Resources Board (Jan. 19, 1982);

Amended Complaint, *Idaho Power Company v. State of Idaho*, Ada County case no. 62237 (Nov. 8, 1977);

Second Amended Complaint, *Idaho Power Company v. State of Idaho*, Ada County case no. 81375 (Dec. 28, 1983);

Notice of Dismissal of Certain Defendants, *Idaho Power Company v. State of Idaho*, Ada County case no. 81375 (Oct. 25, 1984);

Order for Judgment and Consent Judgment, *Idaho Power Company v. State of Idaho*, Ada County case no. 81375 (Feb. 16, 1990);

Minutes of Meeting No. 9-84, Idaho Water Resource Board, Boise, Idaho (Nov. 2, 1984);

Letter to the Idaho Department of Water Resources from Attorney General Lawrence G. Wasden regarding Notices of Change in Water Right Ownership Under Swan Falls Agreement and Implementing Legislation (Dec. 22, 2006);

Notices of Change in Water Right Ownership (Dec. 22, 2006);

Letter to James C. Tucker from Chief Deputy Attorney General Sherman F. Furey III regarding Notices of Change in Water Right Ownership Under The Swan Falls Agreement and Implementing Legislation (Dec. 22, 2006);

Attachments to Notices of Change in Water Right Ownership (Dec. 22, 2006);

Letter to the Idaho Department of Water Resources from Attorney General Lawrence G. Wasden regarding Notices of Change in Water Right Ownership Under Swan Falls Agreement and Implementing Legislation (Jan. 2, 2007);

Notices of Change of Water Right Ownership (Jan. 2, 2007);

Letter to the Honorable Lawrence G. Wasden from Bruce Newcomb (Feb. 27, 2006);

Attorney General Opinion 06-2 (March 9, 2006);

Attorney General Opinion 06-2A (Feb. 13, 2007; effective March 9, 2006);

Swan Falls Data And Research Program Status Report by Idaho Technical Committee on Hydrology (Nov. 1987);

Memorandum to Alan Robertson, Wayne Haas, and Norm Young from Paul Castelin regarding streamflow depletion criteria, Snake River corridor, Milner to Murphy (Sept. 18, 1985);

Letter to A. Kenneth Dunn from Clive J. Strong regarding permit no. 36-7815 and 36-7894 of Idaho Land and Cattle, Inc. d/b/a Heiss Charolais Ranch (Sept. 17, 1986);

Letter to Clive J. Strong from Thomas G. Nelson regarding permit nos. 36-7815 and 36-7894 (Sept. 25, 1986);

Minutes of the Second Meeting of the Snake River Advisory Studies Committee (Mar. 14, 1985);

Meeting of the Snake River Studies Advisory Committee (Oct. 3, 1985);

Minutes of the Sixth Meeting of the Snake River Technical Advisory Committee (Oct. 11, 1983);

Resolution Before The Idaho Water Resources Board In The Matter of Policy 32 of the State Water Plan (Mar. 1, 1985);

Recordings of Idaho Water Resources Board public information meetings on October 25, 1984, October 31, 1984 and November 1, 1984;

Recordings of Senate Resources & Environment Committee meetings of January 18, 1985, January 21, 1985, January 25, 1985 and February 1, 1985;

The State identifies the following persons as having knowledge of the facts. The State has made a good faith effort to determine the contact information for these persons in the time allotted, and will supplement with any additional such information required under the Idaho Rules of Civil Procedure:

<u>Name</u>	<u>Address & Telephone Number</u>
Hal Anderson	Idaho Department of Water Resources, 322 E. Front Street, Boise, Idaho, 83720-0098; 208-287-4800
Cecil Andrus	Office of Governor, 999 Main St., Boise, ID, 83702, (208) 332-0102
David Barber	Office of the Attorney General; PO Box 83720, Boise, ID 83720; (208) 334-2400
Charles Brockway	
James E. Bruce	
Ron Carlson	P.O. Box 322, Boise, ID. 83720-0098, (208) 287-4800
Ben Cavaness	
Sheri Chapman	
Patrick Costello	University of Idaho, College of Law 208-885-4628
Mike Crapo	251 E. Front Street, Suite 205, Boise, Idaho 83702 208-334-1776
Paul Cunningham	

Karl J. Dreher	Brown and Caldwell; 1697 Cole Blvd., Suite 200, Golden, CO 80401; (303) 239-5400
A. Kenneth Dunn	44640 S. Heritage Palms Drive, Indio, California 92201 760-360-2931
John V. Evans	
Kent Foster	Holden, Kidwell, Hahn & Crapo, PLLC; PO Box 50130, Idaho Falls, ID 83405; (208) 523-0620
Richard L. Gardner	752 E. Bracemere Road, Boise, Idaho 83702 208-859-8878
Mike Gilmore	Office of the Attorney General; PO Box 83720, Boise, ID 83720; (208) 334-4130
Gene Gray	
Wayne Haas	
Richard Hahn	
Joel Hamilton	
John Hatch	
Richard High	
Paul Jauregui	PO Box 8802 Boise, ID 83707; (208) 412-7651
Jim Jones	Idaho Supreme Court; PO Box 83720, Boise ID 83720; (208) 334-3186
John Keyes	
Patrick Kole	Idaho Potato Commission; PO Box 1670, Eagle, ID 83616-9104; (208) 334-2350
Logan Lantham	
Roger Ling	Ling, Robinson & Walker; PO Box 396, Rupert, ID 83350; (208) 436-4717

Tim Luke	Idaho Department of Water Resources, 322 E. Front Street, Boise, Idaho, 83720-0098; 208-287-4800
James McClure	
Brian McGrath	
Eileen Martin	
Thomas G. Nelson	9 th Circuit Court of Appeals; PO Box 1339, Boise, ID 83701; (208) 334-9744
Laird Noh	
Mike Nugent	
Greg Panter	Idaho Power Co., 1221 W. Idaho St., Boise, ID. 83702 (208) 388-2200
John Peavey	302 Sitting Bull Dr, Halley, ID 83333-8776 (208) 788-5111
Phillip J. Rassler	Office of the Attorney General; PO Box 83720, Boise, ID 83720; (208) 287-4808
Don Reading	
Ray Rigby	Rigby, Andrus & Moeller, Chtd.; PO Box 250, Rexburg, ID 83440; (208) 356-3633
William Ringert	Ringert Clark, Chtd. PO Box 105, Hammett, ID 83627; (208) 366-7993
John Runft	Runft & Steele Law Offices; 1020 W. Main Street, Ste. 400, Boise, ID 83702; (208) 333-8506
Dave Rydallch	
Alan Robertson	
Glen Saxton	7823 West Apache Way, Boise, ID 83714; (208) 853-2743
Jim Shawver	

Frank Sherman

Richard Stallings

206 N Arthur Ave, Pocatello, ID 83204-3104
(208) 232-9468

Clive J. Strong

Office of the Attorney General; PO Box 83720, Boise, ID 83720;
(208) 334-4126

Perry Swisher

8660 Oakmont Dr., Boise, ID 83704, (208) 376-3477

Steve Symms

Jim Taney

Larry Taylor

Lynn Tomlinaga

Dave Tuthill

Idaho Department of Water Resources; 322 E. Front Street, Boise,
ID 83720; (208) 287-4800

