

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

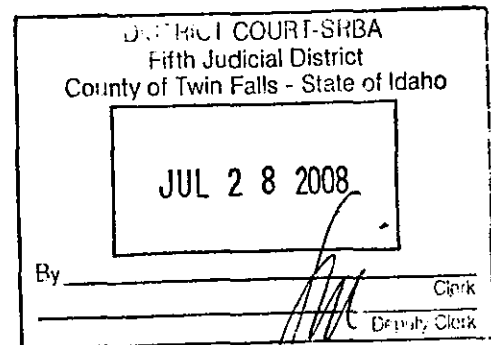
*Attorneys for Plaintiff Idaho Power Company*

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 )  
\_\_\_\_\_)  
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. )

Consolidated Subcase No. 00-92023

AFFIDAVIT OF SHELLEY M. DAVIS  
IN SUPPORT OF IDAHO POWER  
COMPANY'S MEMORANDUM IN  
OPPOSITION TO STATE'S MOTION  
TO COMPEL



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.

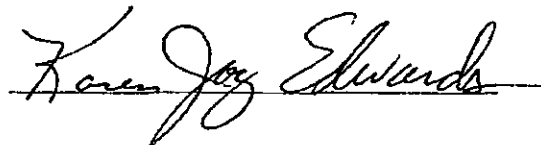
17. If the Court determines to grant the State of Idaho's Motion to Compel the production of records relating to the State's administration of the Snake River at Milner Dam under the State's zero flow policy, the American Falls contracts, and other of the Company's power projects, I conservatively estimate 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.

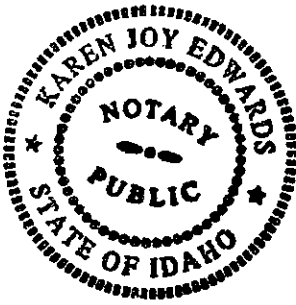
18. Even though during my search for records relating to the Swan Falls matter I did not discover any evidence that the parties contemplated the new matters now urged by the State, to the extent that the parties to the Swan Falls Agreement contemplated or in any way were influenced by the State's administration 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 28<sup>th</sup> day of July, 2008.

  
SHELLEY M. DAVIS

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of July, 2008.





Notary Public for Idaho

Residing at: Borise, 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  
Steven Olsen  
Karl T. Klein  
Michael C. Orr  
Shasta Kilminster-Hadley  
700 W. Jefferson, Room 210  
Boise, ID 83711-4449

|                                     |                                               |
|-------------------------------------|-----------------------------------------------|
| <input checked="" type="checkbox"/> | U.S. Mail, Postage Prepaid                    |
| <input type="checkbox"/>            | Hand Delivered                                |
| <input type="checkbox"/>            | Overnight Mail                                |
| <input type="checkbox"/>            | Facsimile                                     |
| <input checked="" type="checkbox"/> | Electronic Mail: michael.orr@ag.idaho.gov     |
| <input checked="" type="checkbox"/> | Electronic Mail: steven.olsen@ag.idaho.gov    |
| <input checked="" type="checkbox"/> | Electronic Mail: shasta.k-hadley@ag.idaho.gov |

IDWR Document Depository  
PO Box 83720  
Boise, ID 83720-0098

|                                     |                            |
|-------------------------------------|----------------------------|
| <input checked="" type="checkbox"/> | U.S. Mail, Postage Prepaid |
| <input type="checkbox"/>            | Hand Delivered             |
| <input type="checkbox"/>            | Facsimile                  |

United States Department of Justice  
Environment & Nat'l Resources Div.  
550 W Fort Street, MSC 033  
Boise, ID 83724

|                                     |                            |
|-------------------------------------|----------------------------|
| <input checked="" type="checkbox"/> | U.S. Mail, Postage Prepaid |
| <input type="checkbox"/>            | Hand Delivered             |
| <input type="checkbox"/>            | Overnight Mail             |
| <input type="checkbox"/>            | Facsimile                  |

Chief, Natural Resources Division  
Office of Attorney General  
PO Box 44449  
Boise, ID 83711-4449

|                                     |                            |
|-------------------------------------|----------------------------|
| <input checked="" type="checkbox"/> | U.S. Mail, Postage Prepaid |
| <input type="checkbox"/>            | Hand Delivered             |
| <input type="checkbox"/>            | Overnight Mail             |
| <input type="checkbox"/>            | Facsimile                  |

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

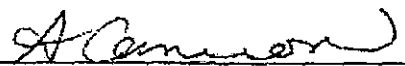
|                                     |                                          |
|-------------------------------------|------------------------------------------|
| <input checked="" type="checkbox"/> | U.S. Mail                                |
| <input type="checkbox"/>            | Hand Delivered                           |
| <input type="checkbox"/>            | Overnight Mail                           |
| <input type="checkbox"/>            | Facsimile                                |
| <input checked="" type="checkbox"/> | Electronic Mail: jo.beeman@beemanlaw.com |

Jerry R. Rigby  
Rigby Andrus & Moeller Chtd.  
P.O. Box 250  
Rexburg, ID 83440

|                                     |                           |
|-------------------------------------|---------------------------|
| <input checked="" type="checkbox"/> | U.S. Mail                 |
| <input type="checkbox"/>            | Hand Delivered            |
| <input type="checkbox"/>            | Overnight Mail            |
| <input checked="" type="checkbox"/> | Facsimile: (208) 356-0768 |

Randall C. Budge  
Candice M. McHugh  
Thomas J. Budge  
Racine Olson Nye Budge & Bailey, Chtd.  
P.O. Box 1391  
Pocatello, ID 83204-1391

|                                     |                                     |
|-------------------------------------|-------------------------------------|
| <input checked="" type="checkbox"/> | U.S. Mail                           |
| <input type="checkbox"/>            | Hand Delivered                      |
| <input type="checkbox"/>            | Overnight Mail                      |
| <input type="checkbox"/>            | Facsimile                           |
| <input checked="" type="checkbox"/> | Electronic Mail: cnun@racinelaw.net |

  
Alison Cameron