

RECEIVED

APR 09 2008

DEPARTMENT OF
WATER RESOURCES

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 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
	)	RESPONSE IN OPPOSITION TO THE
v.	)	STATE'S MOTION FOR
	)	PROTECTIVE ORDER
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") hereby files its Response In Opposition to the State of Idaho's Motion for Protective Order. The State's Motion for Protective Order seeks to improperly limit discovery in this action and should be denied.

INTRODUCTION

After successfully pushing for the most aggressive discovery schedule possible -- with trial scheduled for less than ten months from now -- the State now seeks to halt the production of discovery to Idaho Power. The State's Motion for Protective Order consists of little more than a series of discovery objections that certain documentation and information sought by Idaho Power is outside the scope of the issues that will be addressed at trial during this phase of the litigation. As an initial matter, the State incorrectly characterizes Idaho Power's discovery. In fact, the propounded discovery pertains to the nature, scope and validity of the water rights at issue here, which this Court has already ruled is within its jurisdiction to decide. Even more egregiously, the State presumes clairvoyance in assuming the Court will grant its summary judgment motion and determine that *all* relevant information in this matter is limited to the Swan Falls Legislation and the "official" (the term has no meaning in any document beyond the State's briefs) legislative record compiled in 1985-86. Idaho Power will not reargue the many flaws in the State's summary judgment theory here. The State's argument to limit discovery to only what it interprets to be the relevant record is impermissible, and cannot serve as an appropriate basis for a protective order. As discussed below, each of the grounds for the State's Motion plainly lacks merit.

ARGUMENT

I. Legal Standards Governing Discovery Disputes.

Idaho Rule of Civil Procedure Rule 26(c) allows this Court, "upon motion by a party or person from whom discovery is sought, and for good cause shown," to "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." In order to establish "good cause," the moving party must show that *specific prejudice or harm* will result if no protective order is granted. *General Dynamics Corp. v. Selb Manufacturing*, 481 F.2d 1204, 1212 (8th Cir., 1972) ("the burden is therefore upon the movant to show the necessity of its issuance, which contemplates a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements. Such determination must also include a consideration of the relative hardship to the non-moving party should the protective order be granted.").¹ Moreover, the showing of "good cause" under Rule 26(c) is a "heavy burden." *Rivera v. Nibco, Inc.*, 384 F.3d 822, 827 (9th Cir. 2004) (Bea, J., dissent).

This burden will not be satisfied by "broad allegations of harm, unsubstantiated by specific examples or articulated reasoning," and the fact that a party may be inconvenienced by the amount of relevant material it must produce is irrelevant. *Asarco v. Americas Mining Corp.*, 2007 U.S. Dist. LEXIS 84604, *18 (D. Idaho, 2007); *Klausen v. Sidney Printing*, 271 F. Supp. 783, 784 (D. Kan., 1967) ("[t]he mere fact that interrogatories are lengthy, or that defendant will be put to some trouble and expense in preparing requested answers, is not alone sufficient to warrant the granting of a protective order. The discovery rules should be liberally construed in favor of discovery where possible."). The State does not begin to meet its burden.

¹ Note that Federal Rule of Civil Procedure 26(c) and Idaho Rule of Civil Procedure 26(c) are substantively identical and thus state courts often look to federal case law for guidance on discovery issues.

II. Idaho Power's Discovery Requests Do Not Exceed the Scope of the Court's July 23, 2007 Order.

The State first asserts it is entitled to a protective order because Idaho Power's discovery requests seek discovery outside the scope of the Court's July 23, 2007 Order (the "Order") related to the administration of the Swan Falls Agreement and the Swan Falls Legislation. *See* State's Memorandum in Support of Motion for Protective Order ("Mem. in Support") at 5-7. In making this argument, the State inaccurately characterizes both the Order and Idaho Power's discovery requests

In the Order, the Court stayed Idaho Power's claims against the Idaho Department of Water Resources ("IDWR") and the Director of IDWR for failing to properly administer Idaho Power's water rights as defined by the Agreement. The Court also made clear, however, that it had exclusive jurisdiction to determine the ownership, validity and scope of these disputed water rights in this litigation. Order at 9. Specifically, 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.