Conley Ward
1200

Givens Pursley LLP; PO Box 2720, Boise, ID 83701; (208) 388-

Norm Young

ERO Resources Corporation; 3314 Grace Street, Boise, ID 83703;
(208) 373-7983

REQUEST FOR ADMISSION NO. 5: Admit that the Swan Falls Agreement acknowledges and preserves Idaho Power's right and ability to purchase, lease, own, or otherwise acquire additional water for power purposes over and above the Swan Falls Daily Minimum Flows provided for in the Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Denied.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 5: The Swan Falls Agreement speaks for itself and the applicable provision, Paragraph 7E, provides that Idaho Power 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." Further, the term "Swan Falls Daily Minimum Flows" does not appear in the Agreement, and the definition of "Swan Falls Daily Minimum Flows" in Idaho Power Company's First Set of Discovery Requests conflates or confuses two discrete legal standards created under the settlement: (1) the minimum flows as established by

the State Water Plan amendments implementing the Swan Falls settlement, and (2) the upper limit of Idaho Power Company's water right defined by Paragraph 7A of the Agreement.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 – Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 6: Admit that additional water purchased, leased, owned, or otherwise acquired by Idaho Power for use below the Murphy Gage is not limited by or subject to the Swan Falls Agreement and must be administered and accounted for by the State of Idaho at the Murphy Gage in addition to the Swan Falls Daily Minimum Flows.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Denied.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 6: The Swan Falls Agreement speaks for itself and the applicable provisions, Paragraphs 7B and 7E, provide that “fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows,” and that “Company's ability to purchase, lease, own, or otherwise acquire 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.” Further, Idaho Power Company's definition of the term “Swan Falls Daily Minimum Flows” is incorrect. See also prior responses, including but not limited to the Response To Interrogatory No. 1 – Request For Admission No. 5, which the State incorporates herein by this reference.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 – Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 7: Admit that for 2006 and all years prior to 2006 during which the Bureau of Reclamation had a flow augmentation program, the State calculated the Swan Falls Daily Minimum Flows without taking into account additional water which was acquired by the Bureau of Reclamation and released into the Snake River as flow augmentation to aid migrating salmon pursuant to obligations under the Endangered Species Act.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 7: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these

objections, the State responds that for the years prior to 2003, the flows measured at the Murphy Gage were in excess of the sum of the minimum flows, senior water rights and augmentation flows, and therefore it was unnecessary for the Department to administer water rights in the Milner to Murphy reach of the Snake River, including but not limited to the minimum flows established at the Murphy Gage. Beginning in about 2003, as the flows measured at Murphy began to approach the sum of the minimum flows, senior water rights and the augmentation flows, the Department began to consider how to appropriately administer these various rights.

IDWR administers the minimum flows established by the Swan Falls settlement as an obligation separate and apart from additional water acquired by the United States Bureau of Reclamation and released into the Snake River as flow augmentation. The Department allocates the flow at the Murphy Gage to satisfy the separate obligations under the Swan Falls settlement and the Bureau of Reclamation flow augmentation water. Further, Idaho Power Company's definition of the term "Swan Falls Daily Minimum Flows" is incorrect. See also prior responses, including but not limited to the Response To Interrogatory No. 1 – Request For Admission No. 5, which the State incorporates herein by this reference.

REQUEST FOR ADMISSION NO. 8: Admit that the State's practice of including the Bureau of Reclamation flow augmentation water in the calculation of the Swan Falls Daily Minimum Flows in 2007 is a departure from its prior practice.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 8: Objection. This Interrogatory and the corresponding Request for Production of Documents exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to exhaustion of administrative remedies requirement. Without waiving these objections, the State responds that the Department's practice is and has been to administer flow augmentation water and the minimum flows established at Murphy as separate obligations, and therefore additional water acquired by the United States Bureau of Reclamation and released into the Snake River as flow augmentation is accounted for separate and apart from the minimum flows. The Department calculates the combined quantities of these separate obligations only for purposes of administrative convenience in determining whether flow augmentation obligations have been satisfied. This method of calculation in no way modifies the minimum flows established under the Swan Falls settlement. Further, Idaho Power Company's definition of the term "Swan Falls Daily Minimum Flows" is incorrect. See also prior responses, including but not limited to the Responses To Interrogatory No. 1 – Requests For Admission Nos. 5 and 7, which the State incorporates herein by this reference.

REQUEST FOR ADMISSION NO. 9: Admit that through the "Mediator's Term Sheet" agreement of the Snake River Water Rights Act of 2004, 118 Stat. 3431, the State agreed that the

minimum flows established by the Swan Falls Agreement, designated in the "Mediator's Term Sheet" agreement as Tier 1 - Minimum Flow, shall be decreed in the SRBA to the Idaho Water Resource Board.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Objection. This Request for Admission exceeds the scope of the issues defined in the Order. Without waiving this objection, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 9: Objection. This Interrogatory and the corresponding Request for Production of Documents exceeds the scope of the issues defined in the Order. Without waiving this objection, the State responds that the "Mediator's Term Sheet" speaks for itself and the applicable provision, paragraph III.B. (entitled "Tier 1 - Minimum Flows"), provides that "[t]he minimum flows established by the Swan Falls Agreement shall be decreed in the SRBA to the Idaho Water Resource Board." It should also be noted that while the Swan Falls Agreement of October 25, 1984, contemplated and was expressly conditioned on the passage of amendments to the State Water Plan that would establish enhanced minimum flows at the Murphy Gage, the Agreement did not in and of itself establish such minimum flows. Rather, the Idaho Water Resource Board established these minimum flows for via implementing amendments to the State Water Plan, which were in turn ratified by the Idaho Legislature. See also prior responses, including but not limited to the Response To Interrogatory No. 1 - Request For Admission No. 5, which the State incorporates herein by this reference.

REQUEST FOR ADMISSION NO. 10: Admit that through the "Mediator's Term Sheet" agreement, the State, through IDWR, committed to regulate the Tier 1 - Minimum Flow established by the "Mediator's Term Sheet" agreement in accordance with the Swan Falls Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 10 & INTERROGATORY NO. 1: Objection. This Request for Admission exceeds the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 10: Objection. This Interrogatory and the corresponding Request for Production of Documents exceeds the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State responds that Paragraph III.B. of the "Mediator's Term Sheet" speaks for itself and provides that "[i]f the Idaho Department of Water Resources fails to regulate these minimum instream flows in accordance with the Swan Falls Agreement, then any party to this agreement shall be entitled to seek injunctive relief through the state district court responsible for the SRBA."

REQUEST FOR ADMISSION NO. 11: Admit that the State as a party to the "Mediator's Term Sheet" agreement contemplated that the Tier 2 - Flow Augmentation instream flows would be in

addition to the Tier I - Minimum Flow instream flows described in the "Mediator's Term Sheet" agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 11: Objection. This Request for Admission exceeds the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State denies this Request for Admission to the extent it suggests that the Nez Perce settlement agreement altered the Swan Falls Agreement or the legislation and State Water Plan amendments implementing the Swan Falls Agreement.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 11: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State responds that the State contemplated that the Tier - 2 Flow Augmentation program described in the "Mediator's Term Sheet" would provide opportunities to address or resolve issues arising under the Endangered Species Act in a manner consistent with Idaho law, including the Swan Falls settlement and the implementing legislation. This Request for Admission incorrectly suggests that the Nez Perce settlement agreement was intended to modify or alter the Swan Falls Agreement and/or the implementing legislation and State Water Plan amendments. See also prior responses, including but not limited to the Response to Interrogatory No. 1 - Request For Admission No. 7, which the State incorporates herein by this reference.

REQUEST FOR ADMISSION NO. 12: Admit that the trustee of any trust established under the Swan Falls Agreement is the State of Idaho, acting by and through the Governor.

