

COPY

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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
	)	(92-23)
	)	
Case No. 39576	)	THIRD AFFIDAVIT OF
	)	MICHAEL C. ORR
	)	

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

MICHAEL C. ORR, being first duly sworn upon his oath, deposes and states that:

1. I am a Deputy Attorney General and one of the attorneys of record for the State of Idaho in this consolidated subcase.
2. * The following is based upon my own personal knowledge.
3. Attached hereto as **Exhibit 1** is a true and correct copy of the article

Between Rock Creek And A Hard Place: Who Will Control Idaho's Water?, by Thomas G. Nelson (THE ADVOCATE, September 1989).

4. Attached hereto as **Exhibit 2** are true and correct copies of excerpted pages of the "Report Of Board Of Engineers To Consider Projects In Snake River Valley Which May Affect The Proposed American Falls Reservoir And The Available Water Supply Therefore," dated April 10, 1920.

5. Attached hereto as **Exhibit 3** is a true and correct copy of the "Report on Application Before Federal Power Commission by Idaho Power Company, Serial No. 18, for Preliminary Permit Covering Twin Falls site, on Snake River."

6. Attached hereto as **Exhibit 4** are true and correct copies of excerpted pages of Idaho Power Company's "Application for License" to the Federal Power Commission for the Twin Falls Project (Feb. 1, 1922).

7. Attached hereto as **Exhibit 5** are true and correct copies of excerpted pages of Idaho Power Company's "Exhibit 'H' – Statement of Effect of Project on Stream Flow to Accompany Application for License under Act of June 10, 1920."

8. Attached hereto as **Exhibit 6** are true and correct copies of excerpted pages of the "Contract Between the United States and the Idaho Power Company Relative To Power Rights at American Falls, Idaho."

9. Attached hereto as **Exhibit 7** are true and correct copies of excerpted pages of the article "Twin Falls Hydroelectric Development," by H.L. Senger of Idaho Power Company (ELECTRICAL WEST, April 1936).

10. Attached hereto as **Exhibit 8** is a true and correct copy of the "Proposed Stipulation for inserting in Federal Power License No. 18, to Idaho Power Company."

11. Attached hereto as **Exhibit 9** is a true and correct copy of the Federal Power Commission "License on Government Lands, Project No. 18, Idaho, Idaho Power Company" (May 11, 1934).

12. Attached hereto as **Exhibit 10** is a true and correct copy of "Idaho Power Company Minutes of Special Meeting of Board of Directors May 11, 1934."

13. Attached hereto as **Exhibit 11** are true and correct copies of excerpted pages of the United States Bureau of Reclamation "Report on Upper Snake River Storage Investigations," dated June 1935.

14. Attached hereto as **Exhibit 12** is a true and correct copy of a letter from Lynn Crandall to B.E. Stoutemyer, dated June 18, 1937.

15. Attached hereto as **Exhibit 13** is a true and correct copy of a letter from B.E. Stoutemyer to R.W. Faris, dated June 21, 1937.

16. Attached hereto as **Exhibit 14** are true and correct copies of excerpted pages of the transcript of the examination of Lynn Crandall on July 14, 1952, in Federal Power Commission proceedings on Idaho Power Company's project.

17. Attached hereto as **Exhibit 15** is a true and correct copy of a letter from the Secretary of the United States Department of the Interior to Joseph C. Swindler, Chairman of the Federal Power Commission, dated August 30, 1962.

18. Attached hereto as **Exhibit 16** are true and correct copies of excerpted pages of Idaho Power Company's "Application for License" to the Federal Power Commission of February 13, 1959.

19. Attached hereto as **Exhibit 17** are true and correct copies of excerpted pages of Idaho Power Company's "Application for License" to the Federal Power

Commission of September 21, 1973.

20. Attached hereto as **Exhibit 18** is a true and correct copy of "Answer in Opposition to Motion To Intervene" filed with the Federal Energy Regulatory Commission ("FERC") on November 17, 1983.

21. Attached hereto as **Exhibit 19** is a true and correct copy of an October 1, 1984, "News Release" by the Idaho Office of the Attorney General.

22. Attached hereto as **Exhibit 20** are true and correct copies of excerpted pages of the December 13, 1984 meeting of the Idaho Water Resource Board ("Water Board").

23. Attached hereto as **Exhibit 21** are true and correct copies of excerpted pages of the minutes of the March 1, 1985 meeting of the Water Board. ("Water Board").

24. Attached hereto as **Exhibit 22** is a true and correct copy of the Idaho Department of Water Resources' (the "Department") "Request for Comment and Notice of Intent to Write and Adopt Rules And Regulations or Water Appropriation," dated May 31, 1985.

25. Attached hereto as **Exhibit 23** is a true and correct copy of transcript that the Idaho Attorney General's Office caused to be prepared of a recording of the January 28, 1985, meeting of the Water Board.

26. Attached hereto as **Exhibit 24** are true and correct copies of transcripts the Idaho Attorney General's Office caused to be prepared of the recordings of the 2:00pm and 7:00pm meeting of the Water Board on January 29, 1985.

27. Attached hereto as **Exhibit 25** are true and correct copies of transcripts the Idaho Attorney General's Office caused to be prepared of the recordings of the 2:00pm

and 7:00pm meeting of the Water Board on January 30, 1985.

28. Attached hereto as **Exhibit 26** is a true and correct copy of a transcript that the Idaho Attorney General's Office caused to be prepared of the recordings of the January 31, 1985, meetings of the Water Board.

29. Attached hereto as **Exhibit 27** is a true and correct copy of transcript that the Idaho Attorney General's Office caused to be prepared of the recording of the February 5, 1985, meeting of the Water Board.

30. Attached hereto as **Exhibit 28** are true and correct copies of transcripts of that the Idaho Attorney General's Office caused to be prepared the recordings of the February 6, 1985, meetings of the Water Board.

31. Attached hereto as **Exhibit 29** is a true and correct copy of the attendance sheets, written testimony and exhibits transcript for the January 28, 1985, meeting of the Water Board.

32. Attached hereto as **Exhibit 30** is a true and correct copy of the attendance sheets, written testimony and exhibits transcript for the January 29, 1985, meeting of the Water Board.

33. Attached hereto as **Exhibit 31** is a true and correct copy of the attendance sheets, written testimony and exhibits transcript for the January 30, 1985, meeting of the Water Board.

34. Attached hereto as **Exhibit 32** is a true and correct copy of the attendance sheets, written testimony and exhibits transcript for the January 31, 1985, meeting of the Water Board.

35. Attached hereto as **Exhibit 33** is a true and correct copy of the attendance

sheets, written testimony and exhibits transcript for the February 5, 1985, meeting of the Water Board.

36. Attached hereto as **Exhibit 34** is a true and correct copy of the attendance sheets, written testimony and exhibits transcript for the February 6, 1985, meeting of the Water Board.

37. Attached hereto as **Exhibit 35** are true and correct copies of News Releases the Department issued in 1985 regarding administrative rules and regulations to be adopted pursuant to the legislation implementing the Swan Falls settlement.

38. Attached hereto as **Exhibit 36** is a true and correct copy of a memorandum from Norm Young to Department Director Ken Dunn dated June 14, 1985.

39. Attached hereto as **Exhibit 37** is a true and correct copy of a letter from Jeffery C. Fereday to Department Director A. Kenneth Dunn, dated July 12, 1985.

40. Attached hereto as **Exhibit 38** is a true and correct copy of a letter from John A. Rosholt to Department Director Kenneth Dunn, dated October 30, 1985.

41. Attached hereto as **Exhibit 39** is a true and correct copy of the Department's "Notice of Intent to Adopt Rules Governing Water Allocation and to Hold Hearing," dated November 21, 1985.

42. Attached hereto as **Exhibit 40** is a true and correct copy of memorandum from Norm Young to Department Director Kenneth Dunn, dated January 21, 1986.

43. Attached hereto as **Exhibit 41** is a true and correct copy of a January 29, 1985, "News Release" by the Idaho Office of the Attorney General.

44. Attached hereto as **Exhibit 42** is a true and correct copy of a memorandum from Norm Young to Department Director Kenneth Dunn, dated February

5, 1986.

45. Attached hereto as **Exhibit 43** is a true and correct copy of the minutes of the Water District No. Annual Meeting” of March 4, 1986.

46. Attached hereto as **Exhibit 44** is a true and correct copy of a News Release by the Department dated April 23, 1986.

47. Attached hereto as **Exhibit 45** true and correct copies of excerpted pages of Idaho Power Company’s “Response to Questions 5 and 6 Completing Response to Request for Information Dated January 30, 1987,” and the cover letter thereto, filed with the Federal Energy Regulatory Commission under docket no. EL85-38-000 on May 19, 1987.

48. Attached hereto as **Exhibit 46** are true and correct copies of excerpted pages of the “State of Idaho Response to Federal Energy Regulatory Commission Request for Additional Information,” and the cover letter thereto, filed with the Federal Energy Regulatory Commission under docket no. EL85-38-000 on May 18, 1987.

49. Attached hereto as **Exhibit 47** are true and correct copies of excerpted pages of the “Notice of Dismissal of Certain Defendants” that Idaho Power Company filed in Ada County Case No. 81375 on October 24, 1985.

50. Attached hereto as **Exhibit 48** is a true and correct copy of minutes of the July 7, 2004, meeting of the Expanded Natural Resource Interim Committee, obtained from the Department’s website at the following URL:
<http://www.idwr.idaho.gov/Committee/7-07-04minutes.pdf>.

51. Attached hereto as **Exhibit 49** is a true and correct copy of minutes of the September 2, 2004, meeting of the Expanded Natural Resource Interim Committee,

obtained from the Department's website at the following URL:
<http://www.idwr.idaho.gov/Committee/expnates0902min.pdf>.

52. Attached hereto as **Exhibit 50** is a true and correct copy of "Idaho Power Company's Third Set of Discovery Requests to State Defendants" in this matter, dated May 23, 2008.

53. Attached hereto as **Exhibit 51** is a true and correct copy of "Idaho Power Company's Response to State of Idaho's Third Set of Discovery Requests" in this matter," dated June 30, 2008.

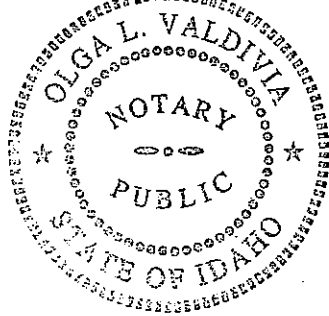
54. Attached hereto as **Exhibit 52** are true and correct copies of "Idaho Power Company's Response to State of Idaho's First Set of Requests for Admission and Requests for Production of Documents" in this matter, dated November 19, 2007.

55. Attached hereto as **Exhibit 53** is a true and correct copy of a document entitled "Future Upstream Depletion Above Hells Canyon," by Lynn Crandall, April 28, 1953.

DATED this 18th day of July 2008.


MICHAEL C. ORR

SUBSCRIBED AND SWORN to before me this 18th day of July 2008.




