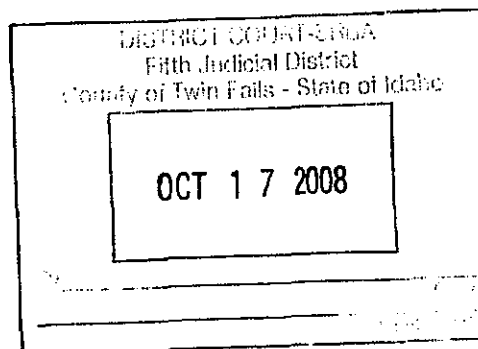


ORIGINAL

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Attorneys for the Ground Water Districts and Aberdeen-Springfield Canal Company

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

In Re SRBA

Case No. 39576

Consolidated Subcase 00-92023

AFFIDAVIT OF RONALD D. CARLSON

STATE OF IDAHO)
)
COUNTY OF BANNOCK) ss.

1. My name is Ronald D. Carlson. I grew up working on our family farm near Firth, Idaho, which I still own and operate. The farm is within and served by the Snake River Valley Irrigation District. I graduated from Firth High School and the University of Idaho. I hold a Bachelor of Science Degree and a Master of Science Degree in Agricultural Engineering from the University of Idaho. My engineering specialty area is hydrology and irrigation. I am a Professional Engineer and Land Surveyor licensed and in good standing in the State of Idaho. My expertise is as an engineer, Watermaster and the Regional Manager of the Idaho Department

nearly all operations within the Department. I was frequently asked to speak to various groups as an expert in Idaho water law and administration and have been called upon to testify as an

6. When I became Regional Manager in 1974, I became aware that one fundamental principle of water administration in the Snake River Basin was that all of the water tributary to the Snake River above Milner Dam was available for appropriation by upstream water users. Any flows past Milner represented water that was available for appropriation as guaranteed by the Idaho Constitution. The State maintained a zero flow policy at Milner Dam which enabled full development of upstream water resources. Water users below Milner Dam had no right to demand the delivery of waters from above Milner Dam to supply their downstream water rights. There was, in effect, a division of the Snake River at Milner Dam. This division is also manifested by the physical boundaries of Water District 1 which terminates at Milner Dam, with water use above Milner being administered independent of water use below Milner.

7. When I became Water District 01 Watermaster in 1978, I established the necessary systems to allow all of the available water arising above Milner to be distributed to upstream water rights except during flood control operations. These systems resulted in the flow at Milner being "0" between April 1 and November 1. It was only when there was not sufficient demand for the water arising above Milner that water flowed past the Milner Dam. Water District 1 managed deliveries such that the flow past Milner dam was zero at all times in keeping with the State Policy of the zero flow at Milner. A computerized accounting program was developed in 1977 to aid in the distribution of all available water arising above Milner Dam. This accounting program was designed to determine the water supply that was available each day in all reaches of the river and then distributed that supply such that the remaining flow each day at Milner was zero.

8. Attached hereto Exhibit A is a true and correct copy of pages 116 to 120 of the first Idaho State Water Plan, dated 1976, which provides for a zero flow at Milner dam and recognizes that the Snake River was operated as two separate rivers—the river above Milner Dam being available for diversion and use for agricultural and other purposes and the river below Milner Dam being available for hydropower and other water uses.

9. During the early years in my tenure as Watermaster, the physical division of the river at Milner was accomplished through the installation of wooden checks in check structures in Milner Dam. The Dam manager would drop the checks in place in the check structure and then dump cinders in front of the checks to better seal them in an effort to assure that all of the water flowing down the river could be diverted into the canals that diverted from the pool created by the dam at Milner. In 1978 when I became Watermaster, Milner Dam was 72 years old and was failing. When it was rebuilt in the early 1980s, the new dam did not leak and resulted in an improved ability to divert all of the available water. There was some leakage that could not be controlled by the original Milner dam. The new dam effectively controlled the flow and allowed the river to be more effectively regulated to assure that the zero flow objective of the Idaho State Water Plan could be met. The only flow that regularly passes Milner Dam is the 200 cfs bypass flow mandated by the Milner FERC license which is supplied by Idaho Power's storage water allocation in American Falls. After 1992, additional stored water has routinely been released by the United States Bureau of Reclamation to meet flow augmentation targets on the lower Snake River.