RESPONSE TO REQUEST FOR ADMISSION NO. 12: Denied.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 12: The Swan Falls Agreement did not establish a trust. Rather, the Agreement provides that "the State shall . . . assert the existence of water rights held in trust by the State." The Idaho Legislature created the trust by enacting the subordination legislation proposed by the Agreement. The subordination legislation speaks for itself and provides, among other things, that the water rights in question "shall be held in trust by the State of Idaho, by and through the governor. . . ." Idaho Code § 42-203B(2).

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 - Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 13: (a) Admit that the Swan Falls Agreement is premised on an assumption by the parties to the Agreement that then existing water uses in the Snake River basin above Swan Falls Dam resulted in a potential irrigation season low flow of approximately 4,500 c.f.s. at the Murphy Gage on an average daily basis. (b) Admit that based on such assumption, the Swan Falls Agreement set the minimum irrigation season low flow at 3,900

c.f.s., 600 c.f.s. below the assumed minimum of 4,500 c.f.s., in order to allow the State to authorize further development of consumptive water uses in the Snake River Basin including the ESPA without violating the 3,900 c.f.s. minimum flow established by the Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 13: Denied.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 13: The Swan Falls Agreement expressly provides that it sets forth all of the parties' understandings, but does not recite, refer to or otherwise purport to rely on any predicate assumptions, understandings or stipulated facts with respect to the then-existing water uses in the Snake River basin above Swan Falls, or the effect of such uses on then-existing flows of the Snake River. Further, the parties and the Idaho Legislature recognized that the data and information regarding existing uses of water above Swan Falls dam in 1984 was incomplete and structured the overall settlement and the implementing legislation accordingly. This structure authorized the State to subordinate the water rights held in trust in order to allow future development of consumptive uses of water above Swan Falls Dam under rights acquired pursuant to State law, including compliance with the requirements of Idaho Code § 42-203C, and protection of the minimum flows established at the Murphy Gage. It should be noted that the Swan Falls Agreement of October 25, 1984 did not establish the minimum flow of 3,900 c.f.s. at the Murphy Gage in and of itself, rather this minimum flow was established by amendments to the State Water Plan that implemented the overall Swan Falls settlement. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 - Requests for Admission Nos. 5 and 9, which the State incorporates herein by this reference.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 - Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 14: Admit that prior to the execution of the Swan Falls Agreement, all trust water had been previously appropriated under Idaho Power's water rights described in Paragraph 7 of the Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 14: The State admits that the flows beneficially used under the water rights held in trust by the State were originally appropriated by Idaho Power Company. The State denies the remainder of this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 14: The concept of "trust water" as defined and used by Idaho Power Company in its First Set of Discovery Requests and in the Complaint is contrary to the Swan Falls settlement and applicable Idaho law. The Swan Falls Agreement expressly contemplates "water rights held in trust by the State," and makes no references to "trust water." The legislation that implements the settlement proposed in the Agreement also defines the trust as holding water rights rather than water. See the Response to Request for Admission No. 4, and the Response to Interrogatory No. 1 - Request for Admission No. 4, including the documents and persons identified therein, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 15: Admit that prior to the execution of the Swan Falls Agreement, there was not 600 c.f.s. of unappropriated water to constitute the trust water described in Paragraph 7 of the Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 15: Denied.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 15: Paragraph 7 of the Swan Falls Agreement speaks for itself and does not contain or describe the terms "trust" or "trust water." Further, the flows of the Snake River as measured at the Murphy Gage in 1984 contained more than 600 c.f.s. of unappropriated water in spring runoff flows alone. This request is also incorrect to the extent it appears to characterize the flows that are beneficially used under the water rights held in trust by the State as "unappropriated." They were appropriated prior to the execution of the Agreement and remained appropriated thereafter, but subject to subordination by the State of Idaho to new water rights acquired pursuant to State law. See also prior responses, including but not limited to the Response to Request for Admission No. 14, and the Response to Interrogatory No. 1 - Request for Admission No. 14, which the State incorporates herein by this reference.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 - Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 16: Admit that under the Swan Falls Agreement, the State is obligated to take reasonable steps to insure the Swan Falls Daily Minimum Flows.

RESPONSE TO REQUEST FOR ADMISSION NO. 16: Denied.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 16: The Swan Falls Agreement speaks for itself and the applicable provision, Paragraph 7B, provides that Idaho Power Company "retains the right to compel [the] State to take reasonable steps to insure the average daily flows." Further, Idaho Power Company's definition of the term "Swan Falls Daily Minimum Flows" is incorrect. See also prior responses, including but not limited to the Response to Interrogatory No. 1 - Request for Admission No. 5, which the State incorporates herein by this reference.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 - Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 17: Admit that under the Swan Falls Agreement, the State is obligated to not issue any permits in the Snake River Basin for ground or surface water use after

October 1, 1984, if the use of water under such permits would deplete the flow of the Snake River below the Swan Falls Daily Minimum Flows.

RESPONSE TO REQUEST FOR ADMISSION NO. 17: Denied.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 17: Nothing in the Swan Falls Agreement imposes, requires or contemplates that a permitting moratorium is the only allowable means for satisfying the minimum flows at the Murphy Gage. Further, such an approach is contrary to the Idaho Code §§ 42-203B and 42-203C, the applicable administrative rules, the State Water Plan, and the structure and framework of the overall Swan Falls settlement as proposed in the Agreement. Further, Idaho Power Company's definition of the term "Swan Falls Daily Minimum Flows" is incorrect. See also prior responses, including but not limited to the Response To Interrogatory No. 1 - Request For Admission No. 5, which the State incorporates herein by this reference.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 - Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 18: Admit that because of the hydrologic interconnectivity of the ESPA and the Snake River, withdrawals of ground water from the ESPA impact flows in the River, and vice-versa.

RESPONSE TO REQUEST FOR ADMISSION NO. 18: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State admits that ground water withdrawals from the ESPA can, under certain circumstances and subject to a variety of factors, affect surface flows in the Snake River to varying degrees. The State otherwise denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 18: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State responds that this Request for Admission oversimplifies a matter of considerable complexity, and which is one of the central issues presented and addressed in the conjunctive administration of water rights in interconnected ground water sources and surface water sources by the Director and the Department. This is demonstrated by the Director's orders in such matters and applicable decisions of the Idaho Supreme Court. For instance, it is incorrect to characterize the physical relationship between the ESPA and the Snake River as a generalized "hydrologic interconnectivity." Rather, ground water in the ESPA is hydraulically connected to the Snake River and tributary surface sources at various places and to varying degrees. Amended Order of May 2, 2005 at 5 ¶ 23 (*In the Matter of Distribution of Water to Various Water Rights Held By or For the Benefit of A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District,*

North Side Canal Company and Twin Falls Canal Company.) Moreover, this Request for Admission improperly condenses a variety of complex factual and legal questions regarding the relationship between and effects of diversions or withdrawals from interconnected surface water sources and ground water sources into a single yes-or-no question of whether sources are hydraulically connected. "Conjunctive administration requires knowledge by the Department of the relative priorities of the ground and surface water rights, how the various ground and surface water sources are interconnected, and how, when, where and to what extent the diversion and use of water from one source impacts the water flows in that source and other sources. That is precisely the reason for the [Conjunctive Management] Rules and the need for analysis and administration by the Director." *American Falls Res. Dist. No. 2 v. IDWR*, 143 Idaho 862, ___, 154 P.3d 433, 448 (2007) (internal quotation marks and citation omitted). Further, it is imprecise to assert that flows in the Snake River affect "withdrawals of ground water" from the ESPA. Rather, flows of the Snake River can, under certain circumstances and subject to a variety of factors, affect ground water levels in the ESPA in various ways to varying degrees.

