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

IDAHO POWER COMPANY'S THIRD SET OF DISCOVERY REQUESTS TO STATE DEFENDANTS

Plaintiff Idaho Power Company ("Idaho Power"), by and through its undersigned attorneys, hereby submits its Third Set of Discovery Requests to Defendant State of Idaho in this action, to be answered by the State of Idaho 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, or as otherwise ordered by the Court, 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.** The term "State" means the State of Idaho, which is one of the Defendants in this action, and which encompasses all State officials, agencies, and entities, including but not limited to: Governor C.L. "Butch" Otter, Attorney General Lawrence G. Wasden, the Idaho Department of Water Resources ("IDWR"), IDWR Director David Tuthill, and the Idaho Water Resource Board and its members.

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. **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 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.

l. **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.

m. **Swan Falls Agreement Water Rights.** The term "Swan Falls Agreement water rights" means the water rights referred to in Paragraph 7 of the Swan Falls Agreement.

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. Discovery Requests pertaining to Attorney General Opinions 06-2 and 06-2A are made in furtherance of resolution of the issue of whether the Swan Falls Agreement water rights are subordinate to aquifer recharge, and not in furtherance of the request in the Complaint to "repeal" the Attorney General Opinions, which has been dismissed by the Court at this stage of the case.

11. 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.

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: Please admit that pursuant to Idaho Code §§ 42-4201A and 42-234, water rights for aquifer recharge are secondary or subordinate to prior perfected water rights for hydropower purposes.

REQUEST FOR ADMISSION NO. 2: Please admit that pursuant to Idaho Code §§ 42-4201A and 42-234, water rights for aquifer recharge are secondary or subordinate to water rights that may otherwise be subordinated pursuant to the 1984 Swan Falls Agreement and its implementing legislation.

REQUEST FOR ADMISSION NO. 3: Please admit that the issue of the legal relationship between the Idaho Power water rights subject to the Swan Falls Agreement and ground water recharge water right permits nos. 01-7054 and 37-7842 is subject to the April 11, 2006 Stipulation signed by Idaho Power Company and the State of Idaho.

REQUEST FOR ADMISSION NO. 4: Please admit that the holders of ground water recharge water right permits nos. 01-7054 and 37-7842 at the time the Swan Falls Agreement was executed were persons who were dismissed from Ada County Case No. 81375.

REQUEST FOR ADMISSION NO. 5: Please admit that with regard to the appropriation of any water which is held in trust by the State of Idaho pursuant to Idaho Code § 42-203B(5), including the purported appropriation of trust water for aquifer recharge, the State, as trustee, must comply with Idaho Code § 42-203C and consider, prior to approving the application, the criteria established in Idaho Code § 42-203A, including whether the proposed use, individually or cumulatively with other existing uses, or uses reasonably likely to exist within twelve (12) months of the proposed use, would significantly reduce the amount of trust water available to the holder of the water right used for power production that is defined by

agreement pursuant to Idaho Code § 42-203B(5), and if so, whether the proposed reduction is in the public interest.

INTERROGATORIES

INTERROGATORY NO. 1: Please describe the basis for the State's contention in its May 7, 2008 Motion for Summary Judgment 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."

INTERROGATORY NO. 2: Please describe the basis for the State's contention in its May 7, 2008 Motion for Summary Judgment 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 of 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."

INTERROGATORY NO. 3: Please describe the basis for the State's contention in its May 7, 2008 Motion for Summary Judgment 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."

INTERROGATORY NO. 4: Please identify each instance in which the State has taken action on a water right for aquifer recharge on the basis of a purported subordination of hydropower water rights to aquifer recharge water rights, and describe how the purported subordination affected the action taken.

INTERROGATORY NO. 5: Please identify each water right for aquifer recharge permitted or licensed by the State, and specify whether each water right was issued pursuant to

Idaho Code § 42-234, § 42-4201, § 42-4201A, or another statute (in which case please identify the statute).

INTERROGATORY NO. 6: Please describe each instance in which the State has implemented the following statutory directive from Idaho Code §§ 42-4201(4) and 42-4201A(4):

To insure that other water rights are not injured by the operations of [the aquifer recharge district/an aquifer recharge project], the director of the department of water resources shall have the authority to approve, disapprove, or require alterations in the methods employed to achieve ground water recharge. In the event that the director determines that the methods of operation are adversely affecting existing water rights or are creating conditions adverse to the beneficial use of water under existing water rights, the director shall order the cessation of operations until such alterations as may be ordered by the director have been accomplished or such adverse effects otherwise have been corrected.

INTERROGATORY NO. 7: Please explain how the State's position on the issue of whether the Swan Falls Agreement water rights are subordinated to the use of water for aquifer recharge is consistent with the following statutory directive in Idaho Code §§ 42-234(2), 42-4201(2) and 42-4201A(2), or if the State's position is inconsistent with the statutory directive please so indicate:

The rights acquired pursuant to any permit and license obtained as herein authorized shall be secondary to all prior perfected water rights, including those water rights for power purposes that may otherwise be subordinated by contract entered into by the governor and Idaho power company on October 25, 1984, and ratified by the legislature pursuant to section 42-203B, Idaho Code.

INTERROGATORY NO. 8: Please indicate whether IDWR has compiled any estimates of the amount of water that would be available, on average, annually for aquifer recharge if hydropower water rights on the Snake River are assumed to be subordinate to aquifer recharge, and if so, please identify the amount and describe the basis of any such estimate.

