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AUG 27 2008

DEPARTMENT OF  
WATER RESOURCES

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Candice M. McHugh, ISB No. 5908  
Thomas J. Budge, ISB No. 7465  
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*Attorneys for the Ground Water Districts and Aberdeen-Springfield Canal Company*

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

In Re SRBA

Case No. 39576

Consolidated Subcase 00-92023

**AFFIDAVIT OF THOMAS J. BUDGE IN  
SUPPORT OF UPPER SNAKE WATER  
USERS' RESPONSE TO IDAHO  
POWER'S MOTION TO CONSOLIDATE**

STATE OF IDAHO            )  
                                      ) ss.  
COUNTY OF BANNOCK    )

Thomas J. Budge, being sworn upon oath, deposes and states as follows:

1. I am one of the attorneys representing Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, North Snake Ground Water District, Clark-Jefferson Ground Water District, and Aberdeen-Springfield Canal Company in the above-referenced subcase, and make the following Affidavit upon my personal knowledge of the facts and circumstances set forth herein.

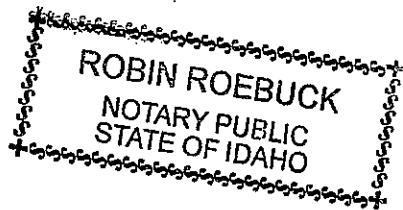
2. Attached hereto as Exhibit A is a true and correct copy of pages 1-4, 98 and 99 of

the transcript of the deposition of Gregory W. Panter in the case of *The State of Idaho v. The United States*, Ada County Case No. 39576, Fifth Judicial District, State of Idaho.

DATES this 25<sup>th</sup> day of August, 2008.

  
\_\_\_\_\_  
THOMAS J. BUDGE

SUBSCRIBED AND SWORN to before me by Thomas J. Budge this 25<sup>th</sup> day of August, 2008.



  
\_\_\_\_\_  
Notary Public  
Commission Expires: 8/18/2012

## CERTIFICATE OF MAILING

I certify that on this 25<sup>th</sup> day of August, 2008, I caused to be served a true and correct copy of the foregoing document *Affidavit of Thomas J. Budge in Support of Upper Snake Water Users' Response to Idaho Power's Motion to Consolidate* to each the following persons via the method(s) indicated:

Clerk of the District Court  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, Idaho 83303-2707

☒ U.S. Mail, Postage Paid  
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IDWR Document Depository  
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Chief, Natural Resources Division  
Office of Attorney General  
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Boise, ID 83711-4449

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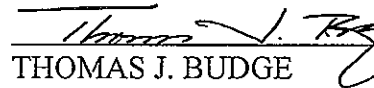
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THOMAS J. BUDGE

# **EXHIBIT A**

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

4 THE STATE OF IDAHO, ex rel, )  
5 R. KEITH HIGGINSON in his )  
6 official capacity as director )  
7 of the Idaho Department of )  
8 Water Resources, )

9 Plaintiff, )

10 vs. )

Case No. 39576

11 THE UNITED STATES; THE STATE )  
12 OF IDAHO; and all claimants to )  
13 the use of water from the )  
14 Snake River Basin Water )  
15 System, )

16 Defendants. )

MAIL



17 Boise, Idaho  
18 October 23, 1990  
19 9:00 a.m.

20 DEPOSITION OF GREGORY W. PANTER

21 Reported by:  
22 LINDA TERPIN

CAPITOL REPORTERS  
Certified Shorthand Reporters  
3350 Americana Terrace  
Suite 245  
Boise, Idaho 83706  
(208) 344-8880

23 Prepared for:  
24 CLIVE J. STRONG  
25 Attorney at Law  
(Copy)

COPY

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DEPOSITION OF GREGORY W. PANTER,

taken at the instance of the United States at the  
Federal Building, Boise, Idaho, commencing at  
9:00 a.m., on Tuesday, October 23, 1990, before  
LINDA TERPIN, CSR, a Notary Public in and for the  
State of Idaho, pursuant to Notice, and in accordance  
with the Idaho Rules of Civil Procedure.