REQUEST FOR ADMISSION NO. 12: Admit that the depletive effect of withdrawals of ground water from the ESPA on Snake River flows is delayed for a period, often many years, depending upon various factors, including the distance from the well to the River.

RESPONSE TO REQUEST FOR ADMISSION NO. 12: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State admits that the depletive effects of ground water withdrawals from the ESPA on Snake River flows can be delayed to varying degrees depending on a number of factors, including the distance from the well to the river, but are not necessarily delayed in all cases or circumstances. The State otherwise denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 12: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State responds that this Request for Admission oversimplifies a matter of considerable complexity, and which is one of the central issues presented and addressed in the conjunctive administration of water rights in interconnected ground water sources and surface water sources by the Director and the Department. This is demonstrated by the Director's orders in such matters: "The time required for depletionary effects in a hydraulically-connected reach of the Snake River to first be expressed, the time required for those depletionary effects to reach maximum amounts . . . can range from days to years or even decades . . ." Amended Order of May 2, 2005 at 6 ¶ 27. Factors affecting the timing of depletionary effects include "the proximity of the well to various hydraulically-connected reaches, the transmissivity of the aquifer (hydraulic conductivity multiplied by saturated thickness) between the well and the hydraulically-connected reach of the Snake River, the riverbed conductivity, the specific yield of the aquifer (ratio of the volume of water yielded from a portion of the aquifer to the volume of that portion of the aquifer), the period of time over which the ground water is pumped from the well, and the amount of ground water pumped that is consumptively used." *Id.* ¶ 26.

REQUEST FOR ADMISSION NO. 20: Admit that existing water uses in the Snake River Basin above the Murphy Gage up to and including 1984 were causing depletions in the hydrologic system, which were not manifested in reduced flows in the Snake River at the Murphy Gage in 1984.

RESPONSE TO REQUEST FOR ADMISSION NO. 20 & INTERROGATORY NO. 1: Denied.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 20: This Request for Admission oversimplifies matters of considerable complexity and cannot be admitted as formulated. The request lumps all uses of water up to and including 1984, and all of their depletive effects, into a single group when in fact each individual use has different effects over time. Some of the existing water uses were fully reflected in flows in 1984, but some amounts of the full depletive effect of some of the existing uses of water were probably not fully expressed in the flows at the Murphy Gage in 1984. See also prior responses, including but not limited to the State's Responses To Interrogatory No. 1 - Requests For Admission Nos. 18 and 19, which the State incorporates herein by this reference. In any event, whether the depletive effects of existing uses were fully reflected in the flows at the Murphy Gage in 1984 is irrelevant because the Swan Falls settlement anticipated and provided for the depletive effects of water rights existing before 1984 as well as all future water rights above the Murphy Gage acquired pursuant to State law.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 - Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 21: Admit that the total delayed depletive effect of ground water withdrawals from the ESPA occurring before 1984 is not yet reflected in Snake River flows at the Murphy Gage.

RESPONSE TO REQUEST FOR ADMISSION NO. 21: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 21: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, this request oversimplifies complex water right administration matters and cannot be admitted as formulated for reasons expressed in prior responses, including but not limited to the Response To Interrogatory No. 1 - Request For Admission No. 20, which the State incorporates herein by this reference.

REQUEST FOR ADMISSION NO. 22: Admit that on July 12, 2003, average daily flows in the Snake River measured at the Murphy Gage and calculated under the Swan Falls Agreement fell below the Swan Falls Daily Minimum Flows.

RESPONSE TO REQUEST FOR ADMISSION NO. 22: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 22: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State responds that United States Geological Survey and Department data show that the flows at the Murphy Gage on July 12, 2003, exceeded the minimum flow of 3,900 c.f.s. In addition, the flows at Murphy on that date would have been even higher but for fluctuations resulting from the operation of Idaho Power Company facilities above Murphy. Further, Idaho Power Company's definition of the term "Swan Falls Daily Minimum Flows" is incorrect. See also prior responses, including but not limited to the Response To Interrogatory No. 1 – Request For Admission No. 5, which the State incorporates herein by this reference.

REQUEST FOR ADMISSION NO. 23: Admit that the flows in the Snake River at the Murphy Gage on July 12, 2003 did not reflect the total delayed depletive effect of ground water withdrawals from the ESPA that had been allowed to occur by the State of Idaho prior to October 1, 1984.

RESPONSE TO REQUEST FOR ADMISSION NO. 23: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 23: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State responds that this request oversimplifies complex water rights administration matters and cannot be admitted as formulated for reasons expressed in prior responses, including but not limited to Responses To Interrogatory No. 1 – Requests For Admission No. 18 – 21, which the State incorporates herein by this reference. Further, whether the total delayed depletive effects of ground water withdrawals from the ESPA that had occurred prior to 1984 were fully reflected in the flows at the Murphy Gage on July 12, 2003, is irrelevant because the Swan Falls settlement anticipated and provided for the depletive effects of water rights existing before 1984 as well as all future water rights above the Murphy Gage acquired pursuant to State law.

REQUEST FOR ADMISSION NO. 24: Admit that the flows in the Snake River at the Murphy Gage on July 12, 2003 did not reflect the total delayed depletive effect of ground water withdrawals from the ESPA from trust water permit/license and non-trust water permit/license appropriations that have been allowed to occur by the State of Idaho since October 1, 1984.

RESPONSE TO REQUEST FOR ADMISSION NO. 24: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 24: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State responds that this request oversimplifies complex water rights administration matters and cannot be admitted as formulated for reasons expressed in prior responses, including but not limited to Responses To Interrogatory No. 1 - Requests For Admission Nos. 14, 18 - 21 and 23, which the State incorporates herein by this reference.

REQUEST FOR ADMISSION NO. 25: Admit that at the time of the Swan Falls Agreement, the Snake River Basin was over appropriated after consideration of the Swan Falls Daily Minimum Flows.

RESPONSE TO REQUEST FOR ADMISSION NO. 25: Denied.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 25: The State denies this Request for Admission because Idaho Power Company's definition of "over appropriation" and "Swan Falls Daily Minimum Flows" are contrary to Idaho law and/or the Swan Falls settlement. See also prior responses, including but not limited to the Responses To Interrogatory No. 1 - Requests For Admission Nos. 1, 5 and 15, which the State incorporates herein by this reference.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 - Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 26: Admit that the ESPA and the Snake River upstream from the Murphy Gage are currently over appropriated and threaten the Swan Falls Daily Minimum Flows insured by the Swan Falls Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 26: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under

Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 26: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission because Idaho Power Company's definition of "over appropriation" and "Swan Falls Daily Minimum Flows" are contrary to Idaho law and/or the Swan Falls settlement. See also prior responses, including but not limited to the Responses To Interrogatory No. 1 - Requests For Admission Nos. 1, 5, 15, and 21-24, which the State incorporates herein by this reference. Further, the Swan Falls Agreement does not "insure" the minimum flows at the Murphy Gage. Rather, the applicable provision of the Agreement, Paragraph 7B, provides that Idaho Power Company "retains the right to compel State to take reasonable steps to insure the average daily flows . . ."

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 - Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 27: Admit that there never was any trust water available for use by post-1984 water uses, there was no trust res, and there exists no trust under the Swan Falls Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 27: Denied.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 27: The concept of "trust water" as defined and used by Idaho Power Company is contrary to the Swan Falls settlement and applicable Idaho law. Further, the trust was established by legislation that provides that the res of the trust is water rights. Idaho Code § 42-203B. In addition, flows above the minimum flows established at the Murphy Gage pursuant to the Swan Falls settlement were available for use by post-1984 uses. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 - Requests For Admission Nos. 14, 15 and 21-24, which the State incorporates herein by reference.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 - Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 28: Admit that IDWR has processed and approved numerous applications for new appropriations of trust water since 1984.

