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JUN 26 2009

DEPARTMENT OF  
WATER RESOURCES

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*Attorneys for Idaho Power 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 No. 00-92023 (92-23)  
)  
)  
) **STATE OF IDAHO'S AND IDAHO**  
) **POWER COMPANY'S JOINT MOTION**  
) **TO MODIFY PARTIAL DECREES RE:**  
) **WATER RIGHTS 36-02013, 36-02018**

The State of Idaho and Idaho Power Company, by and through their counsel of record, and pursuant to Administrative Order 1 § 14(d) and Rules 60(b)(5) and 60(b)(6) of the Idaho Rules of Civil Procedure, hereby jointly move this Court to modify the partial decrees for water rights 36-02013, 36-02018 and 36-02026 to conform to the proposed form of partial decrees attached hereto as Exhibit A.

This motion is related to the *State Of Idaho's And Idaho Power Company's Joint Motion For Entry Of Partial Decrees Re: Water Rights In Basin 02 And Basin 37*, the *State Of Idaho's And Idaho Power Company's Joint Motion To Consolidate Water Right 02-10135 Into Consolidated Subcase 00-92023*, and the *State of Idaho's and Idaho Power Company's Stipulation and Joint Motion to Dismiss Complaint and Petition for Declaratory and Injunctive Relief*, all of which are filed herewith.

The State and Idaho Power request that the Court set a status conference to determine whether there is any opposition to this joint motion. Should there be opposition, the State and Idaho Power request oral argument on this joint motion and that this Court set a briefing and hearing schedule. The State and Idaho Power further request that this joint motion be heard and considered together with the other joint motions referenced above.

Respectfully submitted this 25<sup>th</sup> day of June 2009.

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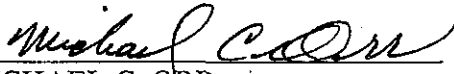
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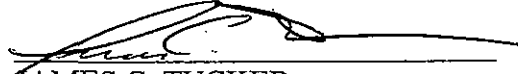
STATE OF IDAHO

IDAHO POWER COMPANY

  
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JAMES C. TUCKER  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25<sup>th</sup> day of June 2009, I caused a true and correct copy of the STATE OF IDAHO'S AND IDAHO POWER COMPANY'S JOINT MOTION TO MODIFY PARTIAL DECREES RE: WATER RIGHTS 36-02013, 36-02018 AND 36-02026 to be served on the following parties by the indicated methods:

Clerk of the SRBA Court  
253 Third Avenue North  
P.O. Box 2707  
Twin Falls, Idaho 83303-2707

- ☐ U.S. Mail
- ☒ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: 208-736-2121

Idaho Power Company  
Represented by:  
James C. Tucker  
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Boise, ID 83707

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- ☐ Overnight Mail
- ☐ Facsimile: 208.388.6935
- ☒ E-mail: [jtucker2@idahopower.com](mailto:jtucker2@idahopower.com)

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Mark J. Mathews  
Michael A. Gheleta  
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Brownstein Hyatt Farber Shreck  
410 17<sup>th</sup> Street, Ste. 2200  
Denver, CO 80202-4432

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IDWR Document Depository  
P.O. Box 83720  
Boise, ID 83720-0098

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☒ Statehouse Mail

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 44449  
Boise, Idaho 83720-4449

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☒ Not Applicable

United States Department of Justice  
Environment & Natural Resources  
Division  
550 West Fort Street  
MSC 033  
Boise, ID 83724

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_

Randall C. Budge  
Candice M. McHugh  
Racine Olson Nye Budge & Bailey,  
Chartered  
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Pocatello, Idaho 83204-1391

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- ☐ Overnight Mail
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- ☒ E-mail: dana@idahowaterlaw.com

Michael C. Orr

Exhibit A To State Of Idaho's And Idaho Power  
Company's Joint Motion To Modify Partial Decrees  
Re: Water Rights 36-02013, 36-02018 And 36-02026

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 )  
 ) AMENDED PARTIAL DECREE PURSUANT TO  
 ) I.R.C.P. 54(b) FOR  
Case No. 39576 )  
 ) Water Right 36-02013

NAME & ADDRESS: STATE OF IDAHO  
TRUSTEE  
STATEHOUSE  
PO BOX 83720  
BOISE ID 83720

SOURCE: Thousand Springs Tributary: Snake River  
Snow Bank Spring Tributary: Snake River