10. In 1977 ratepayers objected to an Idaho Power Company request to the Public Utilities Commission for a rate increase because the Company had allegedly allowed a reduction in power production through not actively protecting their water rights. After the Idaho Supreme

Court determined that the subordination clauses in other of Idaho Power's hydropower rights did not apply to the Company's Swan Falls facility, Idaho Power immediately filed a lawsuit naming thousands of junior water right owners who diverted water from sources upstream from its Swan Falls facility, including water users in Water District 1. After two years of contentious debate in the Idaho Legislature over proposed subordination legislation, the State of Idaho began negotiations with Idaho Power Company to establish the parameters of subordination that would apply to the Company's hydropower water rights.

11. In November 1984 the Idaho Power Company, along with the State of Idaho through the Attorney General's Office and the Governor, entered into what is commonly referred to as the Swan Falls Settlement or Agreement.

12. The Committee of Nine, which was instrumental in getting Water District 1 established in 1919 and continues as a committee of nine representatives from various geographical areas within of the Water District 1, actively influenced the negotiations of the Swan Falls Settlement to ensure that the Settlement did not threaten the zero flow at Milner Dam and that water users in the upper Snake River basin remained free to fully develop water resources above Milner. The Committee of Nine served as advisors to the Watermaster and through its early history was effective in lobbying congress to authorize water storage projects above Milner Dam. The earliest of these was Jackson Lake Dam which was first constructed in 1906. During my career as Watermaster the Committee of Nine was elected at the annual Water District meeting to serve as representatives of the water users and advisors to the Watermaster. I assisted the Committee of Nine in the establishment of many of their policies and always was a participant in the Committee of Nine decision-making process. This included their decisions, resolutions and influence during the negotiations of the Swan Falls Settlement and ultimately

settlement. While Twin Falls and North Side Canal Companies, who were the beneficiaries of the power revenues at Milner dam expressed opposition, the remainder of the Committee of Nine and the canal companies and irrigation districts they represented worked tirelessly to assure that no water arising above Milner would be obligated to meet any part of Idaho Power's Snake River water rights.

13. During the State's negotiation of the Swan Falls Settlement, the Committee of Nine actively participated and consulted with the governor's office, legislators, the Director of the Department and the Attorney General's office. Representatives of the Committee of Nine and I attended most of the settlement negotiation meetings. The primary concern of the Committee of Nine and the water users in the upper Snake River basin was the protection of all existing and future upstream water rights including stored water supplies through the protection of the zero flow at Milner Dam. Their involvement was to ensure that Idaho Power Company would have no right to call for water tributary to the Snake River above Milner Dam.

14. The Committee of Nine and the water users only agreed to the Swan Falls Settlement because of assurances from both the State of Idaho and Idaho Power that the zero flow at Milner Dam would continue and that Idaho Power would retain no right to call for water arising above Milner Dam. During the private negotiations, the Director of the Idaho Department of Water Resources, A. Kenneth Dunn, also provided this assurance to the Committee of Nine representatives and the water users. These assurances were directly communicated through hours of testimony to the Idaho Water Resource Board. I went to many of these meetings and heard these assurances repeatedly from representatives of the State and Idaho Power Company. Ultimately the Milner division became reflected in a line drawn west of Snake River that divided the aquifer into trust water and non-trust water areas. The trust water

area was believed by hydrologists to be tributary to Snake River through the north side springs that discharge to Snake river between Milner and King Hill. The non-trust water area, to which Idaho Power had no claim, was assumed to be tributary to Snake River above Milner and was therefore available for appropriation without the limitations and conditions that were to be applied to new appropriations in the trust water area of the Eastern Snake River Plain. At that time the average annual volume of water flowing past Milner was nearly two-million acre-feet.

15. As I recall, this issue of defining the trust water area came to a head when the Department proposed Water Appropriation Rules that included within the trust water area all of the eastern Snake Plain, including lands lying within Water District 1 that are located upstream from Milner Dam. The water users in Water District 1 saw this as a Trojan horse that would allow Idaho Power to make a delivery call above Milner to meet the agreed upon flows to be maintained at the Murphy gage. Water users in the upper Snake River basin fiercely objected to the rules, which were then amended to limit the trust water area to sources tributary to the Snake River below Milner dam. In addition, the legislature amended Idaho Code § 42-203B to clarify that the Settlement had no effect on water use upstream from Milner Dam which remained independent from water use below Milner.

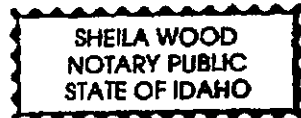
16. Since the Swan Falls Settlement was negotiated I am not aware of an instance in which Idaho Power or any other water user downstream from Milner has ever claimed a right to control the use of water upstream from Milner Dam. In 1995 the Idaho Legislature appropriated \$960,000 to purchase stored water to facilitate aquifer recharge in Water District 1. I managed these funds and was responsible for the recharge efforts that occurred during the next four years. Because of the zero flow at Milner I was able to conserve these funds by recharging nearly 500,000 acre-feet of water that was deemed to be unappropriated because it would have

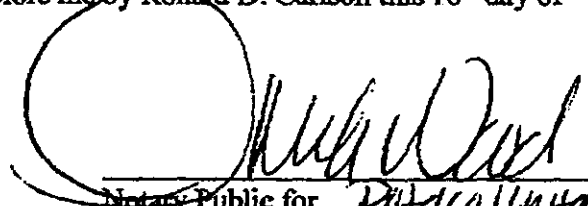
otherwise flowed past Milner. As I recall Twin Falls and North Side Canal Companies participated in these recharge efforts. This is a good indication that Idaho Power had no objection to these recharge efforts.

DATED this 16th day of October, 2008.


RONALD D. CARLSON

SUBSCRIBED AND SWORN to before me by Ronald D. Carlson this 16th day of
October, 2008.




Notary Public for Potlatch United Credit Union
Located at: Bingham County
Commission Expires: 9-21-2010

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of October, 2008, the above and foregoing document(s), was served by placing a copy in the U.S. Mail, postage prepaid and addressed to the following:

Deputy Clerk
Snake River Basin Adjudication
PO Box 2707, 253 Third Avenue N.
Twin Falls, Idaho 83303

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Environment & Natural Resources Div.
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Boise, Idaho 83724

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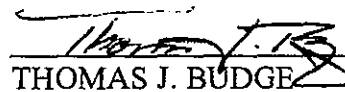

THOMAS J. BUDGE

EXHIBIT A

Basin Policies

The available and unappropriated waters of the Snake River Basin are allocated to satisfy existing uses, meet needs for future growth and development, and protect the environment. The allocations recognize and protect existing water uses and rights. The water allocations are made by large regions to allow the widest possible discretion in application.

Policy 32 Snake River Basin

The greatest competition for water in the Snake River Basin exists along the main stem of the Snake River. Existing and potential uses include hydropower generation, irrigation, fish and wildlife, recreation and protection of water quality. The amount of water required for the potential uses exceeds the remaining available supply.

Water Allocation Criteria

The river flow is regulated by numerous dams, reservoirs, direct diversions and return flows as it crosses the southern half of the state. Existing water rights are principally for irrigation and hydropower generation. Irrigation needs are normally met except during extreme low runoff years. Hydropower generation utilizes water remaining after irrigation diversions even though there are licensed water rights for hydro-generation at several points on the Snake River. Some of these rights are subordinated to upstream diversion and depletions and others are not. The largest unsubordinated right is at Swan Falls Dam (near the Murphy gage) with a flow right of 9,450 cfs (includes 3,300 cfs in claims). Substantial development has occurred above this point, thus reducing flows below the claimed right. Pending applications to divert water could reduce the flows to essentially zero during July, August and September of each year. The resulting impact would substantially reduce electrical energy generation at Swan Falls and at all other points downstream on the main stem Snake River. In the absence of protests from the public and water right holders, the Department of Water Resources has continued to issue permits to develop new water supplies for irrigation from Snake River.

Permits previously issued by the department, if fully developed, would reduce summertime flows in dry years to about 3,300 cfs near Murphy. Sequences of consecutive years of flows of this magnitude would have occurred in the early 1930's and again in the late 1950's and early 1960's if present developments, plus the already issued permits, had been fully developed at that time. These flows were computed in a study of major outstanding permits from the Snake River in southwestern Idaho (Technical Studies Report No. 3) and a preliminary estimate of effects of full development of outstanding groundwater permits in the Upper Snake.

A flow of 3,300 cfs at Swan Falls is about one-third of the flow necessary to meet the entitlement of hydro-generation at that power plant if the recorded water filings are valid. It is also less than the amount identified as needed for fish, wildlife and recreation purposes at Swan Falls or downstream. The potential uses of water in the main stem Snake River have been identified in sufficient detail to determine that remaining water supplies cannot fulfill all identified needs.

The Idaho Water Resource Board concluded, after considering all current and potential uses of water on the main stem Snake River, that depletion of flows below that currently available in the low flow months to maintain water for production of hydropower and other main stem water uses is not in the public interest.

Therefore, main stem Snake River flows will be protected against further appropriations and preserved to provide the following average daily flows at the following U.S. Geological Survey stream gaging stations:

<u>Gaging Station</u>	<u>Protected Flow (Average Daily)</u>
Milner	0 cfs
Murphy	3,300 cfs
Weiser	4,750 cfs

Studies indicate that sufficient water exists in excess of these flows to provide for additional uses if water conserving and storage facilities are constructed.