RESPONSE TO REQUEST FOR ADMISSION NO. 28: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under

Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 28: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State responds the concept of “trust water” as defined and used by Idaho Power Company is contrary to the Swan Falls settlement and applicable Idaho law. Rather than authorizing “applications for new appropriations of trust water,” the State through the Department has subordinated the water rights held in trust to upstream uses upon the Department’s determination that an application for such a use complies with State law, including the requirements of Idaho Code § 42-203C. The Department has approved a number of permit applications under these requirements since 1984. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests For Admission Nos. 4, 14, 15 and 27, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 29: Admit that through the issuance of trust water permits, IDWR authorized the use of trust water that did, and does, not exist.

RESPONSE TO REQUEST FOR ADMISSION NO. 29: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 29: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State responds that the concept of “trust water” as defined and used by Idaho Power Company is contrary to the Swan Falls settlement and applicable Idaho law. Further, water was available for use under new water rights acquired in compliance with State law, including the requirements of Idaho Code § 42-203C, because such compliance subordinated the water rights held in trust by the State. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests for Admission Nos. 4, 14, 15 and 27-28, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 30: Admit that the water supply and public interest analyses which IDWR performed to issue trust water permits do not reflect the present hydrologic conditions of the ESPA and the Snake River.

RESPONSE TO REQUEST FOR ADMISSION NO. 30: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under

Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 30: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State responds that the concepts of “trust water” and “trust water permits” as defined and used by Idaho Power Company are contrary to the Swan Falls settlement and applicable Idaho law. Further, the analyses the Department has performed in subordinating the water rights held in trust to new uses are consistent with the requirements of controlling State law. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests For Admission Nos. 4, 14, 15 and 27-29, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 31: Admit that Idaho Power owns the following water rights (bracketed names below refer to Company Projects): 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).

RESPONSE TO REQUEST FOR ADMISSION NO. 31: The State admits only that Idaho Power Company owns water right 02-0100, and owns portions of water rights 02-2032, 02-4000 and 02-4001 as reflected in the Director’s Report for Basin 2. The State denies the remainder of this request for admission. See also prior responses, including but not limited to the Responses To Requests For Admission Nos. 4 and 14, which the State incorporates herein by reference.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 31: With the exception of the water right 02-0100 and portions of water rights 02-2032, 02-4000 and 02-4001, as reflected in the Director’s Report for Basin 2, the State holds legal title to the water rights listed in this Request for Admission in trust for the benefit of Idaho Power Company and the People of the State of Idaho. Idaho Power Company, as a beneficiary of the trust, retains the right to beneficially use the flows at the above-referenced facilities for power purposes, subject to subordination to and depletion by junior uses under rights acquired pursuant to State law, including compliance with the requirements of Idaho Code § 42-203C. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests For Admission Nos. 4 and 14, which the State incorporates herein by reference.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 – Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 32: Admit that the Attorney General and IDWR have asserted that legal title to a portion of Idaho Power's water rights under the Swan Falls Agreement is held by the State of Idaho, and that equitable title to a portion of those water rights is held by Idaho Power and by the State of Idaho.

RESPONSE TO REQUEST FOR ADMISSION NO. 32: Objection. This Request for Admission exceeds the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State admits that the Attorney General has asserted in the SRBA, as counsel for the State of Idaho, that the State holds legal title to certain water rights pursuant to the Swan Falls settlement, and that the equitable title to those water rights is held by the People of the State of Idaho and Idaho Power Company. The State denies the remainder of this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 32: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State responds that the Department has made no "assertions" in this matter. The Department filed Director's Reports in the SRBA, as required by statute. The Director's Reports are not "assertions" but rather the Director's determination of the elements of the water right, Idaho Code § 42-1411. Further, the Director and the Department are not parties or claimants on behalf of the State in the SRBA. Idaho Code §§ 42-1401B(2)-(3); 42-1041A(2)-(3). In addition, the Attorney General asserted in the Notices of Change of Water Right Ownership that equitable title is held by Idaho Power Company and the People of the State of Idaho, while the Director recommended that equitable title be decreed in Idaho Power Company and in the "State of Idaho, in and for the people of the State of Idaho." In addition, the water rights as to which ownership is disputed in this consolidated subcase are not "Idaho Power's water rights." Rather, the State holds legal title to these water rights in trust pursuant to Idaho Code § 42-203B and the other elements of the Swan Falls settlement. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 - Requests for Admission Nos. 4, 14, and 31, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 33: Admit that the Governor has never asserted that the State holds legal title to a portion of Idaho Power's water rights under the Swan Falls Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 33: Denied.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 33: While in office, former Governors John Evans and Cecil Andrus, throughout the implementation of the Swan Falls settlement, asserted that the State holds legal title to the hydropower water rights that are the subject of the settlement, in their statements and actions and those of their counsel and cabinet members. Such actions included, but are not limited to, testimony by or on behalf of the Governor to the legislative committees that considered the "subordination legislation" proposed by the Swan Falls settlement, testimony by or on behalf of the Governor to the Idaho Water Resources Board regarding the amendments to the State Water Plan proposed by the Swan Falls

settlement, participation in drafting the Statement of Legislative Intent for the "subordination legislation," signing of the "subordination legislation," testimony and information provided to the Federal Energy Regulatory Commission regarding the Swan Falls settlement, and the processing and approval of applications to appropriate water under the criteria and requirements established by Idaho Code § 42-203C, and the other statutes and administrative rules that implement the Swan Falls settlement. In addition, former Governor Evans asserted that the State holds legal title to a portion of the water rights in his testimony in hearings on House Bill 800 on March 27, 2006, before the Senate Resources & Environment Committee. Further, the water rights as to which ownership is disputed in this consolidated subcase are not "Idaho Power's water rights." Rather, the State holds legal title to these water rights in trust pursuant to Idaho Code § 42-203B and the other elements of the Swan Falls settlement. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests for Admission Nos. 4, 14, 31, 32, which the State incorporates herein by reference.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 – Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 34: Admit that one purpose of the State in seeking legal title to a portion of Idaho Power's water rights is to subordinate those water rights to ground water recharge.

RESPONSE TO REQUEST FOR ADMISSION NO. 34: Denied.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 34: The State obtained legal title to certain water rights formerly claimed or held by Idaho Power Company in 1985, upon the enactment of Idaho Code § 42-203B. The State's purpose at that time was, and continues to be, to ensure that the water rights held in trust are be subordinated to future upstream water rights acquired pursuant to State law. The State is participating in this matter to ensure that the SRBA partial decrees for the water rights in question recognize and reflect what the Idaho Legislature already accomplished in Idaho Code § 42-203B, which provides that "[t]he 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, including compliance with the requirements of section 42-203C, Idaho Code." The State's purpose is to fulfill its obligations under the Swan Falls Agreement, to uphold and give effect to the Idaho laws enacted to implement the settlement proposed through the Agreement. The water rights as to which ownership is disputed in this consolidated subcase are not "Idaho Power's water rights." Rather, the State holds legal title to these water rights in trust pursuant to Idaho Code § 42-203B and the other elements of the Swan Falls settlement. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests for Admission Nos. 4, 14, 28, 31, 32 and 33, which the State incorporates herein by reference.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 – Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 35: Admit that the first notification provided by the Idaho Attorney General to Idaho Power that the Attorney General intended to file the Notices of Change in Water Right Ownership with IDWR was a telephone call from two members of the Attorney General's staff on December 22, 2006, the same day that the Attorney General filed the Notices with IDWR and that Idaho Power received them.

