

DEPARTMENT OF
WATER RESOURCES

Idaho Power Company (“Idaho Power”), by and through its counsel, hereby files this Brief in Opposition to the State of Idaho’s Motion to Compel Discovery. In its Motion, the State seeks to compel Idaho Power to produce documents that are clearly outside the scope of the pleadings and orders in this case and are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Since it became clear well over a year ago that this matter would result in litigation, Idaho Power conducted an extensive collection and review of documents related to the Swan Falls negotiations and resulting Swan Falls Agreement and implementing legislation. This collection and review resulted in the generation of over 17,000 responsive documents. With the exception of privileged documents, Idaho Power has produced all of these documents to the State. The only documents Idaho Power has not produced in response to the State's discovery requests are documents related to the subjects identified by Idaho Power as irrelevant to the current litigation in its Motion to Strike, or Alternatively Motion in Limine Re: Scope of State Motion for Summary Judgment (“Motion to Strike or in Limine”). And, as discussed herein, requiring Idaho Power to undertake additional searches for documents and discovery in response to the State's improper requests will take substantial additional time and will necessitate a delay in these proceedings.

For the reasons set forth below and in Idaho Power’s Motion to Strike or in Limine, the outstanding matters on which the State seeks discovery are entirely irrelevant to the issues in the current proceeding. Discovery on these subjects is inappropriate and the State’s Motion should be denied.

PROCEDURAL HISTORY

Idaho Power has thoroughly and completely responded to the State's numerous discovery requests with the exception of the subjects identified in its Motion to Strike or in Limine. In approximately March 2008, Idaho Power completed a comprehensive collection and review of the Company's documents relating to the Swan Falls negotiations and resulting in the Swan Falls Agreement and implementing legislation. Affidavit of Shelley M. Davis in Support of Idaho Power Company's Memorandum in Opposition to State's Motion to Compel ("Davis Aff.") ¶¶ 12-14. In addition to Idaho Power's extensive review of its own files, the Company's outside counsel, Barker Rosholt & Simpson, conducted a comprehensive search of the firm's archived files from its representation of Idaho Power during the Swan Falls negotiations, as well as of the Idaho legislative library and Idaho Historical Archives. *Id.* ¶ 12. The entire document collection and review process generated approximately 17,000 responsive documents and took nearly a year to complete. *Id.* ¶ 12-13.

Idaho Power first made these documents available to the State in their entirety on March 11, 2008, in response to the State's first substantive requests for production of documents. *Id.* ¶ 3. At no time between March 11, 2008 and July 2, 2008 did anyone from the State contact Idaho Power's counsel to request these documents be made available for review. *Id.* The State first requested the right to inspect Idaho Power's documents on July 2, 2008. *Id.* ¶ 4. After scheduling issues were worked out, all of Idaho Power's non-privileged documents from the Company's document collection and review were made available to the State on July 15-16, 2008 at the offices of Barker

Rosholt & Simpson. *Id.* ¶¶ 7-8, 10. Idaho Power also provided the State with its complete privilege log at that time. *Id.*

In addition, in order to assist the State during the State's July 15, 2008 review of Idaho Power's documents, Idaho Power identified a subset of documents from its larger production that are specifically relevant to Idaho Power's contention that the Company's Swan Falls hydropower rights are not subordinated to aquifer recharge. *Id.* ¶ 9. On July 18, 2008, Idaho Power provided the State with another list of documents from Idaho Power's larger production set that specifically respond to selected requests for production. Affidavit of Michael Gheleta in Support of Idaho Power Company's Memorandum in Opposition to State's Motion to Compel ("Gheleta Aff."), Ex. A (July 18, 2008 Letter from Michael Gheleta to Steven Olsen).

Finally, on July 24, 2008, Idaho Power served the State with supplemental responses to the State's third set of requests for production of documents. Gheleta Aff., Ex. B (Idaho Power Company's Supplemental Responses to State of Idaho's Third Set of Discovery Requests). Idaho Power's supplemental responses clarify that – with the exception of the requests for production Idaho Power objected to on the bases set forth in its Motion to Strike or in Limine and a limited number of requests for which Idaho Power is conducting a subsequent search for additional responsive documents (*see id.*, Supplemental Response to RFPs 2, 8, 9, 34, 35 and 53) – Idaho Power has provided the State with documents in response to all of the State's requests for production. *Id.* at 22-66. Idaho Power has also provided thorough objections and responses to the State's interrogatories and requests for admission with the exception of those requests to which Idaho Power objected on the bases set forth in Idaho Power's Motion to Strike or in

Limine. Accordingly, Idaho Power has made a more than reasonable effort to respond to the State's Third Set of Discovery Requests and, for the reasons set forth below, the State's Motion to Compel further responses from Idaho Power on issues outside this case should be denied.

ARGUMENT

A. The State's Discovery Requests Seek Information That is Entirely Irrelevant and Outside the Scope of the Pleadings in This Action.

Although the scope of permissible discovery under the Idaho Rules of Civil Procedure is certainly broad, it does not allow a party to seek information that is neither relevant nor likely to lead to the discovery of admissible evidence. *See* 8 C. Wright & A. Miller, *Federal Practice & Procedure* § 2008, at 41 (1970) (stating that with respect to the nearly identical language of Fed. R. Civ. P. 26(b), “[p]erhaps the single most important word in Rule 26(b) is ‘relevant’ for it is only a relevant matter that may be subject to discovery”). As the State notes in its Motion to Compel, the very purpose of discovery is “so that all *relevant facts and information* pertaining to the action can be ascertained in advance of trial.” *See Sanders v. Ayrhart*, 89 Idaho 302, 309, 404 P.2d 589, 582 (1965) (emphasis added). As discussed below and in Idaho Power's Motion to Strike or in Limine, many of the State's discovery requests fail to meet even this broad discovery standard.

The overall scope of this consolidated subcase under the Court's orders is the interpretation and application of the Swan Falls Agreement, and the only remaining issue to be decided by the Court is whether, under the Swan Falls Agreement, Idaho Power subordinated the hydropower water rights listed in that agreement to the use of water for

aquifer recharge. The State, however, seeks discovery on a number of issues which are clearly outside, and unnecessarily expand and complicate, the scope of this litigation:

- The State's administration of the Snake River as a separate source above versus below Milner Dam – a matter of State policy and water rights administration.
- The nature and enforcement of Idaho Power's rights under a 1923 Contract and 1976 Contracts between Idaho Power and the United States concerning American Falls Reservoir, and the effect of a 1934 Federal Power Commission License for Twin Falls Power Plant.
- The effect of a subordination condition in Idaho Power's water rights for its C.J. Strike facility, when this facility and these water rights are not among those listed in the Swan Falls Agreement or included in this consolidated subcase.
- The terms of subordination of Idaho Power's water rights to two specific water permits for ground water recharge, which have yet to be licensed, and which the parties agreed not to litigate pursuant to a 2006 Stipulation between the State and Idaho Power.

All of these issues are beyond the scope of this consolidated subcase, and Idaho Power should not be required to respond to the State's discovery requests that seek information on these issues.¹

Idaho Power sets forth in substantial detail in its Motion to Strike or in Limine how each of these four issues fall outside the scope of this proceeding, as they relate neither to the interpretation or application of the Swan Falls Agreement and the specific water rights that are subject thereto, nor to the issue of whether those water rights are subordinate to recharge. Although Idaho Power will not repeat its Motion to Strike or in

¹ The State also moves to compel Idaho Power's response to Request for Production No. 10. *See* Motion to Compel at 6. As set forth in Idaho Power's supplemental discovery responses, notwithstanding Idaho Power's initial objections to this request, Idaho Power has made a reasonable effort to produce all non-privileged documents in its possession, custody, or control that are responsive to this request. *Gheleta Aff.*, Ex. B (Idaho Power Company's Supplemental Responses to State of Idaho's Third Set of Discovery Requests at 29 -- Supplemental Response to Request for Production No 10). As such, this issue is now moot.

Limine arguments here, the Company highlights below how each of the above-referenced issues, and the discovery requests related to those issues, are irrelevant – if only to give the Court an idea of how voluminous and superfluous discovery would be were the State allowed to proceed with discovery on these issues.

1. Requests regarding the administration of the Snake River above and below Milner Dam and the State's "zero flow" policy.

In several of its discovery requests, the State seeks information and documents regarding the history, operation, and reach of the State statute concerning administration of water rights above versus below Milner Dam, and the State's related policy of maintaining a zero flow at Milner.² It is clear from the Milner discovery requests, and the State's Motion for Summary Judgment on this same issue, that the State seeks a broad ruling from this Court that Idaho Power subordinated its water rights to all water rights diverting from sources upstream from Milner Dam and not simply to the use of water for recharge. But the issue of state water right administration in accordance with a concept of "two rivers" or "two sources," which is based on broadly applicable legislation enacted by the Idaho legislature implementing prior state policy objectives – not the Swan Falls Agreement – is simply beyond the scope of the issues consolidated in this subcase. *See* Motion to Strike or in Limine at 6-11.

Moreover, the State's discovery sought on its historical policy of administering the Snake River at Milner Dam for zero flow, in addition to being irrelevant and entirely outside the scope of this proceeding, is the subject of separate SRBA subcases. *See*

² Specifically, the following discovery requests in the State of Idaho's Third Set of Discovery Requests to Idaho Power Company seek information and documents on the issue of administration of water rights above versus below Milner (*see* Gheleta Aff., Ex. B): Requests for Admission Nos. 5-11 and 16-18, Interrogatory Nos. 4-6, and Requests for Production Nos. 31-33, 36-37, 39-40 and 61 (hereinafter referred to collectively as the "Milner discovery requests"). Some of the Milner discovery requests are set forth in the for the Court's convenience in Idaho Power's Motion to Strike or in Limine at 7, n. 4.

Gheleta Aff., Ex. B (Request for Production No. 61). Accordingly, the Court has no basis in this proceeding on which to make any ruling on or interpretation of the zero flow policy. As such, the State should not be allowed to conduct discovery on this issue. *See also* Motion to Strike or in Limine at 9.

Moreover, both of these issues – the separate source or two rivers concept and zero flow at Milner Dam – relate solely to how water rights, once decreed by this Court, should be administered pursuant to statute, not whether specific water rights below Milner Dam are subordinated to all water rights above Milner Dam. These administration issues have not been put at issue in Idaho Power’s Complaint or any responsive pleading filed by the State. Accordingly, the State should not be allowed to file far-reaching discovery requests related to these issues.³

2. *Requests regarding the nature and enforcement of Idaho Power’s water rights under a 1923 Contract and 1976 Contracts between Idaho Power and the United States on American Falls Reservoir, and the effect of a 1934 Federal Power Commission license for the Twin Falls power plant.*

The State also seeks discovery related to federal actions governing two facilities not covered in any way by the Swan Falls Agreement. Specifically, the State includes a number of discovery requests in its Third Set of Discovery that relate to the 1923 Contract and 1976 Contracts between Idaho Power and the United States affecting the

³ The State spends several pages of its brief complaining that Idaho Power is now objecting to discovery requests from the State that are similar to discovery requests propounded by Idaho Power. *See* Motion to Compel at 4-7. But given the breadth of the State’s Motion for Summary Judgment and the discovery deadline set by the Court to seek discovery on the issues remaining in this action, Idaho Power had no choice but to serve the State with discovery requests on the four issues set forth above to preserve its option to take discovery on these issues should the Court decline to grant Idaho Power’s Motion to Strike or in Limine. The State proceeded to copy a number of these requests when serving their voluminous discovery requests upon Idaho Power a week later. The fact that Idaho Power propounded these requests as a precautionary measure does not change Idaho Power’s position that the issues covered in its Motion to Strike or in Limine, and the discovery requests at issue in the State’s Motion to Compel, are irrelevant and discovery on those issues is improper. Thus, if the Court grants Idaho Power’s Motion to Strike, as Idaho Power urges the Court to do, Idaho Power’s discovery requests on these issues, like the State’s, would be unnecessary.

release of storage water for the American Falls Reservoir,⁴ and numerous requests for information that pertain to a 1934 Federal Power Commission License for Idaho Power's Twin Falls hydropower facility.⁵ Issues concerning the effects of these federal actions, and in particular Idaho Power's water rights associated with these two facilities, are not included in any pleadings and not properly subject to resolution by the Court in this consolidated subcase.

Rather, the water rights associated with these facilities are the subject of separate proceedings in SRBA Basin 1 and in federal court litigation between Idaho Power and the United States, and issues related to these facilities should be resolved in those proceedings. Accordingly, the American Falls and Twin Falls discovery requests could not possibly lead to the discovery of relevant and admissible evidence *in this action*, and the State's Motion to Compel Idaho Power's responses to these requests should be denied.

3. *Requests regarding alleged subordination of water rights at Idaho Power's C.J. Strike Facility.*

The third group of objectionable discovery requests relate to Idaho Power's C.J. Strike hydropower facility.⁶ In the C.J. Strike discovery requests, the State suggests that

⁴ The following discovery requests in the State of Idaho's Third Set of Discovery Requests to Idaho Power Company seek information and documents on issues related to the American Falls Reservoir (*see Gheleta Aff., Ex. B*): Requests for Admission Nos. 19-20, Interrogatory No. 5, and Requests for Production Nos. 47-49 and 52 (hereinafter referred to collectively as the "American Falls discovery requests"). *See Motion to Strike or in Limine* at 12, n. 8.

⁵ The following discovery requests in the State of Idaho's Third Set of Discovery Requests to Idaho Power Company seek information and documents on issues related to Idaho Power's Twin Falls facility (*see Gheleta Aff., Ex. B*): Requests for Admission Nos. 14-15, Interrogatory No. 6, and Requests for Production Nos. 41, 43-46 (hereinafter referred to collectively as the "Twin Falls discovery requests"). *See Motion to Strike or in Limine* at 12-13, n. 9.

⁶ The following discovery requests in the State of Idaho's Third Set of Discovery Requests to Idaho Power Company seek information and documents on issues related to Idaho Power's C.J.

Idaho Power has subordinated its water rights at its C.J. Strike facility pursuant to state water rights permit and license provisions governing this facility – presumably in an effort to draw conclusions from these provisions about Idaho Power’s subordination intentions with respect to the water rights under the Swan Falls Agreement. As with the water rights associated with the American Falls Facility, the C.J. Strike facility is not listed among the Idaho Power water rights subject to subordination in paragraph 7 of the Swan Falls Agreement, and therefore is not affected by that Agreement. In fact, the hydropower water right for C.J. Strike is the subject of a separate SRBA proceeding in Basin 2 and issues related to that water right should be resolved in that proceeding. Accordingly, the State has no legitimate basis on which to propound the C.J. Strike discovery requests in this action.

