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DEPARTMENT OF  
WATER RESOURCES

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*Attorneys for the Ground Water Districts*

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

|                       |   |                                          |
|-----------------------|---|------------------------------------------|
| <b>In re SRBA</b>     | ) |                                          |
|                       | ) | <b>Consolidated Subcase No. 00-92023</b> |
|                       | ) |                                          |
| <b>Case No. 39576</b> | ) | <b>GROUND WATER DISTRICTS'</b>           |
|                       | ) | <b>RESPONSES TO IDAHO POWER</b>          |
|                       | ) | <b>COMPANY'S FIRST DISCOVERY</b>         |
|                       | ) | <b>REQUESTS TO POCATELLO AND</b>         |
|                       | ) | <b>GROUND WATER DISTRICTS</b>            |
|                       | ) |                                          |

The Ground Water Districts ("GWDs") submit the following responses to Idaho Power Company's First Set of Discovery. The GWDs will supplement their responses consistent with the Idaho Rules of Civil Procedure since discovery is ongoing. These responses are submitted without prejudice to GWDs' right to use such information and evidence that may be later discovered and/or evaluated. These responses are provided in accordance with the Idaho Rules of Civil Procedure irrespective of the definitions and instructions which accompanied these requests, which were found to be overly broad,

oppressive and burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

### **REQUESTS FOR ADMISSIONS**

**REQUEST FOR ADMISSION NO. 1:** Please admit that pursuant to Idaho Code §§ 42-4201A and 42-234, water rights for aquifer recharge are secondary or subordinate to prior perfected water rights for hydropower purposes.

**RESPONSE TO REQUEST FOR ADMISSION NO. 1:** Objection. This request calls for a legal conclusion. Without waiving the objection, the Request for Admission is denied.

**REQUEST FOR ADMISSION NO. 2:** Please admit that pursuant to Idaho Code §§ 42-4201A and 42-234, water rights for aquifer recharge are secondary or subordinate to water rights that may otherwise be subordinated pursuant to 1984 Swan Falls Agreement and its implementing legislation.

**RESPONSE TO REQUEST FOR ADMISSION NO. 2:** Objection. This request calls for a legal conclusion. Without waiving the objection, the Request for Admission is denied.

**REQUEST FOR ADMISSION NO. 3:** Please admit that once the quantity of water rights appropriated in a basin exceeds the physical supply in the basin, then the basin is over appropriated.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:** Objection, this Request appears to request information that is no longer at issue in this consolidated subcase and is irrelevant. Without waiving said objection, the Request for Admission is denied.

**REQUEST FOR ADMISSION NO. 4:** Please admit that the concept of over appropriation applies to interconnected surface and groundwater.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:** Objection, this Request appears to request information that is no longer at issue in this consolidated subcase and is irrelevant. Without waiving said objection, the Request for Admission is denied.

**REQUEST FOR ADMISSION NO. 5:** Please admit that when a basin is “over appropriated”, there is no unappropriated water available for new appropriation.

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:** Objection, this Request appears to request information that is no longer at issue in this consolidated subcase and is irrelevant. Without waiving said objection, the Request for Admission is denied.

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Please identify all documents in your possession relating in any way to the issue of whether the Idaho Power Company water rights subject to the Swan Falls Agreement are subordinated to aquifer recharge.

**RESPONSE TO INTERROGATORY NO. 1:** Objection, this interrogatory is overly broad, indefinite as to time, vague, unduly burdensome and asks for documents in the public record which are equally available to all parties. Without waiving said objections, the GWDs were formed after 1995, when the Idaho legislature passed laws governing water measurement and reporting and for the creation of Ground Water Districts. See Title 42, Chapter 52, Idaho Code. The GWDs have no documents responsive to this request.

**INTERROGATORY NO. 2:** Please identify all individuals of who you believe have knowledge of facts pertaining to whether the Idaho Power Company water rights subject to the Swan Falls Agreement are subordinated to aquifer recharge.

**RESPONSE TO INTERROGATORY NO. 2:** Objection, this interrogatory is overly broad, indefinite as to time, vague and unduly burdensome. Without waiving said objection, the GWDs have no knowledge at this time of any individuals other than those previously identified in the State of Idaho's Responses to Idaho Power's discovery requests which listed the following individuals: James E. Bruce, Patrick Costello, Ron Carlson, Sherl Chapman, A. Kenneth Dunn, John V. Evans, Kent Foster, Jim Jones, Patrick Kole, Thomas G. Nelson, Laird Noh, Ray Rigby, Frank Sherman, Clive J. Strong and Norm Young. The GWDs reserve the right to supplement this response, if necessary, as required by the Idaho Rules of Civil Procedure since discovery is ongoing.