RESPONSE TO REQUEST FOR ADMISSION NO. 35: Objection. This Request for Admission exceeds the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State admits that on December 22, 2006, the Attorney General notified Idaho Power Company that the State intended to file Notices of Change in Water Right Ownership, and would file such Notices that day. The State denies the remainder of this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 35: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State responds that this request is incorrect to the extent it implies that the Attorney General acted in his personal capacity when he filed the Notices of Change in Water Right Ownership. The Attorney General filed the Notices, and gave notification of this filing to Idaho Power Company, in his constitutional and statutory capacity as counsel for the State of Idaho. Further, the December 22, 2006, telephone call was placed as a courtesy, and was made directly to Idaho Power Company's general counsel, James C. Tucker. Formal written notification was provided to Idaho Power Company, by hand delivery addressed to Mr. Tucker, on the same day. This written notification included copies of all documents filed with the Department on that day, including the Notices, the Attorney General's explanatory cover letter to the Department, and the volume of supporting documentation filed in support of the Notices.

REQUEST FOR ADMISSION NO. 36: Admit that prior to the Attorney General's filing of the Notices of Change in Water Right Ownership, representatives of the Attorney General's Office discussed the State's claim of ownership to a portion of Idaho Power's water rights and its intent to file notices of change of ownership with the Director, or representatives, of IDWR.

RESPONSE TO REQUEST FOR ADMISSION NO. 36: Objection. This Request for Admission exceeds the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State admits that prior to filing the Notices of Change of Water Right Ownership, the Attorney General notified the Department that the State intended to file the Notices. The State denies the remainder of this request for admission.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 36: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. The State further objects to this Interrogatory and the corresponding Request for Production of

Documents to the extent they might be understood to seek disclosure of privileged attorney-client communications. Without waiving these objections, the State responds that this request incorrectly suggests that it was improper for the State to notify the Department of its intent to file the Notices of Change of Water Right Ownership. In addition, the water rights as to which ownership is disputed in this consolidated subcase are not "Idaho Power's water rights." Rather, the State holds legal title to these water rights in trust pursuant to Idaho Code § 42-203B and the other elements of the Swan Falls settlement. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests for Admission Nos. 4 and 14, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 37: Admit that representatives of the Attorney General's Office and the Director, or representatives, of IDWR coordinated the filing of the Notices of Change in Water Right Ownership and the issuance of the Director's Report for Basin 2.

RESPONSE TO REQUEST FOR ADMISSION NO. 37: Objection. This Request for Admission exceeds the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 37: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State responds that this request incorrectly suggests that it was improper for the Department to take into account the State's Notices of Change of Water Right Ownership when preparing the Director's Report for Basin 2. The State independently filed the Notices of Change of Water Right Ownership consistent with the requirements of the Swan Falls Agreement. The Notices were filed to preserve State's ownership of the water rights within the time frames established by the Department for filing the Director's Report in Basin 2. The Director in his statutory role was required to consider these Notices in preparing his recommendations.

REQUEST FOR ADMISSION NO. 38: Admit that neither the Director, nor representatives, of IDWR conducted any independent investigation of the validity of the Notices of Change in Water Right Ownership filed by the Attorney General or the basis for the claims of ownership asserted in such Notices.

RESPONSE TO REQUEST FOR ADMISSION NO. 38: Objection. This Request for Admission exceeds the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 38: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State responds that the Attorney General filed the Notices on behalf of the State. The Department conducted a thorough, independent review and

Investigation of all aspects of the water rights in question, including the State's Notices of Change in Water Right Ownership, in accordance with Idaho law.

REQUEST FOR ADMISSION NO. 39: Admit that the State has never filed a Notice of Claim to a Water Right in the SRBA pursuant to Idaho Code § 42-1409(4) with respect to any of Idaho Power's water rights listed in Paragraph 7 of the Swan Falls Agreement or any other water right held or claimed by Idaho Power.

RESPONSE TO REQUEST FOR ADMISSION NO. 39: The State admits that it has not filed a Notice of Claim to a Water Right for the disputed water rights that are at issue in this consolidated subcase, or for any other water right claimed or held by Idaho Power Company. The State denies the remainder of this Request for Admission and affirmatively asserts that the filing of Notices of Change of Water Right Ownership with the Department complied with the SRBA process for claiming ownership of the water rights that are subject to the Swan Falls Agreement.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 39: The water rights as to which ownership is disputed in this consolidated subcase are not water rights "held" by Idaho Power Company. Rather, the State holds legal title to these water rights in trust pursuant to Idaho Code § 42-203B and the other elements of the Swan Falls settlement. See also prior responses, including but not limited to the Responses to Requests for Admission Nos. 4 and 14, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 40: Admit that the res of any trust created under the Swan Falls Agreement is water and not water rights.

RESPONSE TO REQUEST FOR ADMISSION NO. 40: Denied.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 40: The Swan Falls Agreement did not create a trust. Rather, the Swan Falls Agreement contemplated, and was expressly conditioned on, the creation of the trust by the Idaho Legislature. The trust was established by legislative action through the enactment of the "subordination legislation" proposed by the Agreement, Idaho Code § 42-203B. This statute provides that the trust res consists of water rights. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests for Admission Nos. 4 and 27, which the State incorporates herein by reference.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 – Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 41: Admit that Idaho Power's water rights were not to be available for distribution to new uses pursuant to the Swan Falls Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 41: The State denies this Request for Admission to the extent the phrase "Idaho Power's water rights" means that Idaho Power Company holds legal title to the disputed water rights at issue in this consolidated subcase. The State also denies this Request for Admission to the extent it implies that flows originally appropriated under the hydropower water rights held in trust by the State would not be available for beneficial uses under junior water rights acquired pursuant to applicable State law through subordination of the water rights held in trust. Without waiving these partial denials, the State admits that the water rights were to be held in trust by the State under the Swan Falls settlement for the continuing use for hydropower generation by Idaho Power Company, but subject to the State's authority to subordinate the water rights held in trust to future upstream uses under water rights acquired pursuant to State law.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 41: The water rights as to which ownership is disputed in this consolidated subcase are not "Idaho Power's water rights." Rather, the State holds legal title to these water rights in trust pursuant to Idaho Code § 42-203B and the other elements of the Swan Falls settlement. Further, the Swan Falls settlement as proposed by the Agreement and implemented by legislation provided for flows originally appropriated under the hydropower water rights held in trust by the State to be available for new uses through subordination of the rights held in trust to uses under water rights acquired pursuant to State law, including compliance with the requirements of Idaho Code § 42-203C. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests For Admissions Nos. 4, 14, 28, 29, 31, 34 and 40, which the State incorporates herein by reference.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 – Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 42: Admit that nowhere in the Swan Falls Agreement, or any documents related thereto, is there any reference made to the State of Idaho owning or claiming legal title to Idaho Power's water rights as trustee.

RESPONSE TO REQUEST FOR ADMISSION NO. 42: Denied.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 42: The Agreement, the legislation proposed by the Agreement and enacted to pursuant to it, the relevant legislative history, the implementing administrative rules, and the parties' statements explaining the Agreement and the overall settlement, all contain explicit statements or references that the State owns or claims legal title, to be held in trust, to certain water rights formerly held or claimed by Idaho Power Company. The State also denies this Request for Admission to the extent the phrase "Idaho Power's water rights" means that Idaho Power Company holds legal title to the disputed water rights at issue in this consolidated subcase. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests For Admissions Nos. 4 and 14, which the State incorporates herein by reference.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 - Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 43: Admit that nowhere in the Swan Falls Agreement, or any documents related thereto, is there any reference made to Idaho Power conveying its water rights into a trust.