4. *Requests regarding the terms of Idaho Power’s subordination under a 2006 stipulation to two specific recharge permits.*

The final discovery request to which Idaho Power objects is Request for Production No. 38 in the State’s Third Set of Discovery Requests. This Request for Production seeks documents related to two specific recharge permits not yet licensed and the terms of Idaho Power’s subordination under a 2006 Stipulation related to these permits. *See Gheleta Aff., Ex. B* (Request for Production No. 38). Again, the focus of this case is on Idaho Power’s agreement, or not, to the subordination of its Swan Falls water rights under the Swan Falls Agreement. Nothing in the terms of either the recharge permits or the 2006 Stipulation relate in any way to this issue.

Strike facility (*see Gheleta Aff., Ex. B*): Requests for Admission Nos. 12-13 and Requests for Production Nos. 19-21 (hereinafter referred to collectively as the “C.J. Strike discovery requests”). *See Motion to Strike or in Limine* at 14-15, n. 10.

The terms of Idaho Power's subordination of certain of its water rights to these two recharge permits are governed not by the Swan Falls Agreement but by the 2006 Stipulation. Thus, issues concerning Idaho Power's agreement to subordinate its water rights to these particular permits are immaterial to the terms of subordination of Idaho Power's water rights under the Swan Falls Agreement. Moreover, as discussed in Idaho Power's Motion to Strike or in Limine, to the extent the State raises the 2006 Stipulation in support of its arguments before this Court on the issues of alleged subordination of hydropower water rights to recharge, the State is acting in violation of paragraph 6 of the Stipulation. *See* Motion to Strike or in Limine at 17 (quoting paragraph 6 of the Stipulation which provides that "[n]othing in this Stipulation shall be construed as an admission against interest or tendered or used as evidence to support or oppose any party's claims or objections in any administrative or judicial proceeding . . ."). Accordingly, discovery related to these recharge permits and the 2006 Stipulation is not likely to lead to the discovery of relevant and admissible evidence, and Idaho Power should not be compelled to respond to the State's Request for Production No. 38 on these issues.

B. Requiring Idaho Power to Respond to The State's Irrelevant Requests Would Result in a Significant Delay in the Proceedings.

As pointed out to the Court in the Motion to Strike or in Limine, the original schedule for briefing and discovery in this case was adopted by the Court largely pursuant to the scheduling proposal of Idaho Power. *See* Gheleta Aff., Ex. C (Transcript from May 20, 2008 Status and Scheduling Conference) at 2:14-15. That scheduling proposal assumed the scope of this consolidated subcase was limited by the Court in its initial ruling in the case to "issues pertaining to ownership and interpretation and/or

application of the Swan Falls Agreement” (Consolidation Order at 16) – and that the only remaining issue subject to discovery was whether the Swan Falls Agreement subordinated Idaho Power’s water rights to recharge. Gheleta Aff., Ex. C at 1:21-22. Adherence to this tight schedule or one like it would be impossible should the State succeed in substantially broadening the scope of this case to include the four issues discussed above.

If these issues are going to be included in this consolidated subcase, a proposition that Idaho Power strongly opposes, then the overall schedule in the subcase must be revisited. Substantial additional time will be necessary to undertake and complete discovery on the newly expanded issues to determine whether summary judgment proceedings can appropriately resolve some or all of these issues or whether factual disputes may prevent resolution of the issues as a matter of law. As highlighted by Ms. Davis in her affidavit, Idaho Power undertook a substantial effort to gather documents related to issues surrounding the interpretation and application of the Swan Falls Agreement – a process that took Idaho Power and her firm almost a year to complete. Davis Aff. ¶¶ 12-13.

To now require Idaho Power to undertake a similar effort to obtain documents related to the scope, interpretation and application of the Company’s rights under the American Falls Contracts, the Twin Falls Federal Power Commission license, the C.J. Strike water right permit and license provisions, as well as documents and information related in any way to the State’s administration of the Snake River at Milner Dam under its zero flow policy, would conservatively take Idaho Power at least six months to accomplish. *Id.* ¶¶ 16-17. The State’s substantial expansion of the case would also

inevitably impact the scope and timing of the trial in this action. The State should not be allowed at this late date to inject into this case an entirely new set of issues, and thus delay the resolution of the one and only issue properly before the Court – whether Idaho Power subordinated its Swan Falls water rights to recharge.

C. Idaho Power is Substantially Justified in Opposing the State’s Motion and the State’s Request for an Award of Attorneys’ Fees and Costs Should Be Denied.

The State requests attorneys’ fees and costs pursuant to I.R.C.P. 37(a) and (d). An award of attorneys’ fees and costs is improper because Idaho Power’s opposition to the State’s Motion is substantially justified for the reasons discussed above and in the Motion to Strike or in Limine.

Attorneys’ fees and costs to a motion compelling discovery are governed by Rule 37(a)(4).⁷ Attorneys’ fees are only appropriate if the motion to compel is granted, and then only when the court finds the opposition to the motion was unjustified.⁸ See I.R.C.P. 37(a)(4) (providing that if a motion to compel is granted, the court shall award the moving party its reasonable attorneys fees incurred in obtaining the order, “*unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust*”) (emphasis added).

Whether an award of expenses and fees is appropriate is within the sound discretion of the Court. Although Idaho state courts have not addressed the meaning of

⁷ The State misapplies Idaho Rule of Civil Procedure 37(d), which provides that the court may in its discretion award reasonable expenses, including attorneys’ fees, in addition to other sanctions based on a party’s *total failure* to serve answers or objections to interrogatories or a requests for inspection of documents. I.R.C.P. 37(d). That is not the case here. Idaho Power served the State with timely objections and responses to each of the State’s Third Set of Discovery Requests in accordance with I.R.C.P. 33 and 34.

⁸ Correspondingly, if the motion to compel is denied, the court may order the moving party to pay the opposing party’s attorneys’ fees and costs. I.R.C.P. 37(a)(4). Expenses and attorney’s fees may be awarded against the State. I.R.C.P. 37(f).

the phrase “substantially justified” under Rule 37, Rule 37(a)(4) is essentially identical to current Federal Rule of Civil Procedure 37(a)(5), which provides in relevant part that a court must not order payment of attorneys’ fees if “the opposing party’s nondisclosure, response, or objection was substantially justified or other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(a)(5)(A)(ii) and (iii). Pursuant to the Advisory Committee Notes to the federal rules, an opposition to a motion to compel is substantially justified simply if the discovery matter is in “genuine dispute.” Advisory Committee’s Notes on 1970 Amendments to Fed. Rule Civ. Proc. 37(a)(4)⁹; *see also Pierce v. Underwood*, 487 U.S. 552, 565, 108 S.Ct. 2541, 2550 (1988). Put differently, an opposition to discovery is substantially justified “if reasonable people could differ as to the appropriateness of the contested action.” *Pierce*, 487 U.S. at 565, 108 S.Ct. at 2550 (citing *Reygo Pacific Corp. v. Johnston Pump Co.*, 680 F.2d 647, 649 (9th Cir. 1982), abrogated on other grounds by *Stanley v. Woodford*, 449 F.3d 1060 (9th Cir. 2006)).

Idaho Power’s opposition to the State’s Motion is substantially justified. Notwithstanding the State’s attempt to characterize Idaho Power’s discovery responses as “evasive and incomplete,” Motion at 8, Idaho Power has fully and fairly objected or responded to each of the State’s numerous discovery requests and has provided the State with over 17,000 responsive documents. The only discovery requests to which Idaho Power has objected relate to the subjects Idaho Power has identified as irrelevant and outside the scope of the current litigation in its Motion to Strike or in Limine. The relevance of these subjects is in genuine dispute and, should the Court rule in Idaho Power’s favor on its Motion to Strike or in Limine, Idaho Power should not be required

⁹ The relevant provisions of Fed. R. Civ. P. 37(a)(5) were previously codified under Fed. R. Civ. P. 37(a)(4).

to produce the requested discovery. The State has not met its burden for an award of attorneys' fees and costs and its request should be denied.

CONCLUSION

For the reasons set forth above and in Idaho Power's Motion to Strike or in Limine, the State's Motion to Compel should be denied.

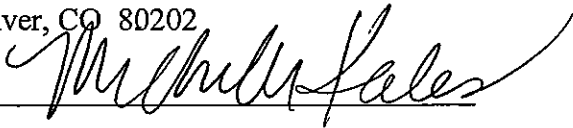
DATED this 28th day of July 2008.

IDAHO POWER COMPANY

James C. Tucker, Esq.
Senior Attorney, Idaho Power Company
1221 West Idaho Street
Boise, ID 83702-5627

John K. Simpson, ISB No. 4242
Shelley M. Davis, ISB No. 6788
BARKER ROSHOLT & SIMPSON LLP
205 North Tenth St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139

James S. Lochhead, Esq.
Michael A. Gheleta, Esq.
Mark J. Mathews, Esq.
Michelle C. Kales, Esq.
Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202

By: 

Attorneys for Idaho Power Company

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July 2008, I caused to be served a true and correct copy of the foregoing document entitled **IDAHO POWER COMPANY'S RESPONSE IN OPPOSITION TO THE STATE OF IDAHO'S MOTION TO COMPEL DISCOVERY** via the method indicated below, and addressed to each of the following:

Lawrence Wasden	☒	U.S. Mail, Postage Prepaid
Steven Olsen	☐	Hand Delivered
Karl T. Klein	☐	Overnight Mail
Michael C. Orr	☐	Facsimile
Shasta Kilminster-Hadley	☒	Electronic Mail: michael.orr@ag.idaho.gov
700 W. Jefferson, Room 210	☒	Electronic Mail: steven.olsen@ag.idaho.gov
Boise, ID 83711-4449	☒	Electronic Mail: shasta.k-hadley@ag.idaho.gov
IDWR Document Depository	☒	U.S. Mail, Postage Prepaid
PO Box 83720	☐	Hand Delivered
Boise, ID 83720-0098	☐	Facsimile
United States Department of Justice	☒	U.S. Mail, Postage Prepaid
Environment & Nat'l Resources Div.	☐	Hand Delivered
550 W Fort Street, MSC 033	☐	Overnight Mail
Boise, ID 83724	☐	Facsimile
Chief, Natural Resources Division	☒	U.S. Mail, Postage Prepaid
Office of Attorney General	☐	Hand Delivered
PO Box 44449	☐	Overnight Mail
Boise, ID 83711-4449	☐	Facsimile
Josephine Beeman	☒	U.S. Mail
Beeman & Associates, P.C.	☐	Hand Delivered
409 W. Jefferson Street	☐	Overnight Mail
Boise, ID 83702	☐	Facsimile
	☒	Electronic Mail: jo.beeman@beemanlaw.com
Jerry R. Rigby	☒	U.S. Mail
Rigby Andrus & Moeller Chtd.	☐	Hand Delivered
P.O. Box 250	☐	Overnight Mail
Rexburg, ID 83440	☒	Facsimile: (208) 356-0768
Randall C. Budge	☒	U.S. Mail
Candice M. McHugh	☐	Hand Delivered
Thomas J. Budge	☐	Overnight Mail
Racine Olson Nye Budge & Bailey, Chtd.	☐	Facsimile
P.O. Box 1391	☒	Electronic Mail: cmm@racinelaw.net
Pocatello, ID 83204-1391		


Alison Cameron

James S. Lochhead
Michael A. Gheleta
Mark J. Mathews
Michelle C. Kales
BROWNSTEIN HYATT FARBER SCHRECK, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
(303) 223-1100 – Telephone
(303) 223-1111 – Facsimile

John K. Simpson, ISB No. 4242
Shelley M. Davis, ISB No. 6788
BARKER RSHOLT & SIMPSON LLP
205 North Tenth St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 – Telephone
(208) 344-6034 – Facsimile

James C. Tucker, ISB No. 2038
Senior Attorney
IDAHO POWER COMPANY
1221 West Idaho Street
Boise, ID 83702-5627
(208) 388-2112 – Telephone
(208) 388-6935 – Facsimile

Attorneys for Plaintiff Idaho Power Company

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. 00-92023
(92-23)

IDAHO POWER COMPANY,)

Plaintiff,)

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.)

**AFFIDAVIT OF MICHAEL A.
GHELETA IN SUPPORT OF IDAHO
POWER COMPANY'S RESPONSE
IN OPPOSITION TO THE STATE
OF IDAHO'S MOTION TO
COMPEL DISCOVERY**

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

Michael A. Gheleta, being fully sworn upon oath, deposes and states as follows:

1. I am one of the attorneys representing Plaintiff Idaho Power Company in the above-entitled action and make the following Affidavit upon my personal knowledge of the facts and circumstances set forth herein.

2. Attached hereto as Exhibit A is a true and correct copy of the letter from Michael A. Gheleta to Steven L. Olsen, dated July 18, 2008.

3. Attached hereto as Exhibit B is a true and correct copy of Idaho Power Company's Supplemental Responses to State of Idaho's Third Set of Discovery Requests, dated July 24, 2008.

4. Attached hereto as Exhibit C is a true and correct copy of pages 1-2 of the Transcript from the May 20, 2008 Status and Scheduling Conference.

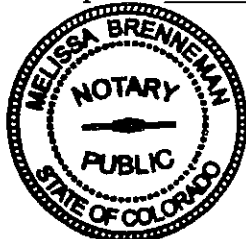
Dated this 28th day of July 2008.

Michael A. Gheleta
Michael A. Gheleta

SUBSCRIBED AND SWORN to before me in County of Denver, State of Colorado this 28th day of July 2008.