QUANTITY: 600.00 CFS

PRIORITY DATE: 11-20-1912

POINT OF DIVERSION: T08S R14E S08 SWNWSE Within Gooding County  
NESWSE  
NWSWSE  
SESWSE

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY   |
|-------------------------------|----------------|----------------|------------|
|                               | POWER          | 01-01 TO 12-31 | 600.00 CFS |

PLACE OF USE: POWER Within Gooding County  
T08S R14E S08 Lot 3 (NESW)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

1. Legal title to this water right is held in trust by the State of Idaho, by and through the Governor, for the benefit of Idaho Power Company as the user of the water for power purposes and for the benefit of the people of the State of Idaho. In addition to the subordination defined in paragraph nos. 4 and 5 below, this water right shall be subject to subordination to and depletion by future beneficial uses under water rights acquired pursuant to applicable state law, unless any such water right is unlawfully exercised or such use depletes or will deplete the average daily flow of the Snake River below 3900 CFS from April 1 to October 31 or below 5600 CFS from November 1 to March 31 as measured at the "Murphy Gaging Station" described below in paragraph no. 2. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Idaho Power Company facilities shall not be considered in the calculation of such flows. Flows of water purchased, leased, owned or otherwise acquired by Idaho Power Company from sources upstream of its power plants, including above Milner Dam, and conveyed to and past its plants below Milner Dam shall be considered fluctuations resulting from the operation of Idaho Power Company facilities.

2. The "Murphy Gaging Station" is located at latitude 43 degrees 17 minutes 31 seconds, longitude 116 degrees 25 minutes 12 seconds, in T01S R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power Plant, 7.5 miles NE of Murphy, Idaho at river mile 453.5.

3. Idaho Power Company, as user of the water for power purposes and a beneficiary of the trust referenced above, is entitled to use the water available at the facility identified herein to the extent of its actual beneficial use but not to exceed the "QUANTITY" set forth above, and to protect its rights to such use of the water as provided by state law against depletions or claims not in accordance with state law.

4. This water right is subordinate to the lawful exercise of water rights of those persons dismissed from Idaho Power Co. v. State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990).

5. This water right is subordinate to the lawful exercise of water rights of those persons who beneficially used water prior to October 1, 1984 and who filed an application or claim for said use by June 30, 1985.

6. For the purposes of the determination and administration of this water right, 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. This water right may not be administered or enforced against any diversions or uses of the waters identified in this paragraph.

7. This partial decree is consistent with the Swan Falls Agreement dated October 25, 1984, the Contract to Implement Chapter 259, Sess. Laws, 1983 dated October 25, 1984 and the Consent Judgments entered in Ada County Civil Cases Nos. 62237 (Mar. 9, 1990) and 81375 (Feb. 16, 1990). The Swan Falls Agreement dated October 25, 1984, shall not be merged into nor integrated with this partial decree, but shall remain in full force and effect independent of this partial decree.

8. This partial decree is subject to such general provisions necessary for the definition of the water rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I.C. Section 42-1416(6).

---

JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

#### RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

---

JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

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                )  
                                  )  
                                  )     Water Right 36-02018

NAME & ADDRESS:     STATE OF IDAHO  
                          TRUSTEE  
                          STATEHOUSE  
                          PO BOX 83720  
                          BOISE ID 83720

SOURCE:               Clear Lake     Tributary: Snake River

QUANTITY:             526.00 CFS

PRIORITY DATE:        01-18-1919

POINT OF DIVERSION:   T09S R14E S02 LOT 7 (NESWSE) Within Gooding County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY   |
|-------------------------------|----------------|----------------|------------|
|                               | POWER          | 01-01 TO 12-31 | 526.00 CFS |

|               |                     |                       |
|---------------|---------------------|-----------------------|
| PLACE OF USE: | POWER               | Within Gooding County |
|               | T09S R14E S02 LOT 7 | (SWSE)                |

