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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. 00-92023  
)  
) **STATE OF IDAHO'S**  
) **MOTION TO DISMISS**  
) **IN RESPONSE TO COURT'S**  
) **ORDER DATED APRIL 18, 2008**  
)

COMES NOW the State of Idaho, by and through its counsel, and pursuant to Rules 12(b)(1) and 12(b)(6) of the Idaho Rules of Civil Procedure moves the Court for an order dismissing those remaining causes of action identified by the Court in its Memorandum Decision and Order on Cross Motions for Summary Judgment that pertain to the administration of water rights and requests for injunctive relief. This motion is made upon the grounds that there is a lack of subject matter jurisdiction and a failure to state a claim upon which relief can be granted. In particular, Idaho Power Company has

failed to exhaust its administrative remedies and its request for injunctive relief contemplates enjoining the State from acting pursuant to its statutory duties and its contractual obligations under the Swan Falls Agreement. A supporting memorandum will be filed in accordance with a briefing schedule established by the Court.

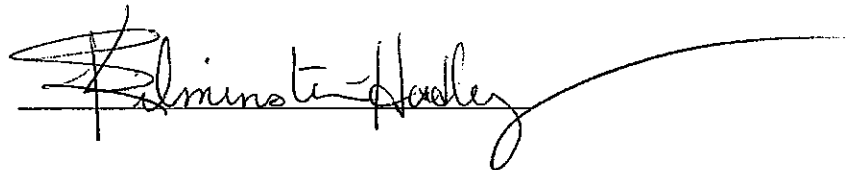
The Respondents request oral argument on this motion.

DATED this 7<sup>th</sup> day of May 2008.

LAWRENCE G. WASDEN  
Attorney General

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

KARL T. KLEIN  
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A handwritten signature in black ink, appearing to read "Shasta Kilminster-Hadley", written over a horizontal line. The signature is stylized with a large initial "S" and a long, sweeping underline that extends to the right.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of May 2008, I caused to be served a true and correct copy of the foregoing STATE OF IDAHO'S MOTION TO DISMISS IN RESPONSE TO COURT'S ORDER DATED APRIL 18, 2008 to the following parties by the indicated methods:

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253 Third Avenue North  
P.O. Box 2707  
Twin Falls, Idaho 83303-2707

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1221 W. Idaho  
Boise, ID 83707

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United States Department of Justice  
Environment & Natural Resources  
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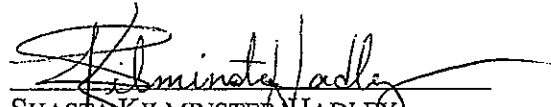
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