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DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

STEVEN L. OLSEN
Deputy Attorney General
Chief, Civil Litigation Division

MICHAEL C. ORR (ISB # 6720)
Deputy Attorney General
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P.O. Box 83720
Boise, Idaho 83720-0010
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Attorneys for the State of Idaho

**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	)	Subcase nos. 00-92002GP, 02-00200,
	)	02-00201, 02-00223 and 02-00224
Case No. 39576	)	
	)	SUPPLEMENTARY AFFIDAVIT
	)	OF MICHAEL C. ORR
	)	

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

MICHAEL C. ORR, being first duly sworn upon his oath, deposes and states that:

1. I am a Deputy Attorney General in the Idaho Office of the Attorney General and one of the attorneys of record for the State of Idaho in the above-entitled proceedings, and also in Consolidated Subcase 00-92023.

2. The following is based upon my own personal knowledge.

3. Attached hereto as **Exhibit 1** are true and correct copies of excerpted pages of the "Framework Reaffirming The Swan Falls Settlement" that the State of Idaho and Idaho Power Company executed on March 25, 2009 in connection with Consolidated Subcase 00-92023. A full copy of the "Framework Reaffirming The Swan Falls Settlement" is in this Court's record, as Exhibit A to the *State of Idaho's and Idaho Power Company's Joint Motion to Enter Order Temporarily Withholding Rulings on Pending Summary Judgment Motions*, filed in Consolidated Subcase 00-92023 on March 26, 2009.

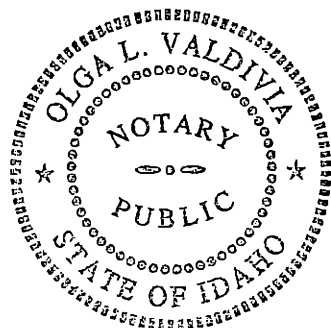
4. Attached hereto as **Exhibit 2** is a true and correct copy of the "Memorandum Of Agreement" that the Idaho Water Resource Board and Idaho Power Company executed on May 6, 2009 in connection with the "Framework Reaffirming The Swan Falls Settlement."

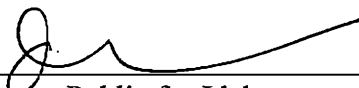
Further your affiant sayeth naught.

DATED this 12th day of November 2009.


MICHAEL C. ORR

SUBSCRIBED AND SWORN to before me this 12th day of November 2009.




Notary Public for Idaho
Residing at: Boise, ID
My commission expires: 2/8/2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November 2009, I caused a true and correct copy of the foregoing SUPPLEMENTARY AFFIDAVIT OF MICHAEL C. ORR to be filed with the Court and 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
P.O. Box 70
1221 W. Idaho
Boise, ID 83707

- ☒ U.S. Mail
- ☐ Hand Delivery
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- ☐ Facsimile: 208.388.6935
- ☒ E-mail: JamesTucker@idahopower.com

Idaho Power Company
Represented by:
John K. Simpson
Shelley M. Davis
Barker, Rosholt & Simpson, LLP
1010 W. Jefferson, Suite 102
Boise, ID 83701-2139

- ☒ U.S. Mail
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- ☐ Overnight Mail
- ☐ Facsimile: 208.344.6034
- ☒ E-mail: jks@idahowaters.com
- ☒ E-mail: smd@idahowaters.com

Idaho Power Company
Represented by:
James S. Lochhead
Michael A. Gheleta
Brownstein Farber Hyatt Shrek, P.C.
410 17th St., Suite 2200
Denver, Colorado 80202

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- ☐ Overnight Mail
- ☐ Facsimile: 303.223.0904
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Randall C. Budge
Candice M. McHugh
T.J. Budge
Racine Olson Nye Budge & Bailey,
Chartered
101 South Capitol Blvd., Suite 208
Boise, Idaho 83702

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- ☐ Facsimile: 208.433.0167
- ☒ E-mail: cmm@racinelaw.net
- ☒ E-mail: rcb@racinelaw.net
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Beeman & Associates, P.C.
409 W. Jefferson Street
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- ☐ Overnight Mail
- ☐ Facsimile: 208.331.0954
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Dana Hostetter
Hostetter Law Office
608 West Franklin Street
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- ☐ Facsimile: 208.424.8774
- ☒ E-mail: dana@idