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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

In Re SRBA)

Case No. 39576)

Consolidated Subcase No. 92-00023

IDAHO POWER COMPANY,)

Plaintiff,)

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

v.)

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"), by and through its undersigned attorneys, hereby submits its First Set of Discovery Requests to the State Defendants in this action, to be answered by all State Defendants in this action 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, 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 Defendants.** The term "State Defendants" means the Defendants in this action, collectively and individually: the State of Idaho, C.L. "Butch" Otter, Lawrence G. Wasden, the Idaho Department of Water Resources ("IDWR"), and David Tuthill. In addition, Defendant State of Idaho encompasses all State agencies and officials, including IDWR and its Director David Tuthill.

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. **Mediator's Term Sheet.** The term "Mediator's Term Sheet" means the document titled "Mediator's Term Sheet" dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03-10022 and SRBA Consolidated Subcase 67-13701, with all appendices to the document, which is referred to as the "Agreement" in Section 3(1) of Title X ("Snake River Water Rights Act of 2004"), 118 Stat. 3431.

j. **Person.** The term "person" is defined as any natural person or any business, legal or governmental entity or association.

k. **Relating to.** The term "relating to" means concerning, touching, referring or having reference to, or in any manner whatsoever, whether directly or indirectly.

l. **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.

m. **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.

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. 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.

II. REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that if the quantity of water rights in a basin exceeds the physical supply of water available during all or portions of a year, that basin is considered "over appropriated."

REQUEST FOR ADMISSION NO. 2: Admit that the concept of "over appropriation" applies both to surface and interconnected ground water.

REQUEST FOR ADMISSION NO. 3: Admit that when a basin is "over appropriated," there is no unappropriated water available for new appropriation.

REQUEST FOR ADMISSION NO. 4: Admit that the water rights listed in Paragraph 22 of the Complaint are the only Idaho Power water rights which the State contends are subject to the Swan Falls Agreement, and that Idaho Power owns other water rights at other facilities, including hydropower projects, which are not subject to the terms of the Swan Falls Agreement.

REQUEST FOR ADMISSION NO. 5: Admit that the Swan Falls Agreement acknowledges and preserves Idaho Power's right and ability to purchase, lease, own, or otherwise acquire additional water for power purposes over and above the Swan Falls Daily Minimum Flows provided for in the Agreement.

REQUEST FOR ADMISSION NO. 6: Admit that additional water purchased, leased, owned, or otherwise acquired by Idaho Power for use below the Murphy Gage is not limited by or subject to the Swan Falls Agreement and must be administered and accounted for by the State of Idaho at the Murphy Gage in addition to the Swan Falls Daily Minimum Flows.

REQUEST FOR ADMISSION NO. 7: Admit that for 2006 and all years prior to 2006 during which the Bureau of Reclamation had a flow augmentation program, the State calculated the Swan Falls Daily Minimum Flows without taking into account additional water which was acquired by the Bureau of Reclamation and released into the Snake River as flow augmentation to aid migrating salmon pursuant to obligations under the Endangered Species Act.

REQUEST FOR ADMISSION NO. 8: Admit that the State's practice of including the Bureau of Reclamation flow augmentation water in the calculation of the Swan Falls Daily Minimum Flows in 2007 is a departure from its prior practice.

REQUEST FOR ADMISSION NO. 9: Admit that through the "Mediator's Term Sheet" agreement of the Snake River Water Rights Act of 2004, 118 Stat. 3431, the State agreed that the minimum flows established by the Swan Falls Agreement, designated in the "Mediator's Term Sheet" agreement as Tier 1 - Minimum Flow, shall be decreed in the SRBA to the Idaho Water Resource Board.

REQUEST FOR ADMISSION NO. 10: Admit that through the "Mediator's Term Sheet" agreement, the State, through IDWR, committed to regulate the Tier 1 - Minimum Flow established by the "Mediator's Term Sheet" agreement in accordance with the Swan Falls Agreement.

REQUEST FOR ADMISSION NO. 11: Admit that the State as a party to the "Mediator's Term Sheet" agreement contemplated that the Tier 2 - Flow Augmentation instream flows would be in addition to the Tier 1 - Minimum Flow instream flows described in the "Mediator's Term Sheet" agreement.

REQUEST FOR ADMISSION NO. 12: Admit that the trustee of any trust established under the Swan Falls Agreement is the State of Idaho, acting by and through the Governor.

REQUEST FOR ADMISSION NO. 13: (a) Admit that the Swan Falls Agreement is premised on an assumption by the parties to the Agreement that then existing water uses in the Snake River basin above Swan Falls Dam resulted in a potential irrigation season low flow of approximately 4,500 c.f.s. at the Murphy Gage on an average daily basis. (b) Admit that based on such assumption, the Swan Falls Agreement set the minimum irrigation season low flow at 3,900 c.f.s., 600 c.f.s. below the assumed minimum of 4,500 c.f.s., in order to allow the State to authorize further development of consumptive water uses in the Snake River Basin including the ESPA without violating the 3,900 c.f.s. minimum flow established by the Agreement.

REQUEST FOR ADMISSION NO. 14: Admit that prior to the execution of the Swan Falls Agreement, all trust water had been previously appropriated under Idaho Power's water rights described in Paragraph 7 of the Agreement.

REQUEST FOR ADMISSION NO. 15: Admit that prior to the execution of the Swan Falls Agreement, there was not 600 c.f.s. of unappropriated water to constitute the trust water described in Paragraph 7 of the Agreement.

REQUEST FOR ADMISSION NO. 16: Admit that under the Swan Falls Agreement, the State is obligated to take reasonable steps to insure the Swan Falls Daily Minimum Flows.

REQUEST FOR ADMISSION NO. 17: Admit that under the Swan Falls Agreement, the State is obligated to not issue any permits in the Snake River Basin for ground or surface water use after October 1, 1984, if the use of water under such permits would deplete the flow of the Snake River below the Swan Falls Daily Minimum Flows.

REQUEST FOR ADMISSION NO. 18: Admit that because of the hydrologic interconnectivity of the ESPA and the Snake River, withdrawals of ground water from the ESPA impact flows in the River, and vice-versa.

REQUEST FOR ADMISSION NO. 19: Admit that the depletive effect of withdrawals of ground water from the ESPA on Snake River flows is delayed for a period, often many years, depending upon various factors, including the distance from the well to the River.

REQUEST FOR ADMISSION NO. 20: Admit that existing water uses in the Snake River Basin above the Murphy Gage up to and including 1984 were causing depletions in the hydrologic system, which were not manifested in reduced flows in the Snake River at the Murphy Gage in 1984.

REQUEST FOR ADMISSION NO. 21: Admit that the total delayed depletive effect of ground water withdrawals from the ESPA occurring before 1984 is not yet reflected in Snake River flows at the Murphy Gage.

REQUEST FOR ADMISSION NO. 22: Admit that on July 12, 2003, average daily flows in the Snake River measured at the Murphy Gage and calculated under the Swan Falls Agreement fell below the Swan Falls Daily Minimum Flows.

REQUEST FOR ADMISSION NO. 23: Admit that the flows in the Snake River at the Murphy Gage on July 12, 2003 did not reflect the total delayed depletive effect of ground water withdrawals from the ESPA that had been allowed to occur by the State of Idaho prior to October 1, 1984.

REQUEST FOR ADMISSION NO. 24: Admit that the flows in the Snake River at the Murphy Gage on July 12, 2003 did not reflect the total delayed depletive effect of ground water withdrawals from the ESPA from trust water permit/license and non-trust water permit/license appropriations that have been allowed to occur by the State of Idaho since October 1, 1984.

REQUEST FOR ADMISSION NO. 25: Admit that at the time of the Swan Falls Agreement, the Snake River Basin was over appropriated after consideration of the Swan Falls Daily Minimum Flows.

REQUEST FOR ADMISSION NO. 26: Admit that the ESPA and the Snake River upstream from the Murphy Gage are currently over appropriated and threaten the Swan Falls Daily Minimum Flows insured by the Swan Falls Agreement.