RESPONSE TO REQUEST FOR ADMISSION NO. 43: Denied.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 43: The main body of the Swan Falls Agreement of October 25, 1984 did not expressly convey the water rights into a trust, but Exhibit 7B to the Agreement proposed the "subordination legislation" that provided for the creation of a State-controlled trust and transfer of the water rights into it. The Agreement was expressly conditioned upon the passage of the "subordination legislation," the creation of the trust, and the conveyance of the water rights into the trust. Further, there are references to Idaho Power Company conveying its water rights into a trust in documents related to the Swan Falls Agreement, such as the record of the proceedings of the Idaho Legislature and the Idaho Water Resource Board with respect to the passage of the legislation and State Water Plan amendments that implemented the overall settlement proposed by the Swan Falls Agreement. See also prior responses, including but not limited to the Response to Interrogatory No. 1 - Request For Admission No. 4, which the State incorporates herein by reference.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 - Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 44: Admit that the State approved applications and issued permits for the use of trust water under new priority dates, not the priority dates of any water rights owned by Idaho Power.

RESPONSE TO REQUEST FOR ADMISSION NO. 44: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 44: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State responds that the Department has not issued "trust water permits" as that term is defined by Idaho Power Company. Rather, the Department has subordinated the water rights held in trust by the State by approving applications for permits to appropriate water under

the requirements of Idaho Code §§ 42-203B and 42-203C, and the other statutes and administrative rules that implement the Swan Falls settlement. The State admits that such permits have different priority dates than those of the water rights held in trust by the State. See also prior responses, including but not limited to the Responses to Requests for Admission Nos. 4, 14-15, 28, 34 and 41, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 45: Admit that until the actions of the State referenced in the Complaint, the State of Idaho has never claimed or asserted legal title to Idaho Power's water rights, requested conveyance of title, otherwise asserted that legal title was necessary for the State of Idaho to undertake its duties as trustee of the trust water, or otherwise contested ownership of Idaho Power's water rights.

RESPONSE TO REQUEST FOR ADMISSION NO. 45: Denied.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 45: The State has asserted legal title to the water rights held in trust, and has asserted that the State's legal ownership of the water rights was and is necessary for the State to carry out its duties as trustee. See also prior responses, including but not limited to the Responses to Requests for Admission Nos. 4, 14-15, 28, 34 and 41, which the State incorporates herein by reference. The State also repeatedly asserted legal title to the water rights in question in periodic discussions between the State and Idaho Power Company regarding the Swan Falls settlement.

The documents that support this response and the persons having knowledge of the facts are identified in the Response To Interrogatory No. 1 – Request For Admission No. 4, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 46: Admit that the State of Idaho through IDWR submitted recommendations to the SRBA Court that water right decrees in Basins 2, 36 and 37 for water rights listed in Paragraph 7 of the Swan Falls Agreement be adjudicated in the name of Idaho Power as the owner of such water rights. (b) Admit that such recommendations were based on IDWR's investigation of Idaho Power's Notices of Claim to a Water Right pursuant to Idaho Code § 42-1410 authorizing and requiring IDWR's investigation of water right claims.

RESPONSE TO REQUEST FOR ADMISSION NO. 46: Objection. This Request for Admission exceeds the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State denies this Request for Admission to the extent it implies that the Department's filing of Director's reports for Basins 2, 36 and 37 in the SRBA was an action on behalf of the State in its capacity as a party to the SRBA. The State also denies that the Director filed reports in the SRBA court recommending that the Basin 2 water rights that are subject to the Swan Falls settlement be decreed in the name of Idaho Power Company. Without waiving these denials, the State admits that the Director's reports for the Basin 36 and Basin 37 water rights that are subject to the Swan Falls settlement recommended that the water rights be decreed in the name of Idaho Power Company, but denies that the amended Director's reports for the Basin 37 water rights recommended that the legal title to the

rights be decreed in the name of Idaho Power Company. The State admits that the initial Director's reports and amended Director's reports regarding the water rights in Basins 2, 36 and 37 that are subject to the Swan Falls settlement were based upon the Department's investigation pursuant to Idaho law, and that these investigations included the relevant Notices of Claim to a Water Right submitted by Idaho Power Company and the State's Notices of Change of Water Right Ownership.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 46: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order and the scope of the SRBA under Idaho law. Without waiving these objections, the State refers to the Director's Reports and amended Director's Reports for the water rights in Basins 2, 37 and 36, which Idaho Power Company possesses. I.R.C.P. 33(c).

REQUEST FOR ADMISSION NO. 47: Admit that the actions of the State, its officials, and its agencies following the execution of the Swan Falls Agreement through at least 2005 have been consistent with title to the water rights remaining with Idaho Power.

RESPONSE TO REQUEST FOR ADMISSION NO. 47: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 47: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State responds that actions since the execution of the Agreement have been consistent with legal title to the water rights in question being held by the State. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests For Admission Nos. 4, 14-15, 28, 34, 41 and 44, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 48: (a) Admit that on March 9, 2006, Attorney General Wasden, in response to questions in a February 27, 2006 letter from State House Speaker Bruce Newcomb, issued Attorney General Opinion 06-2 "Regarding Swan Falls Agreement and Idaho Code §§ 42-234(2) and 42-4201A(2)" (hereinafter "Attorney General Opinion 06-2"). (b) Admit that the Attorney General or members of his staff, before receiving such letter, discussed with Speaker Newcomb or other members of the legislature the preparation of an Attorney General opinion concerning the subordination of Idaho Power's hydropower water rights under the Swan Falls Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 48: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is not reasonably calculated to lead to the discovery of admissible evidence

because the Idaho Power Company's claim for a "repeal" of Attorney General Opinion 06-2 has been dismissed.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 48: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are not reasonably calculated to lead to the discovery of admissible evidence because the Idaho Power Company's claim for a "repeal" of Attorney General Opinion 06-2 has been dismissed.

REQUEST FOR ADMISSION NO. 49: Admit that the water levels in the ESPA have progressively declined, and continue to decline, resulting in diminishing spring flows, reach gains and flows in the Snake River, and that a contributing factor in such hydrologic developments is the pumping of ground water.

RESPONSE TO REQUEST FOR ADMISSION NO. 49: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 49: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. The State also objects to this Request for Admission as ambiguous because it does not define a time frame reference for the alleged progressive "declines" and "diminishments" in spring discharges and rivers flows, nor has the term "progressive" been defined. Without waiving these objections, the State responds that this Request for Admission oversimplifies a matter of considerable complexity, and which is one of the central issues presented and addressed in the conjunctive administration of water rights in interconnected ground water sources and surface water sources by the Director and the Department. This is demonstrated by the Director's orders in such matters:

5. From the pre-irrigation conditions of the 1860s until the 1950s, the amount of water diverted from the Snake River and its tributaries for gravity flood/furrow irrigation increased substantially, from about 8 million acre-feet, or less, in the early 1900s to about 9.5 million acre-feet in the early 1950s. USGS Professional Paper 1408-F, p. F14. Significant quantities of the surface water diverted were in excess of crop consumptive uses and provided incidental recharge to the ESPA above the average incidental recharge of 3.4 million acre feet described in Finding 3 for the May 1980 through April 2002 time period. Ground water levels across the ESPA responded by rising at many locations. For example, the average rise in ground water levels near Jerome, Idaho, and near Fort Hall, Idaho, was 20 to 40 feet over several tens of years. The average rise in ground water levels west of American Falls was 60 to 70 feet. USGS Professional Paper 1408-A, p. A40. As a result, spring discharges in the Thousand Springs area correspondingly increased based on USGS data as shown in Attachment A.