As discussed in detail in Idaho Power's Motion to Compel, each of Idaho Power's interrogatories and document requests to which the State objects seeks information that may lead to the discovery of information relevant to the nature, extent and validity of the water rights at issue in this litigation. For instance, the State takes issue with Idaho Power's Interrogatory Nos. 3 and 4 that ask the State to identify low flow numbers at the Murphy Gage and the method the State uses to calculate these flow. *See* State's Mem. in Support at 3. Contrary to the State's arguments, 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.² To the contrary, the State's calculation of low flows at the Murphy Gage and how the State makes flow calculations is directly relevant to the issue raised in the Complaint as to how much water exists, if any, above the Swan Falls minimum flows that is available for appropriation. It is also relevant to whether the parties operated under a mutual mistake of fact regarding Trust Water availability at the time the parties entered into the Agreement. *See also* Idaho Power's Motion to Compel at 10-12. The State is obligated to produce this information from IDWR's files because it is reasonably calculated to lead to the discovery of admissible evidence.

The State therefore should be required to provide all non-privileged and relevant information responsive to Idaho Power's requests, and the Court should reject the State's attempt

² In making this argument, the State misconstrues its discovery obligations. Information is discoverable if it is "reasonably calculated to lead to the discovery of admissible evidence." IRCP 26(b)(1). It is not, as the State claims, "[a] ground for objection [or for seeking a protective order] that the information sought will be inadmissible at the trial." *Lester v. Salvino*, 141 Idaho 937, 941 (Idaho Ct. App., 2005). The Supreme Court case of *Hickman v. Taylor*, 29 U.S. 495, 500-01 (1947), which the State cites to, in fact stands for *the exact opposite proposition*: "No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession." *See also Salvino*, 141 Idaho at 941.

to unilaterally define through a protective order what issues remain relevant and subject to discovery in this action.

III. Idaho Power's Discovery Requests Do Not Exceed the Scope of the SRBA Nor Do They Contravene the Doctrine of Exhaustion of Remedies.

The State asserts as its second and third grounds for a protective order that Idaho Power's discovery involves issues over which the SRBA Court does not have jurisdiction and for which Idaho Power has not yet exhausted its administrative remedies. The State claims that Idaho Power's discovery improperly seeks information from the Director and IDWR "to develop or support claims involving judicial review" of the administrative actions of these entities. *See* State's Mem. in Support at 7-10.

Once again, these objections rest entirely on the State's fundamental misconstruction of the purpose of Idaho Power's discovery requests. For instance, the State objects on these grounds to Idaho Power's Interrogatory Nos. 8 and 9, claiming incorrectly that they relate solely to administrative claims against IDWR and the Director. These interrogatories seek information regarding assumptions and determinations by the Director relating to impacts of future water development in the Snake River basin on existing water rights. *See* State's Mem. in Support at 3. But as explained in its Motion to Compel, Idaho Power is not seeking this or any other 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. *See* Motion to Compel at 13-14. Instead, these discovery requests seek information related to the nature and scope of Idaho Power's water rights, namely whether any Trust Water existed at the time the parties entered into the Swan Falls Agreement. To the extent this information may also pertain to the State's administration of these rights, this Court has already ruled that overlap between administrative provisions and definition of a water right is inevitable.

Moreover, while the Director and IDWR are no longer parties to this action, they are agents of the State, and the State has control over the documents within their files.³ Thus, this also is not a proper basis for the State's Motion for Protective Order, so long as Idaho Power's requests are calculated to lead to the discovery of evidence relevant to the definition of its Swan Falls rights.

IV. A Broad Canvas of Information is Relevant to Determining the Ownership, Validity and Scope of Idaho Power's Water Rights as Defined by the Swan Falls Agreement, and the State's Attempt to Unilaterally Limit the Scope of Discovery to Solely the Legislative Record is Improper.

The State also claims that discovery should be limited to the Swan Falls Legislation and the "official" legislative record from 1985-86. The State spends several pages in its Motion rearguing its summary judgment briefing on this point, and then makes the impermissible leap that because it should win on summary judgment, its protective order should also be granted.

The State's argument is flawed. The State again confuses the appropriate discovery standard. As discussed above, the permissible scope of discovery is broad for the very purpose of helping a party flesh out what is and is not a viable position. While the State continues to assert its view that discoverable information is limited to what will eventually be admitted at trial, Idaho courts have consistently rejected such a constricted view. *See Salvino*, supra at n. 2 (holding that 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 discovery of admissible evidence).

³ In support of its claim that Idaho Power continues to seek information from non-parties, the State points out that Idaho Power defines "State Defendants" to include the Director and IDWR. This was simply an oversight by Idaho Power in drafting its Second Set of Discovery. Nonetheless, for the reasons previously discussed, the State is obligated to produce all relevant information in its possession and this includes information in the possession of IDWR, the Director, and any other state agency holding responsive information.