REQUEST FOR ADMISSION NO. 27: Admit that there never was any trust water available for use by post-1984 water uses, there was no trust res, and there exists no trust under the Swan Falls Agreement.

REQUEST FOR ADMISSION NO. 28: Admit that IDWR has processed and approved numerous applications for new appropriations of trust water since 1984.

REQUEST FOR ADMISSION NO. 29: Admit that through the issuance of trust water permits, IDWR authorized the use of trust water that did, and does, not exist.

REQUEST FOR ADMISSION NO. 30: Admit that the water supply and public interest analyses which IDWR performed to issue trust water permits do not reflect the present hydrologic conditions of the ESPA and the Snake River.

REQUEST FOR ADMISSION NO. 31: Admit that Idaho Power owns the following water rights (bracketed names below refer to Company Projects): State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad), 37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls).

REQUEST FOR ADMISSION NO. 32: Admit that the Attorney General and IDWR have asserted that legal title to a portion of Idaho Power's water rights under the Swan Falls Agreement is held by the State of Idaho, and that equitable title to a portion of those water rights is held by Idaho Power and by the State of Idaho.

REQUEST FOR ADMISSION NO. 33: Admit that the Governor has never asserted that the State holds legal title to a portion of Idaho Power's water rights under the Swan Falls Agreement.

REQUEST FOR ADMISSION NO. 34: Admit that one purpose of the State in seeking legal title to a portion of Idaho power's water rights is to subordinate those water rights to ground water recharge.

REQUEST FOR ADMISSION NO. 35: Admit that the first notification provided by the Idaho Attorney General to Idaho Power that the Attorney General intended to file the Notices of Change in Water Right Ownership with IDWR was a telephone call from two members of the Attorney General's staff on December 22, 2006, the same day that the Attorney General filed the Notices with IDWR and that Idaho Power received them.

REQUEST FOR ADMISSION NO. 36: Admit that prior to the Attorney General's filing of the Notices of Change in Water Right Ownership, representatives of the Attorney General's Office discussed the State's claim of ownership to a portion of Idaho Power's water rights and its intent to file notices of change of ownership with the Director, or representatives, of IDWR.

REQUEST FOR ADMISSION NO. 37: Admit that representatives of the Attorney General's Office and the Director, or representatives, of IDWR coordinated the filing of the Notices of Change in Water Right Ownership and the issuance of the Director's Report for Basin 2.

REQUEST FOR ADMISSION NO. 38: Admit that neither the Director, nor representatives, of IDWR conducted any independent investigation of the validity of the Notices of Change in Water Right Ownership filed by the Attorney General or the basis for the claims of ownership asserted in such Notices.

REQUEST FOR ADMISSION NO. 39: Admit that the State has never filed a Notice of Claim to a Water Right in the SRBA pursuant to Idaho Code § 42-1409(4) with respect to any of Idaho Power's water rights listed in Paragraph 7 of the Swan Falls Agreement or any other water right held or claimed by Idaho Power.

REQUEST FOR ADMISSION NO. 40: Admit that the res of any trust created under the Swan Falls Agreement is water and not water rights.

REQUEST FOR ADMISSION NO. 41: Admit that Idaho Power's water rights were not to be available for distribution to new uses pursuant to the Swan Falls Agreement.

REQUEST FOR ADMISSION NO. 42: Admit that nowhere in the Swan Falls Agreement, or any documents related thereto, is there any reference made to the State of Idaho owning or claiming legal title to Idaho Power's water rights as trustee.

REQUEST FOR ADMISSION NO. 43: Admit that nowhere in the Swan Falls Agreement, or any documents related thereto, is there any reference made to Idaho Power conveying its water rights into a trust.

REQUEST FOR ADMISSION NO. 44: Admit that the State approved applications and issued permits for the use of trust water under new priority dates, not the priority dates of any water rights owned by Idaho Power.