Water available in excess of the designated flows for development above an average annual flow basis are:

<u>Gaging Station</u>	<u>Water Presently Available for Appropriation (Average Year)</u>
Milner	1,437,000 acre-feet
Murphy	4,218,700 acre-feet
Weiser	7,821,000 acre-feet

The above average daily flows will allow the flow requirements contained in the Federal Power Commission License issued for the Hells Canyon hydropower complex to be met without significantly affecting hydropower production. Article 43 of the license provides the management criteria,

"The project shall be operated in the interest of navigation to maintain 13,000 cfs flow into the Snake River at Lime Point (river mile 172) a minimum of 95 percent of the time, when determined by the Chief of Engineers to be

Electric Energy

Water is allocated for electric energy. Future electric energy requirements will be largely supplied from thermal plants. The plan provides for 170,000 acre-feet beyond August 1975 levels for consumptive use in cooling thermal power plants. The depletion is distributed as follows: Upper Snake - 75,000 acre-feet; Southwest Idaho - 30,000 acre-feet. In addition, flows in the Snake River will be stabilized for the hydropower generating capability of the river.

Navigation

No specific allocation of water is made for commercial or recreational navigation. Commercial navigation enroute to Lewiston on the Columbia River and Lower Snake River can be accommodated with the flows leaving Idaho in Snake River at Lewiston. Above Lewiston, commercial and recreational navigation should be accommodated within the protected flows on Snake River and the instream flows on tributary streams, however, both commercial and recreational navigation are included as components of the multi-lake and reservoir management program.

Aquaculture

No specific allocation of water is made for aquaculture uses. Water necessary to process aquaculture products is included as a component of the municipal and industrial water allocation. Aquaculture is encouraged to continue to expand when and where water supplies are available and where such uses do not conflict with other public benefits. Future management and development of the Snake Plain aquifer may reduce the present flow of springs tributary to the Snake River. If that situation occurs, adequate water for aquaculture will be protected, however, aquaculture interests may need to construct different water diversion facilities than presently exist.

Recreation

No specific allocation of water is made for recreation. The instream flow program for fish and wildlife will provide water for recreation on tributary streams. Main stem Snake River recreation may be affected because of lower flows than presently exist particularly during summer months. Some existing reservoirs may experience greater seasonal fluctuations from increased use of stored water. The State Natural and Recreational River System and Greenway-Greenbelt System will aid and promote water-oriented recreation in the basin. Recreation is also a component of the multi-use lake and reservoir management program.

Indian Resource Use

No separate allocation of water is made for Indian resource use on the Indian reservations. Indian water needs are included as components of other water uses. Irrigation, municipal, industrial, electric energy and the instream flow program include water for Indian uses. Identification of specific needs is required before water allocations can be made specifically to Indian water uses. Several policies in the plan are designed to assist the Indian tribes in obtaining necessary information and incorporating their needs into the State Water Plan.

Fish and Wildlife

No specific allocation of water on the main stem Snake River is made for fish and wildlife, however, the plan does provide for maintaining flows on selected tributary streams to the Snake River for fish and wildlife.

necessary for navigation. Regulated flows of less than 13,000 cfs will be limited to the months of July, August, and September, during which time operation of the project would be in the best interest of power and navigation, as mutually agreed to by the License and the Corps of Engineers. The minimum flow during periods of low flow or normal minimum plant operations will be 5,000 cfs at Johnson's Bar, at which point the maximum variation in river stage will not exceed one foot per hour. These conditions will be subject to review from time to time as requested by either party."

The Board further finds that this requirement is still in the public interest and should be maintained without change.

Within the above management framework, each future use of water can be considered individually. Water allocations for forestry, flood damage reduction, environmental quality, urban lands, land measures, mining and lake and reservoir management are included as components of other allocations.

Water is allocated for additional new and supplemental irrigation development. A minimum level of irrigation development of 850,000 acres by the year 2020 over that which existed in August 1975 is endorsed. The location of future development is expected to be: Upper Snake - 498,000 acres; Southwest Idaho - 292,000 acres, and Lower Snake - 60,000 acres. In addition, 255,000 acres are expected to receive supplemental irrigation water. At least 1.7 million acre-feet of water will be consumptively used to meet the minimum level of irrigation development. A maximum level of irrigation development is not identified but will be determined as water supplies, economic conditions, environmental standards and protected instream water rights allow. The Water Resource Project Feasibility Planning Program is directed to assist in appropriate studies to help accomplish the identified agricultural development.

