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DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

) Consolidated Subcase no. 92-23
)
) **AFFIDAVIT OF DAVID R.**
) **TUTHILL, JR. IN SUPPORT OF**
) **STATE OF IDAHO'S SECOND**
) **MOTION FOR PROTECTIVE**
) **ORDER**

STATE OF IDAHO)
COUNTY OF ADA) ss.

DAVID R. TUTHILL, JR., being first duly sworn upon his oath, deposes and
states that:

1. I am the Director of the Idaho Department of Water Resources ("the Department"). The following is based upon my own personal knowledge.

2. I have reviewed the "Subpoena Duces Tecum to Tim Luke" and "Notice of Deposition Duces Tecum of Tim Luke" that Idaho Power Company served on Tim Luke in this matter. Tim Luke is the Section Manager for the Department's Water Distribution Section.

3. The document requests in the subpoena and notice of deposition encompass the vast majority of the documents that the Department created, consulted or retained in connection with essentially any Departmental activity or action in the Snake River basin in the past twenty years.

4. For example, the document requests in the subpoena and notice of deposition encompass documents that are related in any way to the Department's permitting of water rights, its administration of water rights, its creation and management of entities or management units such as water districts and ground water management areas, its promulgation of administrative rules such as the Water Appropriation Rules and the Conjunctive Management Rules, its water resource planning activities, its water supply analyses and forecasting, its responses to water delivery calls, and its water resource measurement, modeling and characterization activities, including but not limited to analyses or measurements of the flows of the Snake River, the ground water in the Eastern Snake Plain Aquifer, and the spring flows in the Snake River canyon.

5. In addition, the subpoena and notice of deposition encompass every document the Department filed in the SRBA at least until the end of former Director Keith Higginson's tenure in 1995. This is because the SRBA was created and initiated by

the Swan Falls legislation and as part of the implementation of the Swan Falls settlement, and the document requests seek all documents directly or indirectly related to such matters.

6. In sum, not only do the subpoena and notice of deposition seek virtually every document that is directly or indirectly related to the issues that have formed the major portion of the Department's work in the Snake River basin since the time of the Swan Falls controversy, they also seek essentially every document related to the Department's discharge of its statutory duties in the Snake River basin since that time.

7. While it is difficult to estimate the number of pages of documents that fall under the document requests in the subpoena and the notice of deposition, the total would be many thousands of pages. In my opinion, it would impose a significant and unreasonable burden on the Department to review its files and identify all of the documents that are responsive to the broadly-worded document requests in the subpoena and notice of deposition. It would also be impossible to identify and produce all of these documents at the deposition of Tim Luke that is currently scheduled for April 18, 2008.

8. Tim Luke does not have personal custody or control of the vast majority of the documents in question. The majority of the documents are under the personal custody and control of other individuals in the Department.

9. Many of the documents encompassed by the document requests in the subpoena and the notice of deposition are directly available to Idaho Power Company and the public through the Department's website (<http://www.idwr.idaho.gov/>).

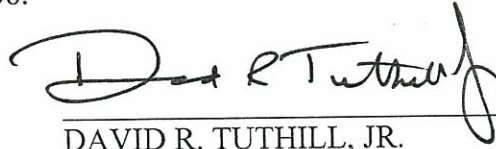
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DATED this 4th day of April 2008.



DAVID R. TUTHILL, JR.
Director,
Idaho Department of Water Resources

SUBSCRIBED AND SWORN to before me this 4th day of April 2008.



Notary Public for Idaho

Residing at: Boise

My commission expires: 5/29/10

CERTIFICATE OF SERVICE

I certify that on this 4th day of April 2008, I caused to be served a true and correct copy of the foregoing AFFIDAVIT OF DAVID R. TUTHILL, JR. IN SUPPORT OF STATE OF IDAHO'S SECOND MOTION FOR PROTECTIVE ORDER, to the following parties by the indicated methods:

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

☒ U.S. Mail
☐ Hand Delivery
☐ Certified Mail, Return Receipt Requested
☐ Overnight Mail
☒ Facsimile: 208-736-2121

Idaho Power Company
Represented by:
James C. Tucker
P.O. Box 70
1221 W. Idaho
Boise, ID 83707

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- ☐ Not Applicable

United States Department of Justice
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