Commission Expires:


Notary Public

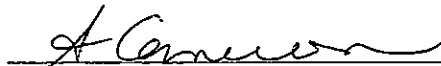


My Commission Expires Nov. 17, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July 2008, I caused to be served a true and correct copy of the foregoing document entitled **AFFIDAVIT OF MICHAEL A. GHELETA IN SUPPORT OF IDAHO POWER COMPANY'S RESPONSE IN OPPOSITION TO THE STATE OF IDAHO'S MOTION TO COMPEL DISCOVERY** via the method indicated below, and addressed to each of the following:

Lawrence Wasden	☒	U.S. Mail, Postage Prepaid
Steven Olsen	☐	Hand Delivered
Karl T. Klein	☐	Overnight Mail
Michael C. Orr	☐	Facsimile
Shasta Kilminster-Hadley	☒	Electronic Mail: michael.orr@ag.idaho.gov
700 W. Jefferson, Room 210	☒	Electronic Mail: steven.olsen@ag.idaho.gov
Boise, ID 83711-4449	☒	Electronic Mail: shasta.k-hadley@ag.idaho.gov
IDWR Document Depository	☒	U.S. Mail, Postage Prepaid
PO Box 83720	☐	Hand Delivered
Boise, ID 83720-0098	☐	Facsimile
United States Department of Justice	☒	U.S. Mail, Postage Prepaid
Environment & Nat'l Resources Div.	☐	Hand Delivered
550 W Fort Street, MSC 033	☐	Overnight Mail
Boise, ID 83724	☐	Facsimile
Chief, Natural Resources Division	☒	U.S. Mail, Postage Prepaid
Office of Attorney General	☐	Hand Delivered
PO Box 44449	☐	Overnight Mail
Boise, ID 83711-4449	☐	Facsimile
Josephine Beeman	☒	U.S. Mail
Beeman & Associates, P.C.	☐	Hand Delivered
409 W. Jefferson Street	☐	Overnight Mail
Boise, ID 83702	☐	Facsimile
	☒	Electronic Mail: jo.beeman@beemanlaw.com
Jerry R. Rigby	☒	U.S. Mail
Rigby Andrus & Moeller Chtd.	☐	Hand Delivered
P.O. Box 250	☐	Overnight Mail
Rexburg, ID 83440	☒	Facsimile: (208) 356-0768
Randall C. Budge	☒	U.S. Mail
Candice M. McHugh	☐	Hand Delivered
Thomas J. Budge	☐	Overnight Mail
Racine Olson Nye Budge & Bailey, Chtd.	☐	Facsimile
P.O. Box 1391	☒	Electronic Mail: cmm@racinelaw.net
Pocatello, ID 83204-1391		


Alison Cameron

James S. Lochhead
Michael A. Gheleta
BROWNSTEIN HYATT FARBER SCHRECK, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
(303) 223-1100 – Telephone
(303) 223-1111 – Facsimile

John K. Simpson, ISB No. 4242
Shelley M. Davis, ISB No. 6788
BARKER ROSHOLT & SIMPSON LLP
205 North Tenth St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 – Telephone
(208) 344-6034 – Facsimile

James C. Tucker, ISB No. 2038
Senior Attorney
IDAHO POWER COMPANY
1221 West Idaho Street
Boise, ID 83702-5627
(208) 388-2112 – Telephone
(208) 388-6935 – Facsimile

Attorneys for Plaintiff Idaho Power Company

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. 00-92023
IDAHO POWER COMPANY,	)	
Plaintiff,	)	AFFIDAVIT OF SHELLEY M. DAVIS
	)	IN SUPPORT OF IDAHO POWER
v.	)	COMPANY'S MEMORANDUM IN
	)	OPPOSITION TO STATE'S MOTION
STATE OF IDAHO; C.L. "BUTCH" OTTER,	)	TO COMPEL
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.	)	

STATE OF IDAHO)
) ss.
County of Ada)

SHELLEY M. DAVIS, being first duly sworn upon oath, deposes and states as follows:

1. I am one of the attorneys representing Plaintiff Idaho Power Company in the above-entitled action, and make the following affidavit upon my personal knowledge of the facts and circumstances set forth herein.

2. On July 15, 2008 attorneys Michael Orr and Karl Klein, representing the State of Idaho in this action, for the first time attended the offices of Barker Rosholt & Simpson, LLP to review Idaho Power Company's production documents.

3. Idaho Power Company made its entire set of production documents available on March 11, 2008, in response to the State of Idaho's first substantive requests for production of documents propounded on February 8, 2008. At no time between March 11, 2008, and July 2, 2008, did anyone from the State of Idaho's legal team contact counsel for Idaho Power Company to request that the documents be made available for review.

4. Based on an e-mail I received from Steve Olsen on July 7, 2008, the State's first request that they be allowed to review the documents of Idaho Power Company was made on July 2, 2008, in a conversation between Mr. Olsen and Michael Gheleta, counsel for Idaho Power Company, which was held to discuss the State's Motion to Vacate Idaho Power Company's Motion to Strike. The substance of that conversation was primarily concerned with the timing of a hearing on the State's Motion to Vacate.

5. In response to the e-mail from Steve Olsen on July 7, 2008, Mr. Gheleta responded on July 8, 2008 on behalf of Idaho Power Company that the State in the call held on

July 2, 2008, had indicated that it would like to begin reviewing documents during either the week of July 7 or July 14, 2008. Mr. Gheleta's response indicated that Idaho Power's production documents would be available for review beginning on July 14, 2008, and that he should contact me to arrange the logistics of the review.

6. On July 11, 2008, Mr. Olsen again contacted Mr. Gheleta to ask whether the State could begin its document review on July 14 or 15, 2008. Mr. Gheleta replied by e-mail to Mr. Olsen, a copy of which was forwarded to me, that Mr. Olsen should contact me to arrange the logistics of the document review.

7. On July 14, 2008, at approximately 9:30 a.m., Mr. Olsen called to arrange a time to begin review of the Company's production documents that Idaho Power had made available to the State as of March 11, 2008.

8. Mr. Orr and Mr. Klein arrived at approximately 9:30 a.m. on July 15, 2008, to begin review of the approximately 21 boxes of non-privileged production documents that were immediately available. After I had instructed them on the organization of the documents and provided them with the privilege log that accompanies the production, Mr. Orr informed me that the State's intention was to briefly review the documents and then send all of the boxes out for copying to a local litigation support company. Within one half hour of the State's review the litigation support company arrived to take the documents for copying.

9. In addition, in order to assist the State of Idaho during Mr. Orr and Mr. Klein's review of Idaho Power Company's documents on July 15, 2008, Idaho Power Company provided a subset of documents from its larger production that are specifically relevant to Idaho Power Company's contention that the Company's Swan Falls hydropower rights are not subordinated to

aquifer recharge. I identified these documents for Mr. Orr and Mr. Klein on July 15 and the State took these documents to be copied.

10. Three additional boxes were withheld from production on July 15, 2008, when I discovered that there was a problem with the privilege review of those boxes. On July 15, 2008, I remedied the problem and made the documents available to be added to the production set being copied for the State the morning of July 16, 2008. The litigation support company took those documents to add to the rest of the documents being copied that same morning. On July 16, 2008, by e-mail I provided the State with the rest of the privilege log which had also been withheld on July 15 because of the problems I discovered in the three boxes.

11. As of July 16, 2008, the State of Idaho is in possession of all of the non-privileged production documents that the Idaho Power Company spent more than a year assembling once it became clear that this matter was inevitably headed toward litigation.

12. Idaho Power Company conducted a comprehensive search of the Company's documents relating to the Swan Falls negotiations and resulting Agreement and implementing legislation. The offices of Barker Rosholt & Simpson conducted a comprehensive search of all of its archived files from the firm during the years when Mr. Nelson was representing the Company in the Swan Falls negotiations. On behalf of the Company I surveyed the legislative library for all materials that related to the Swan Falls Agreement negotiations and implementing legislation, as well as searching the files of Governor Evans held at the Idaho Historical Archives. All of the relevant materials discovered in those searches include approximately 17,000 documents and make up the production documents of Idaho Power Company. This search process required the time of many attorneys and staff, and took approximately 7 to 8 months to complete.

13. After the entire production documents were assembled, copied and bates-numbered (the Idaho Power documents labeled with the IPC bates prefix, the Barker Rosholt & Simpson documents labeled with the BRS bates prefix, and the Legislative Library and Archives documents labeled with the LAR bates prefix) the documents were comprehensively reviewed for privilege. This process took approximately an additional 3 to 4 months and resulted in a 140 page privilege log.

14. This entire process was completed before March 11, 2008, when the documents were initially made available for the State of Idaho's review.

15. Recently a few additional boxes containing potentially relevant documents were discovered. Any relevant and responsive documents discovered in these boxes will be prepared for production and made available to the State in supplemental discovery responses.

16. The State, in its Motion to Compel, seeks documents outside of the scope of the Company's complaint which relate to the State's administration of the Snake River at Milner Dam under the State's zero flow policy; contracts between the United States and Idaho Power Company concerning American Falls Reservoir; the effect of a 1934 Federal Power Commission License for Idaho Power Company's Twin Falls power project; and the effect of a subordination condition in Idaho Power Company's water rights for its C.J. Strike facility. During the course of reviewing the Company and the State's records relating to the Swan Falls negotiations, Agreement and implementing legislation no records were discovered indicating that the zero flow policy at Milner Dam, the American Falls contracts, or the Twin Falls or C.J. Strike power projects in any way influenced or factored into the parties negotiations or carrying out of the Swan Falls Agreement and contract. Therefore, the Company did not conduct a separate search for records relating to these matters during its search for production documents in preparation

for, or during the course of, this litigation independent of its search for records specifically related to the Swan Falls negotiations, Agreement and implementing legislation.

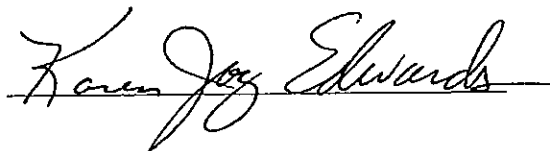
17. If the Court determines to grant the State of Idaho's Motion to Compel the production of records relating to the State's administration of the Snake River at Milner Dam under the State's zero flow policy, the American Falls contracts, and other of the Company's power projects, I conservatively estimate that the length of time necessary to conduct a search for such records, and preparation of records for production, including a review of the records for privilege, to be an additional six months or more in order to respond to the State's requests.

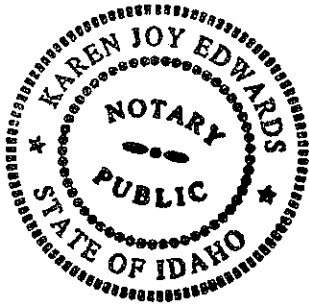
18. Even though during my search for records relating to the Swan Falls matter I did not discover any evidence that the parties contemplated the new matters now urged by the State, to the extent that the parties to the Swan Falls Agreement contemplated or in any way were influenced by the State's administration of the Snake River at Milner Dam under the State's zero flow policy, the American Falls contracts, or other of the Company's power projects, I am confident that any record of such relation to the Swan Falls Agreement would have been discovered during the search of the Company's records, Barker Rosholt & Simpson's records, and the State's historical and legislative records relating to the Swan Falls Agreement and its implementing legislation, and therefore, since all of those records have been produced, they would already be in the possession of the State.

Dated this 28th day of July, 2008.


SHELLEY M. DAVIS

SUBSCRIBED AND SWORN to before me this 28th day of July, 2008.





Notary Public for Idaho

Residing at: Bose, Idaho

Commission Expires: 8/2/2012

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July 2008, I caused to be served a true and correct copy of the foregoing document entitled **AFFIDAVIT OF SHELLEY M. DAVIS IN SUPPORT OF IDAHO POWER COMPANY'S MEMORANDUM IN OPPOSITION TO THE STATE OF IDAHO'S MOTION TO COMPEL** via the method indicated below, and addressed to each of the following:

Lawrence Wasden	☒	U.S. Mail, Postage Prepaid
Steven Olsen	☐	Hand Delivered
Karl T. Klein	☐	Overnight Mail
Michael C. Orr	☐	Facsimile
Shasta Kilminster-Hadley	☒	Electronic Mail: michael.orr@ag.idaho.gov
700 W. Jefferson, Room 210	☒	Electronic Mail: steven.olsen@ag.idaho.gov
Boise, ID 83711-4449	☒	Electronic Mail: shasta.k-hadley@ag.idaho.gov
IDWR Document Depository	☒	U.S. Mail, Postage Prepaid
PO Box 83720	☐	Hand Delivered
Boise, ID 83720-0098	☐	Facsimile
United States Department of Justice	☒	U.S. Mail, Postage Prepaid
Environment & Nat'l Resources Div.	☐	Hand Delivered
550 W Fort Street, MSC 033	☐	Overnight Mail
Boise, ID 83724	☐	Facsimile
Chief, Natural Resources Division	☒	U.S. Mail, Postage Prepaid
Office of Attorney General	☐	Hand Delivered
PO Box 44449	☐	Overnight Mail
Boise, ID 83711-4449	☐	Facsimile
Josephine Beeman	☒	U.S. Mail
Beeman & Associates, P.C.	☐	Hand Delivered
409 W. Jefferson Street	☐	Overnight Mail
Boise, ID 83702	☐	Facsimile
	☒	Electronic Mail: jo.beeman@beemanlaw.com
Jerry R. Rigby	☒	U.S. Mail
Rigby Andrus & Moeller Chtd.	☐	Hand Delivered
P.O. Box 250	☐	Overnight Mail
Rexburg, ID 83440	☒	Facsimile: (208) 356-0768
Randall C. Budge	☒	U.S. Mail
Candice M. McHugh	☐	Hand Delivered
Thomas J. Budge	☐	Overnight Mail
Racine Olson Nye Budge & Bailey, Chtd.	☐	Facsimile
P.O. Box 1391	☒	Electronic Mail: cmm@racinelaw.net
Pocatello, ID 83204-1391		



Alison Cameron

A

Brownstein Hyatt
Farber Schreck

July 18, 2008

Michael A. Gheleta
Attorney at Law
303.223.1104 tel
303.223.0904 fax
mgheleta@bhfs.com

VIA E-MAIL

Steven L. Olsen
Civil Litigation Division
P.O. Box 83720
Boise, Idaho 83720-0010

RE: *Idaho Power Co. v. State of Idaho*, SRBA Consolidated Subcase No. 00-92023:
Supplemental Responses to State of Idaho's Third Set of Discovery Requests to Idaho Power
Company

Dear Steve:

This letter supplements Idaho Power's document production to the State of Idaho in response to the State's Third Set of Discovery Requests.

On July 15, 2008, Idaho Power made approximately 17,000 documents related to the Swan Falls matter available to the State for review and copying at the offices of Barker Rosholt & Simpson in Boise. These documents, as a whole, are responsive to the State's Third Set of Requests for the Production of Documents, with the exception of those requests which Idaho Power objected to in its responses or moved to strike as irrelevant in Idaho Power Company's Motion to Strike. At the same time, we provided a subset of these documents that is specifically relevant to Idaho Power's contention that Idaho Power's Swan Falls hydropower rights are not subordinated to aquifer recharge.

As a follow up to this production, and in order to assist the State's review of Idaho Power's documents, we have identified a specific subset of the documents that were provided to the State on July 15 that are more specifically responsive to selected requests for production. A list of those documents by RFP and Bates number is attached as Exhibit A to this letter. Although we continue to refer the State to Idaho Power's larger document production, we believe the attached list of responsive documents will assist the State in its review.

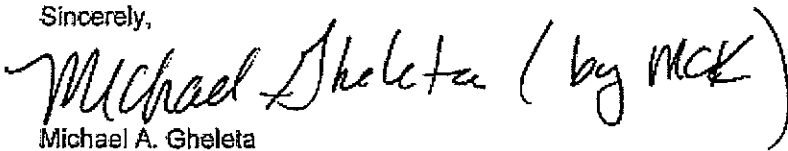
In addition, in response to your letter of July 14, 2008, raising the State's concerns regarding potential supplemental discovery requests, I would like to clarify for the record our communications regarding scheduling of the State's document review. On July 15, the State finally began to undertake review of documents which Idaho Power has made available for State review since early in the case. When you telephoned me on July 3, just before the start of the holiday weekend, to inform Idaho Power of the State's motion to vacate and motion to shorten time filed and sought to be heard that day, you did mention at the end of the call the State's interest in undertaking document review. In that call, you indicated that the State wanted to begin reviewing documents produced by Idaho Power either the week of July 7 or first thing the week of July 14. Accordingly, I responded to your email the week of July 7 with an indication that we would be prepared for the State to review documents at the Barker Rosholt firm beginning July 14 as requested, and State representatives contacted Shelley Davis on July 14 to arrange for review of the documents on July 15.

EXHIBIT A

Steven L. Olsen
July 18, 2008
Page 2

We look forward to continued cooperation regarding discovery as this case proceeds.

Sincerely,

 (by MCK)

Michael A. Gheleta

Encl. (1)

Exhibit A

Documents responsive to State's Requests for Production 2, 10-12, 22-24, 55-57, and 59-60

BRS000238 - BRS000240
BRS000702 - BRS000704
BRS000706 - BRS000706
BRS006185 - BRS006191
BRS023282 - BRS023284
BRS030517 - BRS030520
BRS030629 - BRS030635
IPC000049 - IPC000052
IPC000053 - IPC000056
IPC002286 - IPC002301
IPC012658 - IPC012671
IPC014947 - IPC014952
IPC015140 - IPC015141
IPC016660 - IPC016672
LAR00643 - LAR00652
LAR00753 - LAR00784
LAR00831 - LAR00837
LAR00900 - LAR00903
LAR00908 - LAR00910
LAR00911 - LAR00972
LAR01062 - LAR01078
LAR01079 - LAR01091
LAR01097 - LAR01176
LAR01177 - LAR01189

Documents responsive to State's Requests for Production 13-15 and 27-30

BRS000192 - BRS000201
BRS000202 - BRS000207
BRS000208 - BRS000211
BRS000212 - BRS000216
BRS000230 - BRS000237
BRS000238 - BRS000240
BRS000241 - BRS000241
BRS000242 - BRS000243
BRS000253 - BRS000273
BRS000279 - BRS000291
BRS000292 - BRS000297
BRS000301 - BRS000307
BRS000308 - BRS000311
BRS000321 - BRS000326

BRS000330 - BRS000338
BRS000344 - BRS000346
BRS000415 - BRS000433
BRS000466 - BRS000466
BRS000575 - BRS000579
BRS000594 - BRS000601
BRS000606 - BRS000606
BRS000648 - BRS000650
BRS000666 - BRS000668
BRS000669 - BRS000673
BRS000682 - BRS000685
BRS000686 - BRS000688
BRS000689 - BRS000692
BRS000693 - BRS000694
BRS000706 - BRS000706
BRS000707 - BRS000721
BRS000759 - BRS000779
BRS000855 - BRS000884
BRS001162 - BRS001216
BRS001217 - BRS001256
BRS001378 - BRS001441
BRS001442 - BRS001520
BRS001828 - BRS001829
BRS001837 - BRS001838
BRS001874 - BRS001875
BRS001878 - BRS001879
BRS001880 - BRS001881
BRS001900 - BRS001903
BRS002473 - BRS002477
BRS003546 - BRS003547
BRS003558 - BRS003559
BRS003720 - BRS003724
BRS004129 - BRS004136
BRS005042 - BRS005042
BRS005048 - BRS005049
BRS005056 - BRS005057
BRS005071 - BRS005072
BRS005181 - BRS005183
BRS006332 - BRS006339
BRS008261 - BRS008264
BRS008750 - BRS008751
BRS009040 - BRS009044
BRS009045 - BRS009051
BRS009181 - BRS009185
BRS009211 - BRS009216
BRS009262 - BRS009266

BRS009371 - BRS009375
BRS009538 - BRS009543
BRS009583 - BRS009583
BRS009622 - BRS009622
BRS009631 - BRS009650
BRS009651 - BRS009653
BRS009660 - BRS009664
BRS010152 - BRS010178
BRS010282 - BRS010282
BRS010283 - BRS010318
BRS010815 - BRS010816
BRS010835 - BRS010835
BRS011036 - BRS011038
BRS011287 - BRS011298
BRS011299 - BRS011306
BRS011336 - BRS011337
BRS011473 - BRS011480
BRS011487 - BRS011487
BRS011492 - BRS011494
BRS011572 - BRS011580
BRS012090 - BRS012094
BRS012236 - BRS012239
BRS012387 - BRS012410
BRS012812 - BRS012814
BRS012943 - BRS013220
BRS013440 - BRS013452
BRS013475 - BRS013477
BRS013870 - BRS013887
BRS013895 - BRS013908
BRS013909 - BRS013924
BRS013961 - BRS013965
BRS014003 - BRS014007
BRS014170 - BRS014185
BRS014386 - BRS014465
BRS015326 - BRS015415
BRS016202 - BRS016209
BRS016292 - BRS016296
BRS016544 - BRS016545
BRS016775 - BRS016786
BRS017348 - BRS017431
BRS017672 - BRS017714
BRS017715 - BRS017715
BRS017764 - BRS017800
BRS019427 - BRS019428
BRS019434 - BRS019435
BRS019436 - BRS019447

BRS019449 - BRS019454
BRS019455 - BRS019459
BRS019460 - BRS019464
BRS019470 - BRS019474
BRS020955 - BRS020957
BRS022747 - BRS022765
BRS023279 - BRS023281
BRS023287 - BRS023288
BRS023294 - BRS023296
BRS023298 - BRS023298
BRS023305 - BRS023308
BRS023327 - BRS023327
BRS023362 - BRS023388
BRS023537 - BRS023572
BRS023676 - BRS023686
BRS024505 - BRS024506
BRS024507 - BRS024508
BRS024510 - BRS024511
BRS024541 - BRS024552
BRS024837 - BRS024855
BRS024868 - BRS024875
BRS024877 - BRS024884
BRS024892 - BRS024901
BRS024926 - BRS024930
BRS024933 - BRS024937
BRS024938 - BRS024946
BRS025007 - BRS025026
BRS025088 - BRS025105
BRS025106 - BRS025111
BRS025115 - BRS025118
BRS025144 - BRS025152
BRS025153 - BRS025157
BRS025161 - BRS025171
BRS025172 - BRS025177
BRS025178 - BRS025181
BRS025182 - BRS025186
BRS025200 - BRS025207
BRS025208 - BRS025210
BRS025217 - BRS025245
BRS025400 - BRS025400
BRS025407 - BRS025409
BRS025410 - BRS025411
BRS025412 - BRS025413
BRS025431 - BRS025435
BRS025501 - BRS025502
BRS025562 - BRS025564

BRS025567 - BRS025568
BRS025569 - BRS025569
BRS025570 - BRS025575
BRS025576 - BRS025577
BRS025578 - BRS025578
BRS025631 - BRS025635
BRS025732 - BRS025740
BRS025774 - BRS025774
BRS025823 - BRS025827
BRS025858 - BRS025862
BRS025872 - BRS025873
BRS025906 - BRS025910
BRS025941 - BRS025950
BRS026434 - BRS026711
BRS026712 - BRS026795
BRS027648 - BRS027652
BRS027734 - BRS027738
BRS028081 - BRS028085
BRS028204 - BRS028208
BRS030054 - BRS030061
BRS030312 - BRS030316
BRS030355 - BRS030472
BRS030494 - BRS030494
BRS032129 - BRS032187
BRS032188 - BRS032194
BRS032251 - BRS032315
BRS032340 - BRS032411
BRS032424 - BRS032433
IPC000559 - IPC000563
IPC000706 - IPC000708
IPC001029 - IPC001030
IPC001032 - IPC001034
IPC001052 - IPC001056
IPC001093 - IPC001102
IPC001124 - IPC001128
IPC001174 - IPC001178
IPC001514 - IPC001515
IPC001574 - IPC001580
IPC001923 - IPC001924
IPC002094 - IPC002098
IPC002133 - IPC002137
IPC002182 - IPC002183
IPC002471 - IPC002479
IPC002500 - IPC002503
IPC002627 - IPC002628
IPC002728 - IPC002738

IPC002910 - IPC002957
IPC003651 - IPC003655
IPC003698 - IPC003702
IPC004610 - IPC004634
IPC004983 - IPC004986
IPC005892 - IPC005902
IPC006610 - IPC006681
IPC008520 - IPC008520
IPC010060 - IPC010064
IPC011007 - IPC011011
IPC011051 - IPC011051
IPC011494 - IPC011498
IPC011631 - IPC011635
IPC012273 - IPC012277
IPC012294 - IPC012320
IPC012432 - IPC012436
IPC012451 - IPC012459
IPC012463 - IPC012463
IPC012548 - IPC012552
IPC013627 - IPC013631
IPC014736 - IPC014791
IPC014947 - IPC014952
IPC015052 - IPC015091
IPC015140 - IPC015141
IPC015407 - IPC015507
IPC016446 - IPC016447
IPC016470 - IPC016471
IPC016479 - IPC016480
IPC016485 - IPC016486
IPC016492 - IPC016496
IPC016590 - IPC016596
IPC027690 -
LAR00001 - LAR00065
LAR00079 - LAR00111
LAR00270 - LAR00281
LAR003859 - LAR003862
LAR00446 - LAR00466
LAR00470 - LAR00500
LAR00501 - LAR00548
LAR005118 - LAR005121
LAR00549 - LAR00554
LAR00753 - LAR00784
LAR00838 - LAR00847
LAR00900 - LAR00903
LAR00904 - LAR00906
LAR00911 - LAR00972

LAR01079 - LAR01091
LAR01097 - LAR01176
LAR01177 - LAR01189
LAR01190 - LAR01194
LAR01218 - LAR01223
LAR01233 - LAR01238
LAR01253 - LAR01257
LAR01266 - LAR01281
LAR01294 - LAR01299
LAR01320 - LAR01351

Documents responsive to State's Requests for Production 34-35

BRS000415 - BRS000433
BRS000652 - BRS000654
BRS000660 - BRS000663
BRS000707 - BRS000721
BRS001641 - BRS001663
BRS001783 - BRS001810
BRS001962 - BRS001962
BRS003512 - BRS003514
BRS004124 - BRS004125
BRS006070 - BRS006072
BRS006253 - BRS006289
BRS006292 - BRS006292
BRS006293 - BRS006295
BRS006296 - BRS006303
BRS009802 - BRS009809
BRS010250 - BRS010280
BRS010281 - BRS010281
BRS010283 - BRS010318
BRS010319 - BRS010323
BRS010479 - BRS010486
BRS010857 - BRS010858
BRS011002 - BRS011003
BRS011095 - BRS011186
BRS011338 - BRS011340
BRS011555 - BRS011560
BRS011842 - BRS011933
BRS012849 - BRS012861
BRS013888 - BRS013892
BRS014076 - BRS014090
BRS014103 - BRS014103
BRS014142 - BRS014143
BRS015679 - BRS015684
BRS015685 - BRS015690

BRS015778 - BRS015778
BRS016367 - BRS016381
BRS016775 - BRS016786
BRS016879 - BRS016953
BRS017170 - BRS017187
BRS017233 - BRS017251
BRS018533 - BRS018534
BRS023755 - BRS023764
BRS023873 - BRS023890
BRS023951 - BRS024002
BRS024011 - BRS024012
BRS024013 - BRS024013
BRS024564 - BRS024564
BRS024565 - BRS024565
BRS024575 - BRS024575
BRS024641 - BRS024653
BRS024926 - BRS024930
BRS025007 - BRS025026
BRS025052 - BRS025074
BRS025246 - BRS025258
BRS025267 - BRS025294
BRS025448 - BRS025467
BRS025651 - BRS025668
BRS025732 - BRS025740
BRS025744 - BRS025761
BRS025926 - BRS025929
BRS025941 - BRS025950
BRS026405 - BRS026408
BRS026409 - BRS026410
BRS027894 - BRS027906
BRS031387 - BRS031424
BRS031604 - BRS031629
BRS031708 - BRS031723
BRS031799 - BRS031802
BRS031811 - BRS031885
BRS031912 - BRS031921
BRS031922 - BRS031948
BRS031949 - BRS032011
BRS033087 - BRS033102
IPC001052 - IPC001056
IPC001450 - IPC001450
IPC001538 - IPC001539
IPC001843 - IPC001849
IPC004666 - IPC004666
IPC004667 - IPC004668
IPC011960 - IPC011968

IPC012703 - IPC012731
IPC013408 - IPC013601
IPC013659 - IPC013789
IPC013837 - IPC013838
IPC015255 - IPC015260
LAR00212 - LAR00248
LAR00249 - LAR00267
LAR00339 - LAR00375
LAR00376 - LAR00394
LAR00395 - LAR00415
LAR00549 - LAR00554
LAR01062 - LAR01078
LAR01097 - LAR01176
LAR01444 - LAR01683
LAR01960 - LAR02305
LAR02436 - LAR02588

Documents responsive to State's Requests for Production 3-5, 58

BRS000179 - BRS000180
BRS000181 - BRS000190
BRS000217 - BRS000220
BRS000483 - BRS000486
BRS000502 - BRS000515
BRS000592 - BRS000592
BRS000639 - BRS000639
BRS000664 - BRS000665
BRS000744 - BRS000752
BRS001521 - BRS001537
BRS001738 - BRS001741
BRS003610 - BRS003611
BRS004537 - BRS004537
BRS006374 - BRS006431
BRS009138 - BRS009138
BRS009293 - BRS009296
BRS009768 - BRS009768
BRS010152 - BRS010178
BRS010510 - BRS010511
BRS010932 - BRS010933
BRS010988 - BRS010988
BRS011287 - BRS011298
BRS011299 - BRS011306
BRS011473 - BRS011480
BRS012235 - BRS012235
BRS013925 - BRS013926
BRS016042 - BRS016074

BRS016269 - BRS016278
BRS016353 - BRS016354
BRS016355 - BRS016360
BRS016367 - BRS016381
BRS016392 - BRS016397
BRS016564 - BRS016564
BRS016565 - BRS016566
BRS016693 - BRS016694
BRS016741 - BRS016742
BRS016745 - BRS016751
BRS016752 - BRS016766
BRS016771 - BRS016772
BRS016817 - BRS016821
BRS016833 - BRS016834
BRS017053 - BRS017103
BRS017170 - BRS017187
BRS017207 - BRS017208
BRS017233 - BRS017251
BRS018055 - BRS018072
BRS018938 - BRS018938
BRS021462 - BRS021463
BRS023676 - BRS023686
BRS023873 - BRS023890
BRS023951 - BRS024002
BRS024118 - BRS024119
BRS024120 - BRS024132
BRS025732 - BRS025740
BRS027400 - BRS027408
BRS027609 - BRS027612
BRS027619 - BRS027620
BRS028305 - BRS028832
BRS028833 - BRS029361
BRS030054 - BRS030061
BRS030075 - BRS030083
BRS030474 - BRS030480
BRS030546 - BRS030564
BRS030629 - BRS030635
IPC000082 - IPC000091
IPC000606 - IPC000615
IPC001194 - IPC001203
IPC002607 - IPC002609
IPC003730 - IPC003739
IPC003930 - IPC003947
IPC004121 - IPC004122
IPC004200 - IPC004217
IPC009388 - IPC009397

IPC009508 - IPC009525
IPC010089 - IPC010098
IPC011831 - IPC011831
IPC011896 - IPC011897
IPC012294 - IPC012320
LAR00270 - LAR00281
LAR00282 - LAR00326
LAR00339 - LAR00375
LAR00501 - LAR00548
LAR00612 - LAR00623
LAR00753 - LAR00784
LAR00911 - LAR00972
LAR01097 - LAR01176
LAR01198 - LAR01203

Documents responsive to State's Requests for Production 16-18 and 38

BRS001581 - BRS001581
BRS002198 - BRS002305
BRS004964 - BRS005028
BRS010848 - BRS010849
BRS011287 - BRS011298
BRS011572 - BRS011580
BRS012943 - BRS013220
BRS014386 - BRS014465
BRS023676 - BRS023686
BRS024933 - BRS024937
BRS024938 - BRS024946
BRS026434 - BRS026711
BRS026712 - BRS026795
BRS030658 - BRS030736
BRS030822 - BRS031177
BRS033522 - BRS033626
BRS033628 - BRS033727
BRS033756 - BRS033836
BRS033837 - BRS033902
IPC000693 - IPC000693
IPC000698 - IPC000699
IPC000721 - IPC000723
IPC001263 - IPC001344
IPC001345 - IPC001410
IPC005908 - IPC006082
IPC007693 - IPC007774
IPC007860 - IPC008129
IPC012619 - IPC012656

B

James S. Lochhead
Michael A. Gheleta
Mark J. Mathews
Michelle C. Kales
BROWNSTEIN HYATT FARBER SCHRECK, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
(303) 223-1100 – Telephone
(303) 223-1111 – Facsimile

John K. Simpson, ISB No. 4242
Shelley M. Davis, ISB No. 6788
BARKER ROSHOLT & SIMPSON LLP
205 North Tenth St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 – Telephone
(208) 344-6034 – Facsimile

James C. Tucker, ISB No. 2038
Senior Attorney
IDAHO POWER COMPANY
1221 West Idaho Street
Boise, ID 83702-5627
(208) 388-2112 – Telephone
(208) 388-6935 – Facsimile

Attorneys for Plaintiff Idaho Power Company

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. 00-92023
	)	(92-23)
IDAHO POWER COMPANY,	)	
Plaintiff,	)	
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.	)	

**IDAHO POWER COMPANY'S
SUPPLEMENTAL RESPONSES TO
STATE OF IDAHO'S THIRD SET
OF DISCOVERY REQUESTS**

IDAHO POWER COMPANY'S SUPPLEMENTAL RESPONSES TO STATE OF IDAHO'S
THIRD SET OF DISCOVERY REQUESTS -1

EXHIBIT B

COMES NOW, the Plaintiff, Idaho Power Company, by and through its attorneys of record, set forth in the caption above, and makes the following SUPPLEMENTAL RESPONSES TO STATE OF IDAHO'S THIRD SET OF DISCOVERY REQUESTS, in accordance with Idaho Rules of Civil Procedure 26 and 34.

GENERAL OBJECTIONS

1. Plaintiff objects to the Requests for Admission and Requests for Production and to the definitions and instructions to the extent they purport to require discovery responses beyond that required under the local rules and orders of the Idaho Rules of Civil Procedure. These responses are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany the discovery requests.

2. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such requests were asked of, or any statement, material, or information provided were made by witness present and testifying in court. All such objections are reserved and may be interposed at the time of trial.

3. The Plaintiff specifically objects to these discovery requests to the extent they seek information protected by the attorney-client privilege, the accountant-client privilege, the work product doctrine, and the rules governing discovery relating to experts as set forth in Rule 26(b)(4). The objection is intended to apply to all of the discovery requests that seek such information and will not be repeated specifically for each request

to which it applies. The Plaintiff, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

4. No incidental or implied admissions are intended. The fact that the Plaintiff has responded to any discovery request or part thereof should not be taken as an admission that the Plaintiff accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact that the Plaintiff has responded to all or part of a request is not intended to and shall not be construed to be a waiver by the Plaintiff of all or part of any objection to other requests. The Plaintiff's answers to any discovery requests herein do not constitute a waiver of the Plaintiff's right to object to any future additional, or supplemental discovery requests regarding the same or similar matters.

5. Each of these objections is incorporated into the response to each of the Interrogatories as though set forth verbatim therein.

I. ANSWERS TO REQUESTS FOR ADMISSION

Request for Admission No. 1. Admit that prior to 1977, Idaho Power Company represented to federal and state officials, Idaho agricultural and irrigation organizations and entities, and the public that the hydropower water rights for the Company's Snake River hydropower facilities were subordinate, secondary or subject to existing upstream water rights for irrigation purposes.

Response to Request for Admission No. 1: Idaho Power Company objects to this request on the basis that it is vague, ambiguous, overly-broad and lacks specificity as to the time or place when such representations occurred, to whom such representations

were made, who made such representations and which hydropower facilities such representations may have related to. Idaho Power further objects to this Request on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine re: Scope of State Motion for Summary Judgment ("Motion to Strike, or Alternatively, Motion in Limine"), filed June 30, 2008. For these reasons, Idaho Power denies this Request.

Request for Admission No. 2. Admit that prior to 1977, Idaho Power Company represented to federal and state officials, Idaho agricultural and irrigation organizations and entities, and the public that the hydropower water rights for the company's Snake River hydropower facilities were subordinate, secondary or subject to future upstream water rights for irrigation purposes.

Response to Request for Admission No. 2: Please see response to Request for Admission No. 1.

Request for Admission No. 3. Admit that no document in your possession supports the contention that under the Swan Falls Settlement recharge is secondary to the hydropower water rights referenced in the Swan Falls Agreement.

Response to Request for Admission No. 3: Denied. See e.g., the Swan Falls Agreement and Idaho Code §§ 42-4201(2), 42-4201A(2) and 42-234(2). Idaho Power will be conducting additional document review in conjunction with briefing on the upcoming cross-motions for summary judgment, and will supplement this response as necessary based on such review.

Request for Admission No. 4. Admit that no document in your possession supports the contention that the Parties to the Swan Falls Settlement intended recharge to be secondary to the hydropower water rights referenced in the Swan Falls Agreement.

Response to Request for Admission No. 4: Denied. See e.g., the Swan Falls Agreement and Idaho Code §§ 42-4201(2), 42-4201(A)(2) and 42-234(2). Idaho Power will be conducting additional document review in conjunction with briefing on the upcoming cross-motions for summary judgment, and will supplement this response as necessary based on such review.

Request for Admission No. 5. Admit that Idaho Power Company has never filed, submitted, made or placed a delivery call or any other request for water rights administration seeking the curtailment of water rights diverting waters of the Snake River upstream from Milner Dam or surface or ground water tributary to the Snake River upstream from Milner Dam for purposes of enforcing, satisfying or filling the hydropower water rights for Idaho Power Company's hydropower facilities downstream from Milner Dam.

Response to Request for Admission No. 5: Idaho Power Company objects to Request for Admission No. 5 on the basis that it is unreasonably broad, vague and ambiguous. For example, the phrase "ground water tributary to the Snake River upstream from Milner Dam" is ambiguous because recent data and model runs indicate, and the State has acknowledged, that the ground water in the Eastern Snake Plain Aquifer is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. One of the locations at which a direct hydraulic connection exists between the ESPA and the Snake River and its tributaries is the American Falls

area. (See Amended Order, May 2, 2005, *In the Matter of the Distribution of Water to Various Water Rights Held by or for the Benefit of AFRD No 2, et. al*). As a result, the area commonly referred to as the trust water area may not be adequately or precisely delineated by the State's applicable regulations or the so-called trust water line.

Subject to and without waiving these objections, Idaho Power Company denies this request. By way of further explanation, any inference that Idaho Power Company has failed to protect its water rights, or has waived or intended to waive any right of enforcement under its water rights is incorrect and specifically denied. For example, Idaho Power Company initiated suit against some 7500 junior water rights for the protection of its priority, which suit led to the Swan Falls Agreement. In 2003, when flows in the Snake River dropped below 3900 cfs, Idaho Power Company communicated with the State of Idaho concerning such situation. Idaho Power Company regularly communicates with the State of Idaho on the flows of the Snake River at the Murphy Gage. Idaho Power Company has also participated, or has sought to participate, in numerous proceedings before the Director of the IDWR, in the SRBA, and in state and federal courts, in the enforcement and protection of its water rights.

Request for Admission No. 6. Admit that Idaho Power Company has never filed, submitted, made or placed a delivery call or any other request for water rights administration, seeking the delivery, distribution or provision of waters of the Snake River upstream from Milner Dam or surface or ground water tributary to the Snake River upstream from Milner Dam for purposes of enforcing, satisfying or filling the hydropower water rights for Idaho Power Company's hydropower facilities downstream from Milner Dam.

Response to Request for Admission No. 6: Idaho Power Company objects to Request for Admission No. 6 on the basis that it is unreasonably broad, vague and ambiguous. The phrase "ground water tributary to the Snake River upstream from Milner Dam" is ambiguous because recent data and model runs indicate, and the State has acknowledged, that the ground water in the Eastern Snake Plain Aquifer is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. One of the locations at which a direct hydraulic connection exists between the ESPA and the Snake River and its tributaries is the American Falls area. (See Amended Order, May 2, 2005, *In the Matter of the Distribution of Water to Various Water Rights Held by or for the Benefit of AFRD No 2, et. al*). As a result the area commonly referred to as the trust water area may not be adequately or precisely delineated by the State's applicable regulations or the so-called trust water line.

Subject to and without waiving these objections, Idaho Power Company denies this request. By way of further explanation, any inference that Idaho Power Company has failed to protect its water rights, or has waived or intended to waive any right of enforcement under its water rights is incorrect and specifically denied. For example, Idaho Power Company initiated suit against some 7500 junior water rights for the protection of its priority, which suit led to the Swan Falls Agreement. In 2003, when flows in the Snake River dropped below 3900 cfs, Idaho Power Company communicated with the State of Idaho concerning such situation. Idaho Power Company regularly communicates with the State of Idaho on the flows of the Snake River at the Murphy Gage. Idaho Power Company has also participated, or has sought to participate, in numerous proceedings before the Director of the IDWR, in the SRBA, and in state and

federal courts, in the enforcement and protection of its water rights. Idaho Power Company has rights in American Falls Reservoir which it has sought to enforce in delivering water from above Milner Dam to below Milner Dam. Idaho Power Company has leased water from above Milner Dam for delivery to below Milner Dam.

Request for Admission No. 7. Admit that the waters of the Snake River upstream from Milner Dam and the surface waters tributary to the Snake River upstream from Milner Dam are not subject to or encumbered by the trust established by Idaho Code § 42-203B.

Response to Request for Admission No. 7: Idaho Power Company objects to Request No. 7 on the grounds that it is vague and misleading. Pursuant to the Snake River Basin Adjudication Court's Order on the parties' cross-motions for summary judgment, issued by the Court on April 18, 2008, the res of the trust established by the Swan Falls Agreement consists of water rights and not water. Although Idaho Power Company reserves its rights of appeal with respect to the ruling, this ruling is the law of this case. Accordingly, the Defendants' reference to "waters of the Snake River" being "encumbered by the trust" makes no sense in the context of the Court's ruling. Moreover, Idaho Power Company objects to the premise of the Request that a trust was established by Idaho Code § 42-203B. As Idaho Power Company has asserted throughout this litigation, the trust was established by the Swan Falls Agreement and that Agreement speaks for itself. Lastly, Idaho Power further objects to this Request on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in

Limine. See also Idaho Power's Response to Request for Admission Nos. 5 & 6 relating to the delineation of the trust water area. For these reasons, Idaho Power denies this Request.

Request for Admission No. 8. Admit that ground waters tributary to the Snake River upstream from Milner Dam are not subject to or encumbered by the trust established by Idaho Code § 42-203B.

Response to Request for Admission No. 8: See Idaho Power Company's response to Request for Admission No. 7.

Request for Admission No. 9. Admit that no portion of the waters of the Snake River or surface or ground waters tributary to the Snake River upstream from Milner Dam are subject to curtailment or other administration for purposes of enforcing, satisfying or filling the hydropower water rights referenced in the Swan Falls Agreement.

Response to Request for Admission No. 9: Idaho Power Company objects to Request for Admission No. 9 on the basis that it is unreasonably broad, vague and ambiguous. Idaho Power Company cannot respond to a question regarding "curtailment or other administration" of "waters" without more explanation of what is contemplated. Idaho Power further objects to this Request on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. For these reasons, Idaho Power denies this Request.

Request for Admission No. 10. Admit that no water rights diverting from the waters of the Snake River or surface or ground waters tributary to the Snake River

upstream from Milner Dam are subject to administration for purposes of enforcing, satisfying or filling the hydropower water rights referenced in the Swan Falls Agreement.

Response to Request for Admission No. 10: Idaho Power Company objects to Request for Admission No. 10 on the basis that it is unreasonably broad, vague and ambiguous. Idaho Power Company cannot respond to a question regarding “curtailment or other administration” of “waters” without more explanation of what is contemplated. Idaho Power further objects to this Request on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. For these reasons, Idaho Power denies this Request.

Request for Admission No. 11. Admit that the waters of the Snake River basin upstream from Milner Dam always have been managed and administered separately from the waters of the Snake River basin downstream from Milner Dam.

Response to Request for Admission No. 11: Idaho Power Company objects to Request for Admission No. 11 on the basis that it is unreasonably broad, vague and ambiguous as to time and scope. For example, the phrase “managed and administered separately” is not defined or explained, nor do Defendants provide a reasonable timeframe for the Request. Idaho Power further objects to this Request on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. For these reasons, Idaho Power denies this Request.

Request for Admission No. 12. Admit that the hydropower water rights held by Idaho Power Company for use at its C.J. Strike hydropower facility are subordinate to all existing and future upstream diversion and use of water for the irrigation of lands and other beneficial consumptive uses in the Snake River watershed.

Response to Request for Admission No. 12: Idaho Power Company objects to Request for Admission No. 12 on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. Subject to and without waiving this objection, Idaho Power Company affirmatively states that its rights at the C.J. Strike hydropower facility are defined by the Federal Energy Regulatory Commission ("FERC") license governing that facility; any applicable water right permits, licenses and decrees; and the laws of the United States and the State of Idaho. The FERC license for the C.J. Strike hydropower facility and any applicable permits, licenses and decrees speak for themselves, and to the extent that the characterizations in the Request can be construed as inconsistent with the conditions of those documents, Idaho Power Company denies the Request.