**INTERROGATORY NO. 3:** Please identify each person who you contend has knowledge concerning your contentions in this action.

**RESPONSE TO INTERROGATORY NO. 3:** See Response to Interrogatory No. 2. Without waiving the objections, the GWDs state that Ronald D. Carlson, consultant to the Idaho Ground Water Appropriators, Inc. and former WD01 Water Master and former manager of IDWR's Eastern Region office may have knowledge relating to the issues in this consolidated subcase. The GWDs reserve the right to supplement this response, if necessary, as required by the Idaho Rules of Civil Procedure since discovery is ongoing.

**INTERROGATORY NO. 4:** Please identify each person who you intend to call as an expert witness at the trial of this action.

**RESPONSE TO INTERROGATORY NO. 4:** Since discovery is ongoing, the GWDs have not yet determined what expert(s) they intend to call in regard to this consolidated subcase. However, some or all of the person identified in Responses to Interrogatories No. 2 and 3 above may testify.

**INTERROGATORY NO. 5:** Please identify each document that you introduce [sic] as evidence at the trial of this action.

**RESPONSE TO INTERROGATORY NO. 5:** Discovery is not yet complete and the GWDs have not identified what documents they may introduce at the trial in this action. Exhibits will be disclosed in compliance with the Court's pretrial orders and are expected to include some or all of the documents produced by parties in response to discovery requests.

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** Please produce all materials in your possession which relate to the proposal and legislative adoption of the following provision in Idaho Code § 42-203B(2):

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 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.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:** See Responses to Interrogatories No. 1 and 5. Further, the GWDs rely upon public information which is available on the Idaho Department of Water Resources' internet web page at the following URL: <http://www.idwr.idaho.gov> as well as the Legislative Services library

and the Legislative Services internet web page at the following URL:

<http://www.legislature.idaho.gov/research/referencelibrary.htm>.

**REQUEST FOR PRODUCTION NO. 2:** Please produce all materials your possession [sic] relating to the initial adoption, and the continuation of the State policy concerning a flow of zero c.f.s. at Milner as described in various versions of the Idaho State Water Plan.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:** See Response to Interrogatory No. 1 and Request for Production No. 1. Without waiving said objections, in addition to the references cited in Response to Request for Production No. 2 above, the documents responsive to this request may be available from the Idaho Water Resource Board. See internet web page at the following URL:

<http://www.idwr.idaho.gov/waterboard/>. The GWDs do not have any documents responsive to this request in their possession.

**REQUEST FOR PRODUCTION NO. 3:** Please produce all materials in your possession relating in any way to Attorney General Opinions 06-2 or 06-2A.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:** The GWDs do not have any such documents. Any documents responsive to this request are available on the Attorney General Office's internet web page at the following URL:

[http://www2.state.id.us/ag/ops\\_guide\\_cert/index.htm](http://www2.state.id.us/ag/ops_guide_cert/index.htm).

**REQUEST FOR PRODUCTION NO. 4:** Please produce all documents that you have relied upon to answer, that are identified in, or are in any way related to your answers to the Requests for Admission and Interrogatories set forth above.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:** See Responses to Requests for Production Nos. 1, 2, and 3. The GWDs relied upon the Idaho Ground Water District Handbook prepared by the Idaho Department of Water Resources in November of 1997 which relates to the response to Interrogatory No. 1 above. This handbook is also available on the IDWR internet web page at the following URL: <http://www.idwr.idaho.gov/water/districts/Water%20District%20Publications/GWD%20HANDBOOK.pdf>.

**REQUEST FOR PRODUCTION NO. 5:** Please produce all expert witness reports of any person you intend to rely upon and/or call as an expert, together with all documents describing any of the facts known or opinions held by such expert(s). In addition please provide all documents setting for [sic] any information permitted to be discovery by rule 26(b)(4)(A)(i) of the Idaho Rules of Civil Procedure concerning such expert.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:** See Response to Interrogatory No. 4. There are no such documents in the GWDs' possession. The GWDs reserve the right to supplement this response, if necessary, as required by the Idaho Rules of Civil Procedure.

**REQUEST FOR PRODUCTION NO. 6:** Please produce all documents that support your position and/or that you intend to utilize as evidence in this case.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:** See Responses to Requests for Production Nos. 1-4. The GWDs reserve the right to supplement this response, if necessary, as required by the Idaho Rules of Civil Procedure.

DATED: This 25th day of September, 2008.

RACINE, OLSON, NYE, BUDGE &  
BAILEY, CHARTERED

By:   
CANDICE M. MCHUGH  
*Attorneys for the Ground Water  
Districts*

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25<sup>th</sup> day of September, 2008, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

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