Moreover, the Court has yet to rule on either party's summary judgment motions. No court has ever allowed a party to withhold discovery on the basis that it *should* win a motion pending before the court, yet the State makes such a claim here. And, as discussed below, the State's theories as to why the discovery should be limited to a very narrow spectrum of issues is seriously flawed.

A. Any and all information or documents pertaining to the Swan Falls Agreement at issue in this action are relevant and discoverable, and the State's attempt to unilaterally narrow the scope of discovery is improper.

The State argues in its Motion, as it did in its summary judgment motion, that enactment of the Legislation precludes any inquiry into the parties' contractual intent that goes beyond the Legislation and the legislative history (as the State defines it).⁴ See State's Mem. in Support at 15. Idaho Power has fully addressed and refuted this argument in its Summary Judgment Response. See Idaho Power's Response in Opposition to the State's Motion for Summary Judgment ("Summary Judgment Response") at 15-17 and 19-22. As detailed in Idaho Power's response to the State's summary judgment motion, this action is fundamentally a contract dispute between the parties regarding the scope and meaning of the Swan Falls Agreement. In fact, contrary to the State's assertions, it was the Agreement that defined the scope of the Swan Falls Legislation, not vice versa. The Agreement provides that "[t]he parties agree to propose and support the following legislation *to implement this Agreement*," and then lists the legislative

⁴ The State also claims that the "extensive" scope of the legislative record and the fact that Idaho Power had the opportunity to explain its understanding with respect to select terms of the Agreement to the legislature during the 1985-86 legislative session support its position that discovery should not go beyond this record. See State's Mem. in Support at pp. 13-14. Idaho Power disputes that the "legislative record" is extensive. As set forth in Idaho Power's Motion to Compel, Idaho Power has approximately 45,000 pages of documents in its files that relate to the Swan Falls Agreement and Legislation and the water rights at issue in the settlement, only about 300 pages of which include documents pertaining to the legislative proceedings that the State claims constitute the legislative record. This "official legislative record," as the State deems it, is hardly extensive given the fact the Swan Falls controversy began in the late 1970s and continues even today.

program that includes the Legislation.⁵ The parties clearly viewed the Legislation as “implementing” rather than nullifying or terminating the Agreement as the State contends.⁶

Any analysis of the ownership, scope and validity of Idaho Power's water rights at Swan Falls must begin with the terms of the Swan Falls Agreement. As such, any information pertaining to the Swan Falls Agreement, including evidence of the parties' intent in entering into that Agreement and subsequent actions of the parties with respect to the Agreement, falls within the proper scope of discovery in this action. *See Cool v. Mountainview Landowners*, 139 Idaho 770, 773 (Idaho, 2004); *Hall v. Hall*, 116 Idaho 483, 484 (Idaho, 1989) (noting that subsequent “oral or written statements” may be considered by the court when attempting to ascertain the drafters' intent); *DeBaca v. McAfee*, 109 Idaho 800, 802 (Idaho, 1985) (noting that the trial court's decision to hear, and consider, testimony regarding the intent of the parties as to the drafters' intent was acceptable and upholding the judge's discretion to believe one side over the other.); *Gardner v. Fliegel*, 92 Idaho 767, 771 (Idaho, 1969).

Here, there are numerous categories of documents and information that are either directly relevant or that could lead to other information that is relevant to interpreting the Agreement and the parties' intent in entering into the Agreement. This includes the terms of the Agreement, the discussions of the parties leading up to the Agreement, the entirety of the Swan Falls Legislation, the full legislative history, and the actions taken by the parties during the past twenty years interpreting and applying the Agreement and the Legislation. *See* Idaho Power's Summary Judgment Response at Section II. Perhaps more than any other evidence, actions taken by the

⁵ *See* March 31, 2008 Affidavit of Michael Gheleta filed with Idaho Power's Motion to Compel (hereinafter referred to as the “Gheleta Motion to Compel Aff.”), Ex. F (Swan Falls Agreement) at ¶ 6.

⁶ As argued in the Summary Judgment Response, the validity and continued effectiveness of the Swan Falls Agreement is affirmed in both the Legislation and in the 1990 Consent Decrees entered by the Ada County District Court. *See* Summary Judgment Response at 22-25.

State during the two decades after the Agreement in the course of exercising its obligations under the Agreement are relevant to ascertain the parties' intent and the parties' understanding of the terms of the Agreement. *See Nanakuli Paving and Rock Co. v. Shell Oil Co.*, 664 F.2d 772, 785 (9th Cir. 1981) (noting that the actual performance of a contract is the "most relevant evidence of how the parties interpreted the terms of the contract."). *See also* Summary Judgment Response at 35-47.

