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October 17, 2008

**Via First Class Mail**

United States Department of Justice  
Environmental & Natural Resources Division  
550 W. Fort Street, MSC 033  
Boise, ID 83724

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**OCT 20 2008**

DEPARTMENT OF  
WATER RESOURCES

**RE: In Re SRBA, Case No. 39576 - Consolidated Subcase No. 00-92023**

Dear Counsel:

Enclosed please find Idaho Power Company's Motion for Partial Summary Judgment on Recharge Subordination, Brief in Support of Partial Summary Judgment on Recharge Subordination and Affidavit of Michael A. Gheleta in Support of Partial Summary Judgment on Recharge Subordination the above referenced matter.

A CD of Exhibits A through CC will follow via U.S. Mail on Monday, October 20, 2008

Please contact me if you have any questions. Sincerely,

Sincerely,



Kerry P. O'Hanlon  
Paralegal

Enclosures

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OCT 20 2008

DEPARTMENT OF  
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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.

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)  
) Consolidated Subcase No. 00-92023  
) (92-23)  
)

)  
)  
) **IDAHO POWER COMPANY'S**  
) **MOTION FOR PARTIAL**  
) **SUMMARY JUDGMENT ON**  
) **RECHARGE SUBORDINATION**  
)  
)  
)

COMES NOW Plaintiff Idaho Power Company, by and through its undersigned counsel, pursuant to Rule 56 of the Idaho Rules of Civil Procedure, and hereby moves this Court for an Order of partial summary judgment declaring that Idaho Power's water rights subject to the Swan Falls Agreement are not subordinate to recharge. There being no genuine issue of material fact, Idaho Power is entitled to judgment as a matter of law that:

1. Pursuant to the 1984 Swan Falls Agreement, Idaho Power Company did not subordinate its hydropower water rights to the diversion or management of water for aquifer recharge;

2. In Paragraph 7 of the Swan Falls Agreement, Idaho Power agreed to make its specified water rights subject to subordination only to subsequent beneficial consumptive upstream uses defined by the law in effect at the time of the Agreement;

3. Under the Framework for Final Resolution of Snake River Water Rights Controversy, the 1180 Contract and the Swan Falls Agreement, the State and Idaho Power considered recharge a non-depletionary water management tool that could adversely affect hydropower generation and that should be studied further, not a consumptive beneficial use to which Idaho Power's water rights would be subordinated;

4. At the time of the Swan Falls Agreement, water rights acquired for recharge uses pursuant to I.C. § 42-4201 (1978), and Idaho Code § 42-4201A (1982), were legislatively deemed subordinate and secondary to all prior perfected water rights, including for power purposes;

5. Pursuant to the current law under I.C. § 42-4201A(2) (1994), water rights obtained for recharge are subordinate and secondary to all prior perfected water rights,

explicitly including water rights for power purposes that may otherwise be subject to subordination under the 1984 Swan Falls Agreement.

Idaho Power Company's motion for partial summary judgment is based on this motion, the supporting memorandum and affidavits accompanying this motion, and other arguments and evidence presented to the Court in this proceeding.

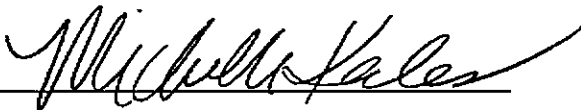
Idaho Power Company requests oral argument on this motion.

Dated this 17th day of October, 2008

IDAHO POWER COMPANY

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Attorneys for Idaho Power Company

### CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October 2008, I caused to be served a true and correct copy of the foregoing document entitled **IDAHO POWER COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON RECHARGE SUBORDINATION** via the method indicated below, and addressed to each of the following:

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