Agriculture

Water is allocated for municipal and industrial purposes. It is projected that the basin population will more than double by year 2020 and additional industrialization will occur. Water necessary to process agricultural, forest, minerals, aquaculture and other products are included in this allocation. The plan provides for 830,000 acre-feet of diversion beyond August 1975 levels to meet this growth. The diversion is distributed as follows: Upper Snake - 420,000 acre-feet; Southwest Idaho - 275,000 acre-feet; and Lower Snake - 135,000 acre-feet. The net depletion will be about 105,000 acre-feet.

Municipal and Industrial

Additional detailed study should be conducted on the principal streams before setting stream resource maintenance flows for fish and wildlife. Information provided by the Idaho Fish and Game Department in the report, *Stream Resource Maintenance Flow Studies, 1975 and 1976* will serve as a guide until detailed studies are complete. Completion of a State Fish and Game Plan will improve management decisions where fish and wildlife are involved. Flows in the Snake River will be less than identified as needed for fish and wildlife in some months of the year. However, significant habitat will be protected for fish and wildlife as a result of protected flows at Murphy and Weiser in the Snake River to meet other uses.

No specific allocation of water is made for water quality and pollution control. As of this date no assessment has been completed which calls for or identifies flows necessary to maintain water quality. Other policies of the plan are based upon the assumption that the water quality goals established by the Congress in P.L. 92-500, The Federal Water Pollution Control Act Amendments of 1972, will be met in Idaho. The instream flow program is directed towards meeting fish, wildlife and recreation needs, not to dilution of pollution.

*Water Quality and
Pollution Control*

The Snake River Compact, enacted in 1949, establishes the allocation of water between Idaho and Wyoming. No other compacts exist with regard to the allocation of the Snake River flows. The State of Washington has previously expressed its desire to see a minimum flow of 22,000 cfs at the Idaho-Washington boundary on the Snake River. The plan does not provide any minimum flow at that point except that which would result under the provisions of the Federal Power Commission License for Hells Canyon Dam of 5,000 cfs at Johnson's Bar. Flows at the Idaho-Washington border will be less than 22,000 cfs at times.

*Interstate
Considerations*

The major policy action of the State Water Plan is the allocation of the available and unappropriated waters of the state to meet a selected level of future water use. The State Water Plan is the legal and administrative vehicle for reserving the future use of these waters to a selected level for each water use function. The allocation procedure is particularly critical in the Snake River Basin where studies have shown that future water uses will exceed supplies.

*Administration of
State Water Plan*

Periodic reviews at five-year intervals of the amount of water allocated to the various water use functions are to be part of the continuing planning process for updating the State Water Plan to meet current and projected needs. This periodic review will enable any apparent irregularities or discrepancies in the water allocated to any particular use to be identified and needed modifications made to the State Water Plan.

The allocation process as established by the State Water Plan, therefore, is specific for each water use function and will be administratively monitored and enforced. The allocation process is not specific as to where the water uses are to occur other than within the planning region. In this way, flexibility is maintained for the public to develop, use and manage the state's available water resources to meet desirable goals and means.

The impact of future development cannot be fully described at this time. The large number and scattered location of existing permits will have profound impact and could cause beneficial or adverse effects depending on the nature of development. Because the extent to which these permits may ultimately be developed is not known, impacts as a result of the State Water Plan will vary from area to area. The plan is based on development of water authorized by existing permits as the first stage of the allocations. The second stage of development will be based on approval of new permits when and where all economic, environmental and social criteria can be met. The plan does not determine where specific agricultural development must occur nor set instream flows for fish and wildlife, but it does preserve options and provide opportunities throughout the basin. In adopting this State Water Plan there are several actions that should be taken to protect the public interest in water resources. The Department of Water Resources will include in their basic program of water inventories and data collection the following:

1. Expand the data collection program and evaluation studies on water levels and outflow from the Snake Plain aquifer.
2. Maintain and expand the state collection program and evaluation studies of streamflows where needed.
3. Monitor water use efficiency of existing and new water uses throughout the basin.
4. Complete a thorough analysis of existing permits and their impact on the aquifer and streams of the basin.
5. Report to the Idaho Water Resource Board annually (October 1 to September 30) the:
 - a) status of current water permits;
 - b) number of new permits issued, location, quantity of water permitted and impact of diversion and depletion.

In addition to these items, it may also be in the public interest to preserve or cancel permits previously granted for large scale public development. These permits should be reevaluated now and in five years when the State Water Plan is updated.