The State has asserted no legitimate basis on which to limit the scope of "relevant" documents to a specific period of legislative history and preclude any inquiry related to the parties' contractual intent.⁷

B. No official legislative record exists and the Court has discretion to consider a broad array of information relevant to the meaning of the Swan Falls Legislation.

Even if the State's argument that the Legislation controls the ownership, scope and validity of the Swan Falls water rights is correct – which it is not – this would still not justify its Motion for Protective Order to limit discoverable evidence solely to the information in the legislative record. As an initial matter, there is no "official" legislative history or record for this agreement or legislation. Even if there was an official legislative record, however, there is no legal basis on which to limit the information that is *discoverable* regarding the Legislation to the record of the 1985 and 1986 legislative sessions. Instead, the scope of information that is relevant or potentially relevant to the meaning of the Legislation, as with the meaning of the Agreement, is broad.

⁷ In an apparent attempt to narrow the legislative record even further, the State cites to a few select statements from the legislative record, including portions of the Statement of Legislative Intent, claiming that these statements alone somehow sufficiently represent the parties' positions and understandings with respect to the Agreement. *See* State's Mem. in Support at pp. 13-14. Idaho Power has addressed most of these statements in its summary judgment briefings and will not repeat its arguments here. *See* Idaho Power's Summary Judgment Response at 27-30 (addressing the State's characterization of the Statement of Legislative Intent).

As established in Idaho Power's Summary Judgment Response, Idaho Code § 42-203B does not unambiguously provide that Idaho Power must convey its water rights to the State through the trust, or that such rights are transferred into trust by operation of law, as the State contends. See Idaho Power's Summary Judgment Response at 10-13. Because this provision is ambiguous, it cannot be considered in isolation. To determine the legislature's intent, the Court examines "not only the literal words of the statute, but also the reasonableness of the proposed constructions, the public policy behind the statute, and its legislative history." *State v. Yzaguirre*, 144 Idaho 471, 475, 163 P.3d 1183, 1187 (2007). See also *State v. Schwartz*, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003); *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999) (when construing an ambiguous statute, the Court should attempt to discern the intent of the legislature, and may look to the statute's legislative history *and contemporaneous context at enactment*). Additionally, a Court may look to how parties have interpreted and applied a statute, particularly where the public relies on that application over a long period of time, in interpreting an ambiguous statute. *Pfau v. Comair Holdings, Inc.*, 135 Idaho 152, 154, 15 P.3d 1160, 1162 (2000); *Hagerman Water Right Owners, Inc.*, 130 Idaho 727, 733, 947 P.2d 400, 406 (1997) ("A basic rule of statutory construction is that the *application of the statute* is an aid to construction, especially where the public relies on that application over a long period of time.") (Emphasis added). Thus, apart from the legislative record, the extensive negotiations leading up to the signing of the Agreement are also relevant to the nature and scope of the water rights at issue here. The State should not be allowed to pick and choose only the portions of this body of evidence that best reflect its position in this action.

The State's reliance on the Idaho Supreme Court case of *Gillihan v. Gump*, 140 Idaho 264 (2004), for the proposition that the Court should not look beyond the 1985-86 legislative record,

is misplaced. Specifically, the State claims *Gillihan* prevents the Court from considering any post-passage statement by a legislator or regulator when the Court is attempting to ascertain the meaning and purpose of a statute or statutory term. This assertion is not accurate, and represents an overly-simplified and over-reaching view of the Court's holding and discretion. While the Court in *Gillihan* did find that post-enactment statements by a legislator concerning legislative intent may not be considered "legislative history," and that such statements should be looked at with skepticism when interpreting a statute, it was not stating that *any* statement made by a legislator after a law is passed is irrelevant to the interpretation of legislative intent. Instead, the Court in *Gillihan* was focused on the gratuitous, post-enactment statement of a single legislator in an affidavit, noting that such statements "represent[] the views – or, perhaps more accurately, the recollections – of a single participant in the legislative process." *Gillihan*, at 268. In fact, other courts have considered post-enactment statements made in a legislator's official capacity when seeking to understand legislative intent. *See, e.g., Humane Soc. v. Lujan*, 1992 U.S. Dist. Lexis 16140, *15 (D.D.C. 1992) (assessing congressional intent of amendments to the Endangered Species Act by reviewing the statements of congressmen during an oversight hearing). More importantly for this case, however, is the fact that the court in *Gillihan* did not address, and thus made no ruling regarding, the relevance to statutory interpretation of actions taken by a regulator to interpret or implement a statute.