Request for Admission No. 13. Admit that Idaho Power Company has no right to seek curtailment of existing or future water rights diverting from waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam to satisfy any of the hydropower water rights held by Idaho Power Company for its C.J. Strike hydroelectric facility.

Response to Request for Admission No. 13: : Idaho Power Company objects to Request for Admission No. 13 on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. Subject to and without waiving this objection, Idaho Power Company affirmatively states that its rights at the C.J. Strike hydropower facility are defined by the Federal Energy Regulatory Commission ("FERC") license governing that facility; any applicable water right permits, licenses and decrees; and the laws of the United States and the State of Idaho. The FERC license for the C.J. Strike hydropower facility and any applicable permits, licenses and decrees speak for themselves, and to the extent that the characterizations in the Request can be construed as inconsistent with the conditions of those documents, Idaho Power Company denies the Request.

Request for Admission No. 14. Admit that in 1934 Idaho Power Company stipulated and agreed that the hydropower water rights for Idaho Power Company's Twin Falls hydropower facility "shall be held and considered at all times to be subject, inferior, and subordinate to all rights heretofore or hereafter acquired by the United States or other parties for irrigation purposes, except (a) the right to use for power development at [the Twin Falls] project the water from the 45,000 acre-feet of primary storage capacity which [Idaho Power Company] holds in American Falls Reservoir under paragraph 16 of the certain contract between the United States of America and Idaho Power Company, dated June 15, 1923, and the discharge of which it may control under the terms of said contract; (b) the right to use for power development at [the Twin Falls] project the seepage,

percolation, drainage, spring or springs, waste, and/or other influent waters which do not flow or spill over Milner Dam but which enter in, arise in, and flow in and along the channel of Snake River between the down-stream tow of Milner Dam in Snake River, Idaho, and the site of the project covered by this license.”

Response to Request for Admission No. 14: Idaho Power Company objects to Request for Admission No. 14 on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. Subject to and without waiving this objection, Idaho Power Company affirmatively states that the 1934 Federal Power Commission license speaks for itself, and to the extent that the characterizations in the Request can be construed as inconsistent with that license or the new license issued in 1991, Idaho Power Company denies the Request.

Request for Admission No. 15. Admit that the stipulation and agreement set forth in Article 14 of the Federal Power Commission License of June 11, 1934, for Idaho Power Company's Twin Falls hydropower facility is a covenant running with the title to that facility, and that the Idaho Power Company agreed to execute and acknowledge under authority of a suitable resolution of its board of directors a recordable contract or deed embodying the provision, conditions, and limitations set out in such stipulation and agreement so that the same could be recorded in the counties in which the Twin Falls hydropower facility is located. (A copy of the Federal Power Commission License of June 11, 1934, for Idaho Power Company's Twin Falls hydropower facility is included herewith as **Exhibit 2.**)

Response to Request for Admission No. 15: Idaho Power Company objects to Request for Admission No. 15 on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. Subject to and without waiving this objection, Idaho Power Company affirmatively states that the 1934 Federal Power Commission license speaks for itself, and to the extent that the characterizations in the Request can be construed as inconsistent with that license or the new license issued in 1991, Idaho Power Company denies the Request.

Request for Admission No. 16. Admit that Idaho Power Company represented to the Committee of Nine prior to the enactment of the 1986 amendment of Idaho Code § 42-203B(2) that it was never the intent of the Parties that the Swan Falls Settlement would force waters arising above Milner Dam to be released to fill water rights downstream of Milner Dam.

Response to Request for Admission No. 16: Idaho Power Company objects to Request for Admission No. 16 on the basis that it is vague and ambiguous. The phrase "force waters arising above Milner Dam to be released to fill water rights downstream of Milner Dam" is unclear, as such phrase could refer to water rights administration or to the purchase, lease or release of water from above Milner Dam to below Milner Dam. Further, the phrase "waters arising above Milner Dam" is ambiguous and misleading, as recent data and model runs indicate, and the State has acknowledged, that the ground water in the Eastern Snake Plain Aquifer is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. Idaho

Power Company further objects to Request for Admission No. 16 on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. For these reasons, Idaho Power Company denies the Request.

Request for Admission No. 17. Admit that Idaho Power Company represented to Water District 01 prior to the enactment of the 1986 amendment of Idaho Code § 42-203B(2) that it was never the intent of the Parties that the Swan Falls Settlement would force waters arising above Milner Dam to be released to fill water rights downstream of Milner Dam.

Response to Request for Admission No. 17: Idaho Power Company objects to Request for Admission No. 17 on the basis that it is vague and ambiguous. The phrase “force waters arising above Milner Dam to be released to fill water rights downstream of Milner Dam” is unclear, as such phrase could refer to water rights administration or to the purchase, lease or release of water from above Milner Dam to below Milner Dam. Further, the phrase “waters arising above Milner Dam” is ambiguous and misleading, as recent data and model runs indicate, and the State has acknowledged, that the ground water in the Eastern Snake Plain Aquifer is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. Idaho Power Company further objects to Request for Admission No. 17 on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge

water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. For these reasons, Idaho Power Company denies the Request.

Request for Admission No. 18. Admit that Idaho Power Company agreed to the 1986 amendment of Idaho Code § 42-203B(2) to clarify that the Swan Falls Settlement was never intended to force waters arising above Milner Dam to be released to fill water rights downstream of Milner Dam.

Response to Request for Admission No. 18: Idaho Power Company objects to Request for Admission No. 18 on the basis that it is vague and ambiguous. The phrase "force waters arising above Milner Dam to be released to fill water rights downstream of Milner Dam" is unclear, as such phrase could refer to water rights administration or to the purchase, lease or release of water from above Milner Dam to below Milner Dam. Further, the phrase "waters arising above Milner Dam" is ambiguous and misleading, as recent data and model runs indicate, and the State has acknowledged, that the ground water in the Eastern Snake Plain Aquifer is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. Idaho Power Company further objects to Request for Admission No. 18 on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. For these reasons, Idaho Power Company denies the Request.

Request for Admission No. 19. Admit that Article 21 of the 1923 American Falls Contract limits Idaho Power Company's right to demand the turning out of water from the American Falls Reservoir for release by and use below Milner Dam to the

company's storage rights at American Falls Reservoir and the water referred to in the last sentence of Paragraph 10 of said contract (A copy of this contract is included herewith as Exhibit 1.)

Response to Request for Admission No. 19: Idaho Power Company objects to Request for Admission No. 19 on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. And in fact, interpretation of the 1923 Contract between Idaho Power Company and the United States is the subject of litigation currently pending in federal court and other SRBA proceedings outside this case. Subject to and without waiving this objection, Idaho Power affirmatively states that Article 21 of the 1923 American Falls Contract speaks for itself, and to the extent that the characterizations in the Request can be construed as inconsistent with that contract, Idaho Power Company denies the Request.

Request for Admission No. 20. Admit that not more than ten per cent (10%) of the water accruing to the active storage capacity in the American Falls Dam may be contractually scheduled for release from the American Falls Dam by Idaho Power Company, except for temporary increases following a default by a Non-Participating Wateruser or Spaceholder as provided in Section 3.5 of the Falling Water Contract Dated as of March 31, 1976 by and between the American Falls Reservoir District and Idaho Power Company or arising from unusually wet or dry weather in the service area of the American Falls Dam.

Response to Request for Admission No. 20: Idaho Power Company objects to Request for Admission No. 20 on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. And in fact, interpretation of the 1976 Falling Water Contract is the subject of litigation currently pending in federal court outside of this case. Subject to and without waiving this objection, Idaho Power affirmatively states that Section 3.5 of the Falling Water Contract Dated as of March 31, 1976 speaks for itself, and to the extent that the characterizations in this Request can be construed as inconsistent with this provision, Idaho Power Company denies the Request.

II. ANSWERS TO INTERROGATORIES

Interrogatory No. 1: Identify all documents responsive to the Requests for Production set forth herein.

Answer to Interrogatory No. 1: Please see Responses to Requests for Production Nos. 1 – 63.

Interrogatory No. 2: Identify all persons having knowledge of the subject matter of the documents you produced in response to the Requests for Production set forth herein, including each person's full name, address, and telephone number.

Answer to Interrogatory No. 2: Idaho Power Company has identified in response to previous discovery requests all persons that it is aware may have knowledge of the subject matter of the documents produced in response to the Defendants' Requests for Production.

Interrogatory No. 3: Identify all persons who assisted in preparing your responses to the discovery requests herein.

Answer to Interrogatory No. 3: Idaho Power Company objects to this Interrogatory on the basis that it seeks information protected by the attorney-client and work product privileges.

Interrogatory No. 4: Explain how Idaho Power Company's position on the questions of whether recharge water rights diverting from surface waters of the Snake River upstream from Milner Dam, or from surface waters tributary thereto, are secondary to the hydropower water rights referenced in the Swan Falls Agreement is consistent with the following statutory directives in Idaho Code § 42-203B(2), or if Idaho Power Company's position is inconsistent with the statutory directive please so indicate:

provided, however, that application 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 the 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.

Answer to Interrogatory No. 4: Idaho Power Company objects to Interrogatory No. 4 on the grounds that it is not relevant or material to the issue before the Court of

whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. Idaho Code § 42-203B(2), enacted by the Idaho Legislature in 1986, relates to the administration of water rights below and above Milner Dam and not to the issue of whether specific water rights, including those rights of Idaho Power, are subordinate to recharge or other specific beneficial uses.

Interrogatory No. 5: Explain how Idaho Power Company's position on the questions of whether recharge water rights diverting from surface waters of the Snake River upstream from Milner Dam, or from surface waters tributary thereto, are secondary to the hydropower water rights referenced in the Swan Falls Agreement is consistent with Article 21 of the 1923 American Falls Contract, or if Idaho Power Company's position is inconsistent with Article 21 of the 1923 American Falls Contract please so indicate. (A copy of the 1923 American Falls Contract is included herewith as Exhibit 1.)

Answer to Interrogatory No. 5: Idaho Power Company objects to Interrogatory No. 5 on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. The issue of whether Idaho Power's water rights are secondary, subordinate, or limited in the manner in which they may be enforced or administered by virtue of conditions imposed by other agreements or regulatory proceedings is irrelevant to the issue pending before this Court. Moreover, Idaho Power Company's position with respect to subordination to recharge under the Swan Falls Agreement is unrelated to its rights under the 1923 American Falls Contract.

Interpretation of the 1923 Contract between Idaho Power Company and the United States is the subject of litigation currently pending in federal court and other SRBA proceedings outside this case.

Interrogatory No. 6: Explain how Idaho Power Company's position on the question of whether recharge water rights diverting from surface waters of the Snake River upstream from Milner Dam, or from surface waters tributary thereto, are secondary to the hydropower water rights referenced in the Swan Falls Agreement is consistent with Article 14 of the 1934 Federal Power Commission license for Idaho Power Company's Twin Falls hydropower facility, or if Idaho Power Company's position is inconsistent with Article 14 of said license please so indicate. (A copy of the license is included herewith as **Exhibit 2.**)

Answer to Interrogatory No. 6: Idaho Power Company objects to Interrogatory No. 6 on the grounds that it is not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. The issue of whether Idaho Power's water rights are secondary, subordinate, or limited in the manner in which they may be enforced or administered by virtue of conditions imposed by other agreements or regulatory proceedings is irrelevant to the issue pending before this Court. Moreover, Idaho Power Company's position with respect to recharge is unrelated to any conditions under the 1934 Federal Power Commission license for the Twin Falls hydropower facility.

III. RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

Supplemental Response: In addition to the specific objections and responses identified below, Idaho Power Company has identified a subset of the documents provided by Idaho Power Company to the State of Idaho that are responsive to individual Requests for Production. A list of those documents by Request for Production and Bates number is attached as Exhibit A to these Supplemental Discovery Responses.

Request for Production No. 1: Produce all documents that support your responses to the Requests for Admission and Interrogatories set forth herein.

Response to Request for Production No. 1: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges, and documents pertaining to issues which are not within the scope of pleadings filed in this litigation. *See* I.R.C.P. 7(a); SRBA Administrative Order No. 1, § 4. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the remaining issue in this case of whether under the Swan Falls Agreement, the hydropower water rights subject to subordination therein are subordinate to the use of water for aquifer recharge, which are the matters at issue in this litigation.

Supplemental Response to Request for Production No. 1: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 2: Produce all documents in your possession that Idaho Power Company contends support its "Answer to Interrogatory No. 11" on page 24

of "Idaho Power Company's Answer to State of Idaho's First Set of Interrogatories,"
Dated December 20, 2007.

Response to Request for Production No. 2: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 2: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents identified to date. Pursuant to its duty under the Idaho Rules of Civil Procedure to seasonably supplement its discovery responses, the Company is currently conducting an additional review of documents within its possession, custody, and control and will produce additional responsive documents, if any.

Request for Production No. 3: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, submitted, mailed, faxed, e-mailed or otherwise provided, on behalf of Idaho Power Company, to the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, that pertain to the "Framework."

Response to Request for Production No. 3: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client

and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 3: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 4: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, received, on behalf of Idaho Power Company, from the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, that pertain to the "Framework."

Response to Request for Production No. 4: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 4: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 5: Produce all other documents in your possession that address, analyze, evaluate, discuss, refer or otherwise pertain to the "Framework."

Response to Request for Production No. 5: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 5: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 6: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, submitted, mailed, faxed, e-mailed or otherwise **provided**, on behalf of Idaho Power Company, to the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, that pertain to the question of whether hydropower water rights, including but not limited to those claimed, owned or used by Idaho Power Company, are subordinated or may be subordinated, through the Swan Falls Settlement or otherwise, to recharge.

Response to Request for Production No. 6: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power

Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 6: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 7: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, received, on behalf of Idaho Power Company, from the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, that pertain to the question of whether hydropower water rights, including but not limited to those claimed owned or used by Idaho Power Company, are subordinated or may be subordinated, through the Swan Falls Settlement or otherwise, to recharge.

Response to Request for Production No. 7: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 7: Idaho Power

Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 8: Produce all other documents in your possession that address, analyze, evaluate, discuss, refer to, set forth or otherwise evidence the intent of the Parties as to whether the hydropower water rights referenced in the Swan Falls Agreement were subordinated or may be subordinated in the future, through the Swan Falls Settlement or otherwise, to recharge.

Response to Request for Production No. 8: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 8: Idaho Power

Company has made a reasonable effort to produce all non-privileged, responsive documents identified to date. Pursuant to its duty under the Idaho Rules of Civil Procedure to seasonably supplement its discovery responses, the Company is currently conducting an additional review of documents within its possession, custody, and control and will produce additional responsive documents, if any.

Request for Production No. 9: Produce all other documents in your possession that address, analyze, evaluate, discuss, refer or otherwise pertain to the question of whether hydropower water rights, including but not limited to those claimed, owned or

used by Idaho Power Company, are subordinated or may be subordinated, through the Swan Falls Settlement or otherwise, the recharge.

Response to Request for Production No. 9: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 9: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents identified to date. Pursuant to its duty under the Idaho Rules of Civil Procedure to seasonably supplement its discovery responses, the Company is currently conducting an additional review of documents within its possession, custody, and control and will produce additional responsive documents, if any.

Request for Production No. 10: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, submitted, mailed, faxed, e-mailed or otherwise provided, on behalf of Idaho Power Company, to the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, that pertain to the formulation, adoption, enactment, amendment and/or implementation of Idaho Code §§ 42-234, 42-4201, 42-4201A, including but not limited to 1978 House Bill 598,

1982 House Bill 710, 1985 House Bill 266, 1994 Senate Bills 1564, 1565, 1574 and/or 1575.

Response to Request for Production No. 10: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request to the extent that it seeks documents that are not relevant to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 10: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 11: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, received on behalf of Idaho Power Company, from the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, that pertain to the formulation, adoption, enactment, amendment and/or implementation of Idaho Code §§ 42-234, 42-4201, 42-4201A, including but not limited to 1978 House Bill 598, 1982 House Bill 710, 1985 House Bill 266, 1994 Senate Bills 1564, 1565, 1574 and/or 1575.

Response to Request for Production No. 11: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 11: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 12: Produce all other documents in your possession that address, analyze, evaluate, discuss, refer or otherwise pertain to the formulation, adoption, enactment, amendment and/or implementation of Idaho Code §§ 42-234, 42-4201, 42-4201A, including but not limited to 1978 House Bill 598, 1982 House Bill 710, 1985 House Bill 266, 1994 Senate Bills 1564, 1565, 1574 and/or 1575.

Response to Request for Production No. 12: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 12: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 13: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, submitted, mailed, faxed, e-mailed or otherwise **provided**, on behalf of Idaho Power Company, to the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, that pertain to the formulation, adoption, enactment, amendment and/or implementation of Idaho Code §§ 42-203B, 42-203C, 42-203D and 1985 Idaho Session Laws Chapters 14 and 204, including but not limited to 1985 Senate Bills 1005, 1006 and 1008, and 1986 Senate Bills 1358 and/or 1358aa.

Response to Request for Production No. 13: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 13: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 14: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, received, on behalf of

Idaho Power Company, from the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, that pertain to the formulation, adoption, enactment, amendment and/or implementation of Idaho Code §§ 42-203B, 42-203C, 42-203D and 1985 Idaho Session Laws Chapter 14 and 204, including but not limited to 1985 Senate Bills 1005, 1006 and 1008, and 1986 Senate Bills 1358 and/or 1358aa.

Response to Request for Production No. 14: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 14: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 15: Produce all other documents in your possession that address, analyze, evaluate, discuss, refer or otherwise pertain to the formulation, adoption, enactment, amendment and/or implementation of Idaho Code §§ 42-203B, 42-203C, 42-203D and 1985 Idaho Session Law Chapters 14 and 204, including but not limited to 1985 Senate Bills 1005, 1006 and 1008, and 1986 Senate Bills 1358 and/or 1358aa.

Response to Request for Production No. 15: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power

Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 15: Idaho Power

Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 16: Produce all documents that Idaho Power

Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, submitted, mailed, faxed, e-mailed or otherwise provided, on behalf of Idaho Power Company, to the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, that pertain to the "Water Appropriation Rules" originally proposed in 1985 (*see, e.g.*, Exhibits 49-59 to the "Affidavit of Michael C. Orr in Support of State of Idaho's Motion for Partial Summary Judgment" (Jan. 9, 2008)), and that are currently codified at IDAPA 37.03.08.001-.999.

Response to Request for Production No. 16: Idaho Power Company objects to

this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 16: Idaho Power

Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 17: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, received, on behalf of Idaho Power Company, to the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, that pertain to the "Water Appropriation Rules" originally proposed in 1985 (*see, e.g.*, Exhibits 49-59 to the "Affidavit of Michael C. Orr in Support of State of Idaho's Motion for Partial Summary Judgment" (Jan. 9, 2008)), and that are currently codified at IDAPA 37.03.08.001-.999.

Response to Request for Production No. 17: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 17: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 18: Produce all others documents in your possession that address, analyze, evaluate, discuss, refer or otherwise pertain to the "Water

Appropriation Rules” originally proposed in 1985 (*see, e.g.*, Exhibits 49-59 to the “Affidavit of Michael C. Orr in Support of State of Idaho’s Motion for Partial Summary Judgment” (Jan 9, 2008)), and that are currently codified at IDAPA 37.03.08.001-.999.

Response to Request for Production No. 18: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 18: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 19: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, submitted, mailed, faxed, e-mailed or otherwise provided, on behalf of Idaho Power company, to the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, that pertain to the origin, formulation, negotiation, approval, acceptance, meaning and/or effect of the following provisions in the license and permit for the water right for Idaho Power Company’s C.J. Strike hydropower facility (water right 02-2080):

The rights herein granted are subject to the condition that the project shall be operated in such a manner as will not conflict with future depletion in the flow of the waters of the Snake River and its tributaries, or prevent or interfere with the future upstream diversion

and use of such waters, for the irrigation of lands and other beneficial consumptive uses in the Snake River watershed.

(Copies of said license and permit are included herewith as **Exhibit 3**).

Response to Request for Production No. 19: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 20: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, received, on behalf of Idaho Power company, from the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, that pertain to the origin, formulation, negotiation, approval, acceptance, meaning and/or effect of the following provisions in the license and permit for the water right for Idaho Power Company's C.J. Strike hydropower facility (water right 02-2080):

The rights herein granted are subject to the condition that the project shall be operated in such a manner as will not conflict with future depletion in the flow of the waters of the Snake River and its tributaries, or prevent or interfere with the future upstream diversion and use of such waters, for the irrigation of lands and other beneficial consumptive uses in the Snake River watershed.

(Copies of said license and permit are included herewith as **Exhibit 3**).

Response to Request for Production No. 20: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 21: Produce all other documents in your possession that address, analyze, evaluate, discuss, refer or otherwise pertain to the origin, formulation, negotiation, approval, acceptance, meaning and/or effect of the following provisions in the license and permit for the water right for Idaho Power Company's C.J. Strike hydropower facility (water right 02-2080):

The rights herein granted are subject to the condition that the project shall be operated in such a manner as will not conflict with future depletion in the flow of the waters of the Snake River and its tributaries, or prevent or interfere with the future upstream diversion and use of such waters, for the irrigation of lands and other beneficial consumptive uses in the Snake River watershed.

(Copies of said license and permit are included herewith as Exhibit 3).

Response to Request for Production No. 21: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 22: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, and James C. Tucker, submitted, mailed, faxed, e-mailed or otherwise provided, on behalf of Idaho Power Company, to the Idaho Legislature, or any Agency, as those terms are defined above, that pertain to 2006 House Bill 800.

Response to Request for Production No. 22: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 22: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 23: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, and James C. Tucker, received, on behalf of Idaho Power Company, from the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, that pertain to 2006 House Bill 800.

Response to Request for Production No. 23: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client

and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 23: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 24: Produce all other documents in your possession that address, analyze, evaluate, discuss, refer or otherwise pertain to 2006 House Bill 800.

Response to Request for Production No. 24: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 24: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 25: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, submitted, mailed, faxed, e-mailed, or otherwise provided, on behalf of Idaho Power Company, to the Attorney

General of the State of Idaho, or any employee, representative, agent or staff of the Attorney General, that pertain to the Swan Falls Settlement.

Response to Request for Production No. 25: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 25: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 26: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, and James C. Tucker and Thomas G. Nelson, received, on behalf of Idaho Power Company, from the Attorney General of the State of Idaho, or any employee, representative, agent or staff of the Attorney General, that pertain to the Swan Falls Settlement.

Response to Request for Production No. 26: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all

of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 26: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 27: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, submitted, mailed, faxed, e-mailed or otherwise provided to the Attorney General of the State of Idaho, or any employee, representative, agent or staff of the Attorney General, that pertain to 1986 Senate Bills 1358 and/or 1358aa, and/or the 1986 amendments to Idaho Code § 42-203B(2).

Response to Request for Production No. 27: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 27: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 28: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, received, on behalf of Idaho Power, from the Attorney General of the State of Idaho, or any employee, representative, agent or staff of the Attorney General, that pertain to 1986 Senate Bills 1358 and/or 1358aa, and/or the 1986 amendments to Idaho Code § 42-203B(2).

Response to Request for Production No. 28: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 28: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 29: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, submitted, mailed, faxed, e-mailed or otherwise **provided**, on behalf of Idaho Power Company, to the Water District 01, the Committee of Nine, the Idaho Water Users Association Idaho Water Rights Defense, or to any irrigation district, canal company or other water use entity or

water distribution entity operating in the Snake River basin, or to their officers, directors, staff, employees, members, representatives, attorneys or agents, that address, analyze, evaluate, discuss, refer or otherwise pertain to 1986 Senate Bills 1358 and/or 1358aa, and/or the 1986 amendments to Idaho Code § 42-203B(2).

Response to Request for Production No. 29: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 29: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 30: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, received, on behalf of Idaho Power Company, from the Water District 01, the Committee of Nine, the Idaho Water Users Association Idaho Water Rights Defense, or to any irrigation district, canal company or other water use entity or water distribution entity operating in the Snake River basin, or to their officers, directors, staff, employees, members, representatives, attorneys or agents, that address, analyze, evaluate, discuss, refer or otherwise pertain to

1986 Senate Bills 1358 and/or 1358aa, and/or the 1986 amendments to Idaho Code § 42-203B(2).

Response to Request for Production No. 30: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 30: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 31: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, submitted, mailed, faxed, e-mailed or otherwise **provided**, on behalf of Idaho Power Company, to the Water District 01, the Committee of Nine, the Idaho Water Users Association Idaho Water Rights Defense, or to any irrigation district, canal company or other water use entity or water distribution entity operating in the Snake River basin, or to their officers, directors, staff, employees, members, representatives, attorneys or agents, that address, analyze, evaluate, discuss, refer or otherwise pertain to the question of whether waters of the Snake River upstream from Milner Dam and surface water and ground water tributary the

Snake River upstream from Milner Dam are subject to the trust established under the Swan Falls Settlement.

Response to Request for Production No. 31: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 32: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, received, on behalf of Idaho Power Company, from the Water District 01, the Committee of Nine, the Idaho Water Users Association Idaho Water Rights Defense, or to any irrigation district, canal company or other water use entity or water distribution entity operating in the Snake River basin, or to their officers, directors, staff, employees, members, representatives, attorneys or agents, that address, analyze, evaluate, discuss, refer or otherwise pertain to the question of whether waters of the Snake River upstream from Milner Dam and surface water and ground water tributary the Snake River upstream from Milner Dam are subject to the trust established under the Swan Falls Settlement.

Response to Request for Production No. 32: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client

and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 33: Produce all documents in your possession that address, analyze, evaluate, discuss, refer or otherwise pertain to the question of whether waters of the Snake River upstream from Milner Dam and surface water and ground water tributary the Snake River upstream from Milner Dam are subject to the trust established under the Swan Falls Settlement.

Response to Request for Production No. 33: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 34: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, submitted, mailed, faxed, e-mailed or otherwise **provided**, on behalf of Idaho Power Company, to the Water District 01, the Committee of Nine, the Idaho Water Users Association Idaho Water

Rights Defense, or to any irrigation district, canal company or other water use entity or water distribution entity operating in the Snake River basin, or to their officers, directors, staff, employees, members, representatives, attorneys or agents, that address, analyze, evaluate, discuss, refer or otherwise pertain to the question of whether hydropower water rights, including but not limited to those claimed, owned or used by Idaho Power Company, are subordinated or may be subordinated, through the Swan Falls Settlement or otherwise, to recharge.

Response to Request for Production No. 34: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 34: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents identified to date. Pursuant to its duty under the Idaho Rules of Civil Procedure to seasonably supplement its discovery responses, the Company is currently conducting an additional review of documents within its possession, custody, and control and will produce additional responsive documents, if any.

Request for Production No. 35: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, received, on behalf of

Idaho Power Company, from the Water District 01, the Committee of Nine, the Idaho Water Users Association Idaho Water Rights Defense, or to any irrigation district, canal company or other water use entity or water distribution entity operating in the Snake River basin, or to their officers, directors, staff, employees, members, representatives, attorneys or agents, that address, analyze, evaluate, discuss, refer or otherwise pertain to the question of whether hydropower water rights, including but now limited to those claimed, owned or used by Idaho Power Company, are subordinated or may be subordinated, through the Swan Falls Settlement or otherwise, to recharge.

Response to Request for Production No. 35: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 35: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents identified to date. Pursuant to its duty under the Idaho Rules of Civil Procedure to seasonably supplement its discovery responses, the Company is currently conducting an additional review of documents within its possession, custody, and control and will produce additional responsive documents, if any.

Request for Production No. 36: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan

Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, submitted, mailed, faxed, e-mailed or otherwise provided, on behalf of Idaho Power Company, to the Water District 01, the Committee of Nine, the Idaho Water Users Association, Idaho Water Rights Defense, or to any irrigation district, canal company or other water use entity or water distribution entity operating in the Snake River basin, or to their officers, directors, staff, employees, members, representatives, attorneys or agents, that address, analyze, evaluate, discuss, refer or otherwise pertain to the question of whether water rights diverting from the Snake River upstream from Milner Dam, or from surface waters or ground waters tributary thereto, are subject to water rights diverting downstream from Milner Dam.

Response to Request for Production No. 36: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 37: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, including but not limited to James Bruce, Logan Lanham, Greg Panter, James C. Tucker and Thomas G. Nelson, received, on behalf of Idaho Power Company, from the Water District 01, the Committee of Nine, the Idaho Water Users Association Idaho, Water Rights Defense, or to any irrigation district, canal

company or other water use entity or water distribution entity operating in the Snake River basin, or to their officers, directors, staff, employees, members, representatives, attorneys or agents, that address, analyze, evaluate, discuss, refer or otherwise pertain to the question of whether water rights diverting from the Snake River upstream from Milner Dam, or from surface water or ground waters tributary thereto, are subject to water rights diverting downstream from Milner Dam.

Response to Request for Production No. 37: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 38: Produce all documents in your possession that address, analyze, evaluate, discuss, refer or otherwise pertain to water right permits numbers 01-7054 and 37-7842.

Response to Request for Production No. 38: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power further objects to this requests on the grounds that it is overly broad and unduly burdensome. Idaho Power Company also objects to this request to the extent that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho

Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 38: To the extent Idaho Power Company has non-privileged documents in its possession, custody, or control that relate to the Swan Falls Agreement and also reference water right permits numbers 01-7054 and 37-7842, Idaho Power Company has produced these documents.

Request for Production No. 39: Produce all documents in your possession evidencing that the water rights that are the subject of the Swan Falls Agreement include or carry a right to obtain the administration of water rights diverting from the Snake River upstream from Milner Dam, or diverting from surface water or ground waters tributary to the Snake River upstream from Milner Dam.

