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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	)	Consolidated Subcase no. 00-92023
	)	
Case No. 39576	)	STATE OF IDAHO'S MOTION
	)	FOR SUMMARY JUDGMENT
	)	ON SUBORDINATION TO
	)	GROUND WATER RECHARGE
	)	

COMES NOW the State of Idaho, by and through its counsel of record, and pursuant to Rule 56 of the Idaho Rules of Civil Procedure moves for summary judgment on the following three (3) issues:

1. That the water rights at issue in this consolidated subcase are subordinate to all water rights diverting from sources upstream from Milner Dam, including ground water recharge water rights;
2. That the State of Idaho has the right to subordinate, to the extent authorized by state law, the water rights held in trust by the State under Idaho Code § 42-203B to any water right diverting from sources downstream from Milner Dam and upstream from the Murphy gauging station, including ground water recharge water rights; and
3. That the water rights at issue in this consolidated subcase are subordinate to ground water recharge water right permits nos. 01-7054 and 37-7842, as finally licensed.

This motion is based on the Swan Falls Agreement and the legislative, executive, administrative and judicial actions implementing the Agreement. These grounds will be detailed in a supporting memorandum to be filed in accordance with the briefing schedule established by the Court. In brief, Idaho Code § 42-203B(2) provides in relevant part as follows:

[A]pplication of the provisions of this section to water rights for hydropower purposes on the Snake river or its tributaries downstream from Milner dam shall not place in trust any water from the Snake river or surface or ground water tributary to the Snake river upstream from Milner dam. For the purposes of the determination and administration of rights to the use of the waters of the Snake river or its tributaries downstream from Milner dam, no portion of the waters of the Snake river or surface or ground water tributary to the Snake river upstream from Milner dam shall be considered. 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, including compliance with the requirements of section 42-203C, Idaho Code.

Paragraph 7(B) of the Swan Falls Agreement provides in relevant part that Idaho Power Company's entitlement to use the flow of the Snake River at company facilities between the Milner Dam and the Murphy gauging station to the extent of actual beneficial use within the amounts stated in the State water licenses for those facilities "shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the State in accordance with State law." Paragraph 7(C) of the Swan Falls Agreement provides that "[t]he Company's rights listed in paragraph 7(A) and 7(B) are also subordinate to those persons dismissed from Ada County Case No. 81375."

The State requests oral argument on this motion.

DATED this 7^h day of May 2008.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of May 2008, I caused to be served a true and correct copy of the foregoing STATE OF IDAHO'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON SUBORDINATION TO GROUND WATER RECHARGE to the following parties by the indicated methods:

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