The fact is that this Court has broad discretion when seeking to understand the legislative intent behind an ambiguous statutory term. *See Gillihan*, 140 Idaho at 266 (noting that when a statutory term is ambiguous, the Court "exercises free review" to determine the meaning of the term, and may consider "the language used, the reasonableness of the proposed interpretations,

and the policy behind the statute.")⁸ Thus, any information pertaining to the meaning of the Swan Falls Legislation is relevant and discoverable in this action. This includes evidence pre- and post-enactment of the Legislation that illustrates not only the legislature's intent in enacting the Legislation but also sheds light on the parties' intent in drafting the legislative language presented to the legislature for enactment. The State's actions subsequent to the enactment of the Legislation are also particularly relevant and should be considered in ascertaining the meaning and intent of the Legislation because the State not only helped draft the Legislation but also implemented the Legislation for the past twenty years. Further, as previously discussed, the fact that the Court may not ultimately rely on such information for construction of the Legislation does not entitle the State to withhold it from discovery. *See supra* at n.2.

Accordingly, the State's attempt to limit discovery regarding the meaning of the Swan Falls Legislation, and thereby limit what this Court can ultimately consider on this issue, should be denied.

V. **Idaho Power Has Not Exceeded Discovery Limits Set by the Idaho Rules of Civil Procedure.**

Finally, the State makes a procedural objection that Idaho Power's Second Set of Interrogatories exceeds the limitation of 40 interrogatories established by IRCP 33(a)(3). The State claims that Idaho Power's only interrogatory in its First Set of Discovery,⁹ asking the State to explain its grounds for denying any of Idaho Power's 54 requests for admissions, constitutes a

⁸ The State's current attempt to limit relevant information to documents in the legislative record of 1985 and 1986 is also inconsistent with its own responses to Idaho Power's First Set of Discovery Requests. In responding to Idaho Power's Request for Admission No. 4, the State lists numerous documents that it deems relevant to its position in this lawsuit that are outside the 1985-1986 timeframe, including documents both pre and post enactment of the Swan Falls Legislation. *See Gheleta Motion to Compel Aff., Ex. G* (State's Response to Idaho Power's First Set of Discovery Requests) at 5-15.

⁹ *See Gheleta Aff. at Ex. D* (Idaho Power's First Set of Discovery Requests).

separate interrogatory for each request for admission requiring an explanation. On this basis alone, the State claims that Idaho Power exceeded the 40-interrogatory limit.

No Idaho Court decision supports the State's claim.¹⁰ Although IRCP 33 limits the number of interrogatories a party can serve to 40, IRCP 36(a) 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.¹¹ IRCP 36(a) therefore requires that the State provide the information requested by Idaho Power in its First Set of Discovery Requests, without Idaho Power needing to propound an interrogatory seeking this information. Accordingly, the State has no legitimate basis on which to claim that Idaho Power has exceeded the number of interrogatories allowed under Rule 33.

CONCLUSION

For the foregoing reasons, and the reasons set forth in Idaho Power's Motion to Compel, Idaho Power respectfully requests that the Court deny the State's Motion for Protective Order and compel the State to provide full and complete responses to Idaho Power's Second Set of Discovery Requests.

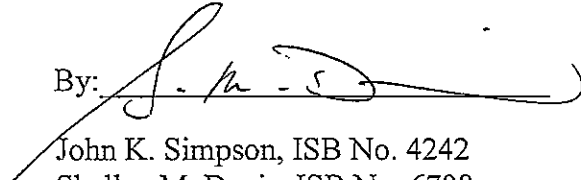
¹⁰ The State cites one federal California case and one Idaho case in support of its argument that, while generally discussing the purpose of interrogatories, do not support the State's claim.

¹¹ "[Each] answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter." IRCP 36(a).

DATED: April 8, 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. Kales, 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 8 day of April 2008, I caused to be served a true and correct copy of the foregoing document entitled **IDAHO POWER COMPANY'S RESPONSE IN OPPOSITION TO THE STATE'S MOTION FOR PROTECTIVE ORDER** 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

 X U.S. Mail, Postage Prepaid

 X Electronic Mail

 Facsimile

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

 Hand Delivered

 Overnight Mail

 Facsimile

Josephine Beeman

Beeman & Associates, P.C.

409 W. Jefferson Street

Boise, ID 83702

 X U.S. Mail

 Hand Delivered

 Overnight Mail

 Facsimile