REQUEST FOR ADMISSION NO. 45: Admit that until the actions of the State referenced in the Complaint, the State of Idaho has never claimed or asserted legal title to Idaho Power's water rights, requested conveyance of title, otherwise asserted that legal title was necessary for the State of Idaho to undertake its duties as trustee of the trust water, or otherwise contested ownership of Idaho Power's water rights.

REQUEST FOR ADMISSION NO. 46: Admit that the State of Idaho through IDWR submitted recommendations to the SRBA Court that water right decrees in Basins 2, 36 and 37 for water rights listed in Paragraph 7 of the Swan Falls Agreement be adjudicated in the name of Idaho Power as the owner of such water rights. (b) Admit that such recommendations were

based on IDWR's investigation of Idaho Power's Notices of Claim to a Water Right pursuant to Idaho Code § 42-1410 authorizing and requiring IDWR's investigation of water right claims.

REQUEST FOR ADMISSION NO. 47: Admit that the actions of the State, its officials, and its agencies following the execution of the Swan Falls Agreement through at least 2005 have been consistent with title to the water rights remaining with Idaho Power.

REQUEST FOR ADMISSION NO. 48: (a) Admit that on March 9, 2006, Attorney General Wasden, in response to questions in a February 27, 2006 letter from State House Speaker Bruce Newcomb, issued Attorney General Opinion 06-2 "Regarding Swan Falls Agreement and Idaho Code §§ 42-234(2) and 42-4201A(2)" (hereinafter "Attorney General Opinion 06-2"). (b) Admit that the Attorney General or members of his staff, before receiving such letter, discussed with Speaker Newcomb or other members of the legislature the preparation of an Attorney General opinion concerning the subordination of Idaho Power's hydropower water rights under the Swan Falls Agreement.

REQUEST FOR ADMISSION NO. 49: Admit that the water levels in the ESPA have progressively declined, and continue to decline, resulting in diminishing spring flows, reach gains and flows in the Snake River, and that a contributing factor in such hydrologic developments is the pumping of ground water.

REQUEST FOR ADMISSION NO. 50: Admit that diminishing spring flows, reach gains and flows in the Snake River have resulted in a number of water right "calls" made by senior priority appropriators utilizing surface and spring water from the Snake River, and that a contributing factor in such calls is the pumping of ground water under junior water rights.

REQUEST FOR ADMISSION NO. 51: Admit that ground water pumping from the ESPA has hydrologic impacts on the aquifer and interconnected surface waters beyond the year that pumping occurs.

REQUEST FOR ADMISSION NO. 52: Admit that to date IDWR has not taken into account the multiple year impacts of ground water pumping from the ESPA in its administration of junior ground water and senior surface water rights.

REQUEST FOR ADMISSION NO. 53: Admit that IDWR has curtailed or threatened to curtail ground water rights only on the basis of within-the-year or seasonal impacts of such pumping.

REQUEST FOR ADMISSION NO. 54: Admit that the State's failure to account for the multiple year impacts of ground water pumping, to the extent that that failure results in a violation of the Swan Falls Daily Minimum Flows, is unreasonable and constitutes a breach of the Swan Falls Agreement.

III. INTERROGATORIES

INTERROGATORY NO. 1: For each of your responses to Requests for Admission 1 through 54 above that is not an unqualified admission, state the number of the Request for Admission, state all facts upon which you base your response, identify each person who has knowledge of these facts, and identify all documents and other tangible things that support your response.

IV. REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Produce all documents identified in or related to your responses to Interrogatory No. 1 and Requests for Admission Nos. 1 through 54 above.

Dated this 9th day of October, 2007.

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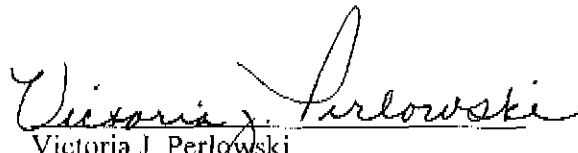
Attorneys for Idaho Power Company

CERTIFICATE OF MAILING

I certify that on October 9, 2007, I mailed copies of **IDAHO POWER COMPANY'S FIRST SET OF DISCOVERY REQUESTS TO STATE DEFENDANTS** to the following persons by U.S. Mail:

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