6. Beginning in about the 1960s to 1970s time period through the most recent years, the total combined diversions of natural flow and storage releases above Milner Dam for irrigation using surface water supplies have declined from an average of nearly 9 million acre-feet annually to less than 8 million acre-feet annually, notwithstanding years of drought, because of conversions from gravity flood/furrow irrigation to sprinkler irrigation in surface water irrigation systems and other efficiencies implemented by surface water delivery entities. The measured decrease in cumulative surface water diversions above Milner Dam for irrigation reflects the fact that less water is generally needed in the present time to fully irrigate lands authorized for irrigation with a certain crop mix under certain climatic growing conditions than was needed in the 1960s to 1970s for the same lands, crop mix, and climatic growing conditions. With parallel appropriations of ground water, which dramatically increased in about 1950, ground water levels across the ESPA have responded by declining at most locations where levels had previously risen, exacerbated by the worst consecutive period of drought years on record for the upper Snake River Basin. As a result, spring discharges in the Thousand Springs area have correspondingly declined based on USGS data as also shown on Attachment A.

Order of May 19, 2005 (*In the Matter of Distribution of Water to Water Rights Nos. 36-02356A, 36-07210, and 36-07427*) ("Blue Lakes Delivery Call"), at 2 ¶¶ 5-6. "[A]s of May 2002, the Snake River Plain aquifer [sic] is close to dynamic equilibrium." Amended Order of May 2, 2005 at 17 ¶ 30 (Surface Water Coalition Delivery Call). See also prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests For Admission Nos. 18-20, 21, 23 and 49, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 50: Admit that diminishing spring flows, reach gains and flows in the Snake River have resulted in a number of water right "calls" made by senior priority appropriators utilizing surface and spring water from the Snake River, and that a contributing factor in such calls is the pumping of ground water under junior water rights.

RESPONSE TO REQUEST FOR ADMISSION NO. 50: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State admits that certain delivery calls submitted to the Department by holders of rights to the use of the surface flows of the Snake River and spring flows in the Snake River canyon have asserted or alleged that the spring flows and reach gains have diminished and that a contributing factor in such diminishment is the pumping of ground water under junior water rights. The State denies this Request for Admission to the extent that it implies that such allegations and assertions are true or correct.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 50: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. See also prior responses,

including but not limited to the Responses to Interrogatory No. 1 – Requests For Admission Nos. 18-20, 21, 23 and 49, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 51: Admit that ground water pumping from the ESPA has hydrologic impacts on the aquifer and interconnected surface waters beyond the year that pumping occurs.

RESPONSE TO REQUEST FOR ADMISSION NO. 51: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 51: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State responds that this Request for Admission oversimplifies a matter of considerable complexity and cannot be admitted as formulated. See prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests for Admission Nos. 18-20, 21, 23 and 49-50, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 52: Admit that to date IDWR has not taken into account the multiple year impacts of ground water pumping from the ESPA in its administration of junior ground water and senior surface water rights.

RESPONSE TO REQUEST FOR ADMISSION NO. 52: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 52: Objection. This Interrogatory and the corresponding Request for Production of Documents are outside the scope of the issues defined in the Order, outside the scope of the SRBA under Idaho law, and contrary to the requirement of exhaustion of administrative remedies. Without waiving this objection, the State responds that the Department and the Director routinely consider the multiple year effects of ground water pumping from the ESPA when conjunctively administering water rights in interconnected ground water sources and surface water sources, and modeling the depletionary effects of ground water withdrawals and curtailments. For instance, the Director's orders in response to delivery calls by holders of senior surface water and spring rights against junior ground water right holder uses expressly consider both the transient and "steady state" depletionary effects of ground water pumping that "continues from year to year." Order of May 19, 2005 at 3 ¶ 9 (Blue Lakes Delivery Call); Amended Order of May 2, 2005 at 6 ¶ 25, 17 ¶ 77 (Surface Water Coalition Delivery Call). Similarly, in the Surface Water Coalition's delivery call, the Director ordered that he would make annual determinations of the extent of injury

reasonably likely to occur to the members of the Surface Water Coalition from out-of-priority ground water depletions, and require mitigation or curtailment as warranted without further demand by members of the Coalition until such time that a permanent mitigation plan might be approved. Amended Order of May 2, 2005 at 47 ¶ 12. This means the Director required mitigation in the form of replacement water in equal quantities to depletions to hydraulically-connected surface water that would result from out-of-priority ground water withdrawals, in lieu of curtailment of such junior priority ground water rights, over the length of period, including multiple-years, that shortages to senior priority surface water rights continued. The amounts of replacement water provided must equal the total gains to the hydraulically-connected surface water that would have accrued from curtailment of junior priority ground water rights over the length of period, including multiple-years, that senior priority rights would have otherwise been injured. Similarly, in response to the Blue Lakes delivery call, the Director analyzed the effects of curtailing certain ground water uses "on an ongoing basis." Order of May 19, 2005 at 17 ¶ 78. Further, the computer model for the ESPA, a basic tool for the Department's administration and planning, is calibrated using data and measurements covering a period of over twenty years, thereby including the multiple year impacts of groundwater withdrawals. See, e.g., Amended Order of May 2, 2005 at 7 ¶ 30. See also prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests for Admission Nos. 18-20, 21, 23, and 49-51, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 53: Admit that IDWR has curtailed or threatened to curtail ground water rights only on the basis of within-the-year or seasonal impacts of such pumping.

RESPONSE TO REQUEST FOR ADMISSION NO. 53: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 – REQUEST FOR ADMISSION NO. 53: Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State responds by referring to prior responses, including but not limited to the Responses to Interrogatory No. 1 – Requests for Admission Nos. 18-20, 21, 23, and 49-52, which the State incorporates herein by reference.

REQUEST FOR ADMISSION NO. 54: Admit that the State's failure to account for the multiple year impacts of ground water pumping, to the extent that that failure results in a violation of the Swan Falls Daily Minimum Flows, is unreasonable and constitutes a breach of the Swan Falls Agreement.

RESPONSE TO REQUEST FOR ADMISSION NO. 54: Objection. This Request for Admission exceeds the scope of the issues defined in the Order, the scope of the SRBA under

Idaho law, and is contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State denies this Request for Admission.

RESPONSE TO INTERROGATORY NO. 1 - REQUEST FOR ADMISSION NO. 54:
Objection. This Interrogatory and the corresponding Request for Production of Documents exceed the scope of the issues defined in the Order, the scope of the SRBA under Idaho law, and are contrary to the exhaustion of administrative remedies requirement. Without waiving these objections, the State responds by referring to prior responses, including but not limited to the Responses To Interrogatory No. 1 - Requests for Admission Nos. 5, 7-8, 18-19, 21-30 and 48-53, which the State incorporates herein by reference.

DATED this 13th day of November, 2007.

LAWRENCE G. WASDEN
Attorney General

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

KARL T. KLEIN (ISB # 5156)
Deputy Attorney General
Civil Litigation Division

MICHAEL C. ORR (ISB # 6720)
Deputy Attorney General
Natural Resources Division



DAVID HENSLEY (ISB # 6600)
Counsel to the Governor


FOR DAVID HENSLEY