INTERROGATORY NO. 9: Please identify those individuals, from the list of persons the State identified as having knowledge of the facts in this case at pages 15-18 of the State's

Responses to Idaho Power Company's First Set of Discovery Requests, who the State believes have knowledge of facts pertaining to whether the Swan Falls Agreement water rights are subordinated to aquifer recharge.

INTERROGATORY NO. 10: Please identify all persons who were involved in preparing or providing information for the State to complete its responses to these discovery requests, specifying the response or responses to which each person contributed.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce all materials in the State's possession relevant to the intent of the parties to the Swan Falls Agreement in 1984 as to whether hydropower water rights exceeding the Swan Falls minimum flows would be subject to subordination to uses of water designated as beneficial uses, and types of entities making such uses, under state law as modified in the future.

REQUEST FOR PRODUCTION NO. 2: Please produce all materials in the State's possession relevant to the intent of the Idaho Legislature as to whether hydropower water rights exceeding the Swan Falls minimum flows would be subject to subordination to uses of water designated as beneficial uses, and types of entities making such uses, under state law as modified in the future.

REQUEST FOR PRODUCTION NO. 3: Please produce all materials in the State's possession relevant to the intent of the parties to the Swan Falls Agreement in 1984 as to whether hydropower water rights exceeding the Swan Falls minimum flows would be subject to subordination to the management or use of water for aquifer recharge.

REQUEST FOR PRODUCTION NO. 4: Please produce all materials in the State's possession relevant to the intent of the Idaho Legislature as to whether hydropower water rights

exceeding the Swan Falls minimum flows would be subject to subordination to the management or use of water for aquifer recharge.

REQUEST FOR PRODUCTION NO. 5: Please produce all materials in the State's possession which relate to the Framework for Final Resolution of Snake River Water Rights Controversy ("Framework"), signed on October 1, 1984 by Governor John Evans, Attorney General Jim Jones, and Idaho Power Chairman and C.E.O. James Bruce, including but not limited to all drafts of the Framework, documents considered in its formulation, and documents referring to it.

REQUEST FOR PRODUCTION NO. 6: Please produce all materials in the State's possession, including documents outside of legislative histories compiled by the Legislative Services Office of the Idaho State Legislature, pertaining to the formulation, adoption and implementation of the following statutes: 1) Idaho Code § 42-234, as enacted in 1978, and as amended in 1994; 2) Idaho Code § 42-4201, as enacted in 1978, and as amended in 1994; 3) Idaho Code § 42-4201A, as enacted in 1982, and as amended in 1985 and in 1994.

REQUEST FOR PRODUCTION NO. 7: Please produce all materials in the State's possession relating to applications, permits and licenses for water rights or the use of water for aquifer recharge.

REQUEST FOR PRODUCTION NO. 8: Please produce all materials in the State's possession relating to use of water in the Snake River Basin, including the ESPA, for aquifer recharge between the years 1976 and the present day.

REQUEST FOR PRODUCTION NO. 9: Please produce all materials in the State's possession relating in any way to aquifer recharge which may occur in the Snake River Basin, including the ESPA, in the future.

REQUEST FOR PRODUCTION NO. 10: Please produce any estimate compiled by IDWR of the amount of water that would be available, on average, annually for aquifer recharge if hydropower water rights on the Snake River are assumed to be subordinate to aquifer recharge

REQUEST FOR PRODUCTION NO. 11: Please produce all materials in the State's possession relating to the consideration of aquifer recharge by the 1986 Legislative Council interim committee on ground water resources, other than the minutes and final report of this committee.

REQUEST FOR PRODUCTION NO. 12: Please produce all materials in the State's possession relating to the consideration of aquifer recharge by the 1993 Legislative Council interim committee on aquifer recharge, other than the minutes and final report of this committee.

REQUEST FOR PRODUCTION NO. 13: Please produce all materials in the State's possession related to the suggestion of IDWR or its personnel that approximately 400,000 acre-feet of water may be available for aquifer recharge in the Snake River Basin.

REQUEST FOR PRODUCTION NO. 14: Please produce all materials in the State's possession outside of the legislative history materials already provided by the State which relate to the proposal and legislative adoption of the following provision in Idaho Code § 42-203B(2):

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.

REQUEST FOR PRODUCTION NO. 15: Please produce all materials in the State's possession relating to the initial adoption, and the continuation, of the State policy concerning a flow of zero c.f.s. at Milner as described in various versions of the Idaho State Water Plan.

REQUEST FOR PRODUCTION NO. 16: Please produce all materials in the State's possession relating to the application for, issuance of, and exercise of water right permit nos. 01-7054 and 37-7842 for ground water recharge.

REQUEST FOR PRODUCTION NO. 17: Please produce all materials in the State's possession relating in any way to Attorney General Opinions 06-2 or 06-2A generated by any party other than the Attorney General or his staff.

REQUEST FOR PRODUCTION NO. 18: Please produce all materials in the State's possession relating in any way to Attorney General Opinions 06-2 or 06-2A, generated by the Attorney General or his staff, and published or provided to any person or entity not part of the government of the State of Idaho.

REQUEST FOR PRODUCTION NO. 19: Please produce all materials upon which the State intends to rely in support of its May 7, 2008 Motion for Summary Judgment.

REQUEST FOR PRODUCTION NO. 20: Please produce all materials, not already produced, which the State referenced, reviewed, or in any way relied upon to answer Interrogatories numbered 1 through 10 set forth above.

Dated this 23rd day of May, 2008.

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