Notary Public for Idaho
Residing at: Boise, ID
My commission expires: 2/8/2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18st day of July 2008, I caused a true and correct copy of the foregoing **THIRD AFFIDAVIT OF MICHAEL C. ORR** to be served on the following parties by the indicated methods:

Idaho Power Company

Represented by:

James S. Lochhead

Mark J. Mathews

Michael A. Gheleta

Michelle C. Kales

Brownstein Hyatt Farber Shreck

410 17th Street, Ste. 2200

Denver, CO 80202-4432

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☒ FedEx First Overnight
- ☐ Facsimile: 303.223.0904
- ☐ E-mail: mgheleta@bhfs.com
- ☐ E-mail: jlochhead@bhfs.com



MICHAEL C. ORR

Deputy Attorney General

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LAWRENCE G. WASDEN
Attorney General

STEVEN L. OLSEN (ISB #3596)
Deputy Attorney General
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KARL T. KLEIN (ISB # 5156)
MICHAEL C. ORR (ISB # 6720)
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Boise, ID 83711-4449
(208) 334-2400
Attorneys for The State of Idaho

**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
	) (92-23)
	)
Case No. 39576	) AMENDED CERTIFICATE OF
	) SERVICE FOR THIRD AFFIDAVIT
	) OF MICHAEL C. ORR
	)

I HEREBY CERTIFY that on the 18th day of July 2008, I caused a true and correct copy of the THIRD AFFIDAVIT OF MICHAEL C. ORR, including attached exhibits, to be served on the following parties by the indicated methods:

Idaho Power Company

Represented by:

James S. Lochhead

Mark J. Mathews

Michael A. Gheleta

Michelle C. Kales

Brownstein Hyatt Farber Shreck

410 17th Street, Ste. 2200

Denver, CO 80202-4432

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☒ FedEx First Overnight
- ☐ Facsimile: 303.223.0904
- ☐ E-mail: mgheleta@bhfs.com
- ☐ E-mail: jlochhead@bhfs.com

I FURTHER HEREBY CERTIFY that on this 21st day of July 2008, prior to 12:00 p.m., I caused a true and correct copy of the THIRD AFFIDAVIT OF MICHAEL C. ORR, including exhibits (except as otherwise indicated), foregoing to be served on the following parties by the indicated methods:

Original to Clerk of the SRBA Court
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☒ Facsimile: 208-736-2121

Idaho Power Company

Represented by:

James C. Tucker

P.O. Box 70

1221 W. Idaho

Boise, ID 83707

- ☐ U.S. Mail
- ☒ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: 208.388.6935
- ☒ E-mail: jtucker2@idahopower.com (affidavit without exhibits)

Idaho Power Company

Represented by:
James S. Lochhead
Mark J. Mathews
Michael A. Gheleta
Michelle C. Kales
Brownstein Hyatt Farber Shreck
410 17th Street, Ste. 2200
Denver, CO 80202-4432

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: 303.223.0904
- ☒ E-mail: mgheleta@bhfs.com (affidavit without exhibits)
- ☒ E-mail: jlochhead@bhfs.com (affidavit without exhibits)

Idaho Power Company

Represented by
John K. Simpson
Shelley M. Davis
1010 W. Jefferson, Suite 102
Boise, ID 83701-2139

- ☐ U.S. Mail
- ☒ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: 208.344.6034
- ☒ E-mail: smd@idahowaters.com (affidavit without exhibits)

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83720-4449

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Not Applicable

United States Department of Justice
Environment & Natural Resources
Division
550 West Fort Street
MSC 033
Boise, ID 83724

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____

Randall C. Budge
Candice M. McHugh
Racine Olson Nye Budge & Bailey,

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested

Chartered
P.O. Box 1391
Pocatello, Idaho 83204-1391

☐ Overnight Mail
☐ Facsimile: _____
☒ E-mail: cmm@racinelaw.net (affidavit
without exhibits)

Josephine Beeman
Beeman & Associates, P.C.
409 W. Jefferson Street
Boise, Idaho 83702

☒ U.S. Mail
☐ Hand Delivery
☐ Certified Mail, Return Receipt Requested
☐ Overnight Mail
☐ Facsimile: _____
☒ E-mail: jo.beeman@beemanlaw.com
(affidavit without exhibits)



Attachments may be viewed in the repository
or legal file