A P P E A R A N C E S

|                     |                                                                                                                              |
|---------------------|------------------------------------------------------------------------------------------------------------------------------|
| For United States:  | Peter C. Monson, Esq.<br>U.S. DEPARTMENT OF JUSTICE<br>P.O. Box 44378<br>Washington, D.C. 20026                              |
| For State of Idaho: | Clive J. Strong, Esq.<br>and Steven Strack, Esq.<br>OFFICE OF ATTORNEY GENERAL<br>Statehouse, Room 210<br>Boise, Idaho 83720 |
| For Idaho Power Co: | Thomas Nelson, Esq.<br>NELSON, ROSHOLT, ROBERTSON,<br>TOLMAN & TUCKER<br>1020 Main Street, Suite 400<br>Boise, Idaho 83702   |
| For Boise River     | Albert Barker, Esq.<br>HAWLEY TROXELL ENNIS & HAWLEY<br>877 Main Street, Suite 1000<br>Boise, Idaho 83702                    |
| Also Present:       | Jack Hockberger<br>Field Solicitors Office                                                                                   |

I N D E X

| <u>WITNESS</u> | <u>EXAMINATION BY</u> | <u>PAGE</u> |
|----------------|-----------------------|-------------|
| MR. PANTER     | Mr. Monson            | 5           |
|                | Mr. Barker            | 84          |
|                | Mr. Strong            | 117         |
|                | Mr. Monson            | 122         |
|                | Mr. Barker            | 127         |

E X H I B I T S

| <u>NUMBER</u> | <u>DESCRIPTION</u>                                                      | <u>PAGE</u> |
|---------------|-------------------------------------------------------------------------|-------------|
| 1             | Recommended Adjudication Cost Sharing<br>for Snake River above Lewiston | 55          |
| 2             | Section 42-1414 of the Idaho Code                                       | 71          |

1 BOISE, IDAHO, TUESDAY, OCTOBER 23, 1990, 9:00 A.M.

2  
3  
4 GREGORY W. PANTER,  
5 a witness produced at the instance of the United States,  
6 having been first duly sworn, was examined as follows:  
7  
8

9 MR. MONSON: This is the deposition of  
10 Mr. Greg Panter that is being taken for purposes of the case  
11 of In Re the General Adjudication of Rights to the Use of  
12 Water from the Snake River Basin Water System, also known as  
13 State of Idaho versus United States, case No. 39576, pending  
14 before the District Court of the State of Idaho, Fifth  
15 Judicial District, in and for the County of Twin Falls.

16 This deposition is being held in room 429,  
17 Federal Building and Courthouse, 550 West Fort Street,  
18 Boise, Idaho. Today's date is October 23rd. This  
19 deposition is being taken for all purposes permitted by the  
20 Idaho Rules of Civil Procedure.

21 Present, in addition to Mr. Panter, are  
22 myself, Peter C. Monson, attorney for the defendant United  
23 States; Mr. Thomas Nelson, attorney for Idaho Power Company;  
24 Mr. Clive Strong, attorney for the State of Idaho;  
25 Mr. Steven Strack, attorney for the State of Idaho; Mr. Al-

1 users associations upstream from the Swan Falls Dam, like  
2 the Committee of Nine?

3 A Agreements of what nature?

4 Q Well, for example, you said, in your testimony  
5 earlier today, that Idaho Power Company leases a substantial  
6 amount of water from the water bank, which is administered  
7 by the Committee of Nine. Is there any agreement related to  
8 leasing of water?

9 A No. The agreements relating to leasing of  
10 water are done on a year-to-year basis. They're totally in  
11 control of that. Statutorily, you can't enter into any  
12 agreements beyond a year-to-year basis.

13 Q Were there any discussions between Idaho Power  
14 Company and the Committee of Nine or any of these other  
15 upper Snake River Valley water users about, if the Swan  
16 Falls agreement goes through, Idaho Power Company will do  
17 certain things for these upstream water users?

18 A No. Not really. You know, our discussions  
19 with the Committee of Nine were fairly acrimonious  
20 throughout the legislative debates. They obviously were  
21 totally in support of full subordination of the water  
22 rights.

23 I can recall myself personally giving  
24 assurances to various members of that committee that, when  
25 the ultimate agreement was struck, that Idaho Power Company

1 would do their part. And we would abide by the terms of  
2 that agreement and in all ways work to make sure it was  
3 implemented. That's the only agreement that I ever  
4 participated in.

5 Q As far as you're aware, there aren't any side  
6 agreements.

7 A No. No.

8 Q In answering Mr. Monson's questions earlier  
9 this morning, you said that the minimum stream flow at the  
10 Murphy gauge would benefit Idaho Power because it gives you  
11 some certainty of the amount of water that's going to flow  
12 over the Swan Falls -- or through the turbines at the Swan  
13 Falls Dam.

14 A That's correct.

15 Q If that was true, if you've got that minimum  
16 stream flow agreement to provide you the certainty, why is  
17 it that Idaho Power believed that they needed an  
18 adjudication to provide them with additional certainty at  
19 Swan Falls?

20 A Well, I'm not -- you know, legal counsel  
21 advised the company on that aspect of it. But I can only  
22 say that it was the belief of the company, at the time, that  
23 the adjudication was necessary to give the State -- or the  
24 Department of Water Resources, I should say -- the tools to  
25 manage the river, so that that number became something that