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

1. Legal title to this water right is held in trust by the State of Idaho, by and through the Governor, for the benefit of Idaho Power Company as the user of the water for power purposes and for the benefit of the people of the State of Idaho. In addition to the subordination defined in paragraph nos. 4 and 5 below, this water right shall be subject to subordination to and depletion by future beneficial uses under water rights acquired pursuant to applicable state law, unless any such water right is unlawfully exercised or such use depletes or will deplete the average daily flow of the Snake River below 3900 CFS from April 1 to October 31 or below 5600 CFS from November 1 to March 31 as measured at the "Murphy Gaging Station" described below in paragraph no. 2. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Idaho Power Company facilities shall not be considered in the calculation of such flows. Flows of water purchased, leased, owned or otherwise acquired by Idaho Power Company from sources upstream of its power plants, including above Milner Dam, and conveyed to and past its plants below Milner Dam shall be considered fluctuations resulting from the operation of Idaho Power Company facilities.

2. The "Murphy Gaging Station" is located at latitude 43 degrees 17 minutes 31 seconds, longitude 116 degrees 25 minutes 12 seconds, in T01S R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power Plant, 7.5 miles NE of Murphy, Idaho at river mile 453.5.

3. Idaho Power Company, as user of the water for power purposes and a beneficiary of the trust referenced above, is entitled to use the water available at the facility identified herein to the extent of its actual beneficial use but not to exceed the "QUANTITY" set forth above, and to protect its rights to such use of the water as provided by state law against depletions or claims not in accordance with state law.

4. This water right is subordinate to the lawful exercise of water rights of those persons dismissed from Idaho Power Co. v. State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990).

5. This water right is subordinate to the lawful exercise of water rights of those persons who beneficially used water prior to October 1, 1984 and who filed an application or claim for said use by June 30, 1985.

6. For the purposes of the determination and administration of this water right, 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. This water right may not be administered or enforced against any diversions or uses of the waters identified in this paragraph.

7. This partial decree is consistent with the Swan Falls Agreement dated October 25, 1984, the Contract to Implement Chapter 259, Sess. Laws, 1983 dated October 25, 1984 and the Consent Judgments entered in Ada County Civil Cases Nos. 62237 (Mar. 9, 1990) and 81375 (Feb. 16, 1990). The Swan Falls Agreement dated October 25, 1984, shall not be merged into nor integrated with this partial decree, but shall remain in full force and effect independent of this partial decree.

8. This partial decree is subject to such general provisions necessary for the definition of the water rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I.C. Section 42-1416(6).

---

JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

---

JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

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                 )  
                                  )     Water Right 36-02026

NAME & ADDRESS:     STATE OF IDAHO  
                          TRUSTEE  
                          STATEHOUSE  
                          PO BOX 83720  
                          BOISE ID 83720

SOURCE:                 Sand Springs Creek     Tributary: Snake River

QUANTITY:               100.00 CFS

PRIORITY DATE:         05-01-1916

POINT OF DIVERSION:    T08S R14E S17     SENWSE     Within Gooding County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY   |
|-------------------------------|----------------|----------------|------------|
|                               | POWER          | 01-01 TO 12-31 | 100.00 CFS |

PLACE OF USE:           POWER                     Within Gooding County  
                          T08S R14E S08 LOT 3     (NESW)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

1. Legal title to this water right is held in trust by the State of Idaho, by and through the Governor, for the benefit of Idaho Power Company as the user of the water for power purposes and for the benefit of the people of the State of Idaho. In addition to the subordination defined in paragraph nos. 4 and 5 below, this water right shall be subject to subordination to and depletion by future beneficial uses under water rights acquired pursuant to applicable state law, unless any such water right is unlawfully exercised or such use depletes or will deplete the average daily flow of the Snake River below 3900 CFS from April 1 to October 31 or below 5600 CFS from November 1 to March 31 as measured at the "Murphy Gaging Station" described below in paragraph no. 2. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Idaho Power Company facilities shall not be considered in the calculation of such flows. Flows of water purchased, leased, owned or otherwise acquired by Idaho Power Company from sources upstream of its power plants, including above Milner Dam, and conveyed to and past its plants below Milner Dam shall be considered fluctuations resulting from the operation of Idaho Power Company facilities.

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3. Idaho Power Company, as user of the water for power purposes and a beneficiary of the trust referenced above, is entitled to use the water available at the facility identified herein to the extent of its actual beneficial use but not to exceed the "QUANTITY" set forth above, and to protect its rights to such use of the water as provided by state law against depletions or claims not in accordance with state law.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication