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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
(92-23)

**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**

DISTRICT COURT SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JUL 28 2008	
By _____	Clerk
_____	Deputy Clerk

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.

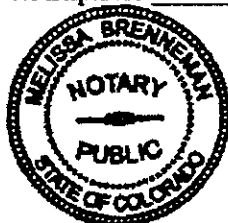
Dated this 28th day of July 2008.

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:

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Steven Olsen
Karl T. Klein
Michael C. Orr
Shasta Kilminster-Hadley
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Boise, ID 83711-4449

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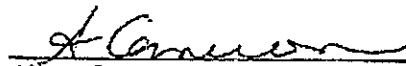
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Brownstein Hyatt
Farber Schreck

July 18, 2008

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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,

Michael Gheleta (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
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BRS000707 - BRS000721
BRS000759 - BRS000779
BRS000855 - BRS000884
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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
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BRS006332 - BRS006339
BRS008261 - BRS008264
BRS008750 - BRS008751
BRS009040 - BRS009044
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BRS009181 - BRS009185
BRS009211 - BRS009216
BRS009262 - BRS009266

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

BRS000415 - BRS000433
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Documents responsive to State's Requests for Production 3-5, 58

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BRS030629 - BRS030635
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IPC003930 - IPC003947
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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
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IPC005908 - IPC006082
IPC007693 - IPC007774
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IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	
Case No. 39576	)	
_____	)	Consolidated Subcase No. 00-92023
IDAHO POWER COMPANY,	)	(92-23)
Plaintiff,	)	
v.	)	IDAHO POWER COMPANY'S
STATE OF IDAHO; C.L. "BUTCH" OTTER,	)	SUPPLEMENTAL RESPONSES TO
Governor of the State of Idaho; LAWRENCE G.	)	STATE OF IDAHO'S THIRD SET
WASDEN, Attorney General of the State of	)	OF DISCOVERY REQUESTS
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 -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 Placeholder 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

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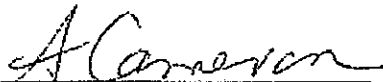
Attorneys for Idaho Power Company

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

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. 19576) REPORTER'S TRANSCRIPT
) Subcase 00-02023
7)
)

8
9 PARTIAL TRANSCRIPT OF PROCEEDINGS
10 Judge's comments

11 BEFORE THE HONORABLE JOHN M. MELANSON
12 District Judge, Presiding

13 DATE: May 20, 2008

14 TIME: 10:00 a.m.

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

19
20
21
22 Reported by:
23 Maureen Newton, CSR, No. 121
24 P.O. Box 132
25 Heyburn, ID 83336
 (208) 431-1587

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

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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.

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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 go 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?

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1 MR. MURPHY: No, Your Honor.
2 THE COURT: All right, court will be in recess.
3 Thank you very much.
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