Response to Request for Production No. 39: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 40: Produce all documents in your possession evidencing that the water rights that are the subject of the Swan Falls Agreement include or carry a right to obtain the distribution of waters of the Snake River upstream from

Milner Dam, or surface waters or ground waters tributary to the Snake River upstream from Milner Dam.

Response to Request for Production No. 40: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 41: Produce all documents in your possession that address, analyze, evaluate, discuss, characterize or refer to the quantity or source(s) of flows available or expected to be available for power purposes at Idaho Power Company's hydroelectric power generation facilities at Twin Falls, Shoshone Falls, Upper Salmon Falls, and Lower Salmon Falls.

Response to Request for Production No. 41: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 42: Produce all documents that Idaho Power Company or its lobbyists, counsel, employees, officers, directors, representatives,

attorneys, investigators, or expert witnesses, submitted, mailed, faxed, e-mailed, or otherwise **provided**, on behalf of Idaho Power Company's "Petition for Declaratory Order" filed with the Federal Energy regulatory Commission (FERC docket. No. EL-85-38-000), including but not limited to any presentations to FERC officers, staff or employees.

Response to Request for Production No. 42: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request to the extent that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 42: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 43: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, submitted, mailed, faxed, e-mailed, otherwise **provided**, on behalf of Idaho Power Company, to the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, or to the United States of America or any

of its executive or administrative department, agencies, bureaus, commissions, boards, employees, officers, attorneys, agents or representatives, that address, analyze, evaluate, discuss, refer or otherwise pertain to Article 14 of the 1934 Federal Power Commission license for Idaho Power Company's Twin Falls hydropower facility. (A copy of said license is attached hereto as **Exhibit 2.**)

Response to Request for Production No. 43: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 44: Produce the "recordable contract or deed embodying the provisions, conditions, and limitations set forth" in Article 14 of the first Federal Power Commission license for Idaho Power Company's Twin Falls hydropower facility that Idaho Power Company agreed to execute and acknowledge pursuant to Article 14 of said license. (A copy of said license is attached hereto as **Exhibit 2.**)

Response to Request for Production No. 44: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights

to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 45: Produce the “recordable contract or deed embodying the provisions, conditions, and limitations set forth” in Article 14 of Federal Power Commission license for Project No. 18 “that the Idaho Power Company’s Board of Directors authorized Company officers to execute and acknowledge pursuant to a resolution unanimously adopted at a special meeting on May 11, 1934. (A copy of the “Minutes of Special Meeting” of Idaho Power Company’s Board of Director’s (May 11, 1934) is included herewith as Exhibit 4.)

Response to Request for Production No. 45: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 46: Produce all documents in your possession that address, discuss, analyze, evaluate, refer or otherwise pertain to Article 14 of the 1934 Federal Power Commission license for Idaho Power Company’s Twin Falls hydropower facility. (A copy of said license is attached hereto as Exhibit 2.)

Response to Request for Production No. 46: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on

the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 47: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, submitted, mailed, faxed, e-mailed, or otherwise **provided**, on behalf of Idaho Power Company, to the United States of America or any of its executive or administrative department, agencies, bureaus, commissions, boards, employees, staff, officers, attorneys, agents or representatives that address, analyze, evaluate, discuss, refer or otherwise pertain to Article 21 of the 1923 American Falls Contract.

Response to Request for Production No. 47: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 48: Produce all documents in your possession that address, analyze, evaluate, discuss, refer or otherwise pertain to Article 21 of the 1923 American Falls Contract.

Response to Request for Production No. 48: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 49: Produce all documents in your possession that address, analyze, evaluate, discuss, refer or otherwise pertain to the Idaho Power Company's water rights, water use, and/or contract rights to the storage capacity in the American Falls reservoir.

Response to Request for Production No. 49: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 50: Produce all documents that Idaho Power Company or its lobbyists, employees, officers, directors, representatives, attorneys, investigators, or expert witnesses, submitted, mailed, faxed, e-mailed, or otherwise **provided**, on behalf of Idaho Power Company, to the Idaho Legislature, the Governor, or any Agency, as those terms are defined above, or to the United States of America or any

of its executive or administrative department, agencies, bureaus, commissions, boards, employees, staff, officers, attorneys, agents or representatives, that address, analyze, evaluate, discuss, refer or otherwise pertain to the 1928 amendment to the Idaho Constitution that added the following passage to section 3 of Article XV: "except that the State may regulate and limit the use thereof for power purposes."

Response to Request for Production No. 50: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 51: Produce all documents in your possession that address, analyze, evaluate, discuss, refer or otherwise pertain to the 1928 amendment to the Idaho Constitution that added the following passage to section 3 of Article XV: "except that the State may regulate and limit the use thereof for power purposes."

Response to Request for Production No. 51: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 52: Produce all documents in your possession that pertain to the rebuilding of American Falls dam during the 1970's, including but not limited those documents pertaining to United States S.1258 & S.1259; Public Law 93-206 (Dec. 28, 1973); United States H.R.9968; Public Law 94-164 (Dec. 23, 1975); the Falling Water contract Dated March 31, 1976 between the American Falls Reservoir District and the Idaho Power Company; the Spaceholder Contract among the United States; the American Falls Reservoir District, and the Idaho Power Company Dated March 31, 1976; and the Contract between the United States of America and the American Falls Reservoir District for Construction and Operation and Maintenance of the American Falls Replacement Dam Program Dated March 31, 1976.

Response to Request for Production No. 52: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 53: Produce all documents in your possession that set forth, consist of, including, summarize, address, analyze, evaluate, discuss, or refer to any economic or hydrologic studies, analyses or reports pertaining to subordination of hydropower water rights or uses to recharge.

Response to Request for Production No. 53: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client

and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it is overly broad and unduly burdensome. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 53: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents identified to date. Pursuant to its duty under the Idaho Rules of Civil Procedure to seasonably supplement its discovery responses, the Company is currently conducting an additional review of documents within its possession, custody, and control and will produce additional responsive documents, if any.

Request for Production No. 54: Produce all documents in your possession relevant to the intent of the parties to the Swan Falls Agreement 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.

Response to Request for Production No. 54: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request in that it is overly broad and unduly burdensome. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 54: Idaho Power

Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 55: Please produce all documents in your 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.

Response to Request for Production No. 55: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 55: Idaho Power

Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 56: Produce all documents in your 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 not be subject to subordination to the management or use of water for aquifer recharge.

Response to Request for Production No. 56: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client

and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 56: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 57: Produce all documents in your possession relevant to the intent of the Idaho Legislature as to whether hydropower water rights exceeding the Swan Falls minimum flows would not be subject to subordination to the management or use of water for aquifer recharge.

Response to Request for Production No. 57: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 57: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 58: Produce all documents in your possession which relate to the Framework for Final Resolution of Snake River Water Right 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.

Response to Request for Production No. 58: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 58: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 59: Produce all documents in your 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.

Response to Request for Production No. 59: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 59: Idaho Power

Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 60: Produce all documents in your 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.

Response to Request for Production No. 60: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 60: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Request for Production No. 61: Produce all documents in your possession relating to the initial adoption, and the continuation, of the State policy concerning a flow of zero cfs minimum flow at Milner as described in various versions of the Idaho State Water Plan.

Response to Request for Production No. 61: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Idaho Power Company further objects to this request on the grounds that it seeks documents that are not relevant or material to the issue before

the Court of whether the Swan Falls Agreement subordinated Idaho Power's water rights to either existing or future recharge water rights. See Idaho Power Company's Motion to Strike, or Alternatively, Motion in Limine.

Request for Production No. 62: Produce all documents upon which Idaho Power Company intends to rely in defending against the State's May 7, 2008 Motion for Summary Judgment, and in support of the motion for summary judgment that Idaho Power Company intends to file.

Response to Request for Production No. 62: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 62: Idaho Power Company has not yet identified all of the documents upon which it intends to rely in defending against the State's Motion for Summary Judgment or in support of its own Motion for Summary Judgment. Nevertheless, Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control. Idaho Power Company will supplement its response to this request, if necessary, once it determines the entire universe of documents upon which it will rely in support of its positions in the summary judgment briefings.

Request for Production No. 63: Produce all documents you have not already produced but which you referenced, reviewed or in any way relied upon to respond to the Requests for Admission and Interrogatories set forth herein.

Response to Request for Production No. 63: Idaho Power Company objects to this request to the extent it seeks to discover documents protected by the attorney-client and/or work product privileges. Notwithstanding the foregoing objection, the Idaho Power Company will make available for review, at a time mutually agreeable to the parties, all of its non-privileged production documents relevant to the matters at issue in this litigation.

Supplemental Response to Request for Production No. 63: Idaho Power Company has made a reasonable effort to produce all non-privileged, responsive documents in its possession, custody, or control.

Dated this 24th day of July, 2008.

IDAHO POWER COMPANY

James C. Tucker, Esq.
Senior Attorney, Idaho Power Company
1221 West Idaho Street
Boise, ID 83702-5627

By: Michael A. Gheleta

James S. Lochhead, Esq.
Michael A. Gheleta, Esq.
Mark J. Mathews, Esq.
Michelle C. Kales, Esq.
Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202

John K. Simpson, ISB No. 4242
Shelley M. Davis, ISB No. 6788
BARKER ROSHOLT & SIMPSON LLP
205 North Tenth St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139

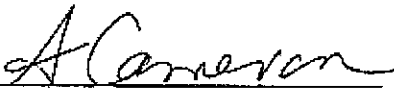
Attorneys for Idaho Power Company

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July 2008, I caused to be served a true and correct copy of the foregoing document entitled **IDAHO POWER COMPANY'S SUPPLEMENTAL RESPONSES TO STATE OF IDAHO'S THIRD SET OF DISCOVERY REQUESTS** via the method indicated below, and addressed to the following:

Lawrence Wasden
Steven Olsen
Karl T. Klein
Michael C. Orr
Shasta Kilminster-Hadley
700 W. Jefferson, Room 210
P.O. Box 44449
Boise, ID 83711-4449

☒	U.S. Mail, Postage Prepaid
☐	Hand Delivered
☐	Overnight Mail
☐	Facsimile
☒	Electronic Mail: michael.orr@ag.idaho.gov
☒	Electronic Mail: steven.olsen@ag.idaho.gov
☒	Electronic Mail: shasta.k-hadley@ag.idaho.gov



Alison Cameron

C

1 IN THE DISTRICT COURT OF THE
2 FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO
3 IN AND FOR THE COUNTY OF TWIN FALLS
4 * * * * *

4 IN RE SRBA)
5)
6 Case No. 39576) REPORTER'S TRANSCRIPT
7) Subcase 00-92023
8)
9)

9 PARTIAL TRANSCRIPT OF PROCEEDINGS
10 Judge's comments
11 BEFORE THE HONORABLE JOHN M. MELANSON
12 District Judge, Presiding

12 DATE: May 20, 2008

13 TIME: 10:00 a.m.

14 PLACE: COURTROOM OF THE DISTRICT COURT
15 SNAKE RIVER BASIN ADJUDICATION
16 BUILDING - 253 3RD AVE. NORTH
17 TWIN FALLS, IDAHO

22 Reported by:
23 Maureen Newton, CSR, No. 321
24 P.O. Box 132
25 Heyburn, ID 83336
 (208) 431-1587

EXHIBIT C

1 THE COURT: All right. Well, here's what I'll
2 do. I think I can rule on part of this from the bench so
3 that the parties will have some guidance now as to what's
4 coming up through the summer.
5 Looking at the beginning of the proposed
6 schedules, that is, the parties beginning discovery on
7 May 23rd with responses due no later than June 25, it
8 appears that the parties agree with those dates and the
9 only difference is the State's suggestion that there would
10 be a requirement that the party receiving discovery
11 provides notice within 14 days thereafter of additional
12 requests for depositions or of requests for depositions.
13 I don't think that's going to make much
14 difference in the final analysis here. My inclination is
15 to simply adopt the schedule as stated by Idaho Power, at
16 least the beginning of it there. If there is a need for
17 additional discovery requests or requests for depositions,
18 that can be done by July 9th.
19 And I recognize that there might be some disputes
20 about discovery. I'm relying to a large extent here on
21 Idaho Power's representations that the discovery would be
22 limited to the recharge issues and that the parties can
23 resolve whatever discovery disputes may arise. I'll try to
24 be available on as short a notice as possible to resolve
25 the ones that need to be resolved by the court and

1

1 Idaho Power agrees to allow dismissal without prejudice.
2 The State believes that there are some matters that need to
3 be heard and decided by the court, even recognizing that
4 the final result if the State prevails is likely to be
5 dismissal without prejudice; and also Idaho Power
6 recognizes there are some issues that maybe could be
7 winnowed out during the process. So there are some
8 countervailing, I guess, issues there.
9 On the one hand judicial economy dictates
10 dismissing without prejudice; on the other, trying to, I
11 guess, move this case along with decisions made for the
12 parties as we going along dictates perhaps that the court
13 should hear it. I'll make that decision within the week I
14 think and then it will be included in the written order
15 that I enter on this scheduling conference. So if the
16 court decides to hear it, I imagine I'll be adopting the
17 schedule proposed by Idaho Power again since it does allow
18 a little bit of additional time.
19 Is there anything further in this matter from
20 Idaho Power then?
21 MR. GHELETA: No, Your Honor.
22 THE COURT: Anything further from the State?
23 MR. OLSON: No, Your Honor.
24 THE COURT: Anything further then from the
25 parties participating by telephone?

3

1 hopefully preserve the hearing dates.
2 As far as the date for hearing on the cross
3 motions for summary judgment, I think a later date's
4 acceptable to the court, that is, one around the date
5 proposed by Idaho Power. The problem is I've got some
6 other obligations coming up this summer, other cases, that
7 may conflict with that exact date. So it's my intention to
8 adopt the scheduling order set forth by Idaho Power, but I
9 may have to set the final date -- that is, I may have to
10 change that December 16 date, but I won't make it earlier
11 than that. That's a Tuesday. I may set it on the 15th, a
12 Monday, rather than Tuesday the 16th, but I just have to
13 take a look at my schedule and try to coordinate that a
14 little bit. So with that one exception I'll adopt the
15 scheduling order as set forth by Idaho Power, with the
16 understanding that the parties will attempt to cooperate
17 and agree on discovery issues as much as possible, and also
18 with the understanding, as I said, that the court will be
19 available as quickly as possible to get the matter resolved
20 if that's necessary.
21 On the motion to dismiss regarding the asserted
22 administrative matters, I'll have to take that under
23 advisement. You know, I guess the judicial economy part of
24 me says, Look, the final result here, if the State
25 prevails, is going to be a dismissal without prejudice.

2

1 MS. McHUGH: No, Your Honor.
2 THE COURT: All right, court will be in recess.
3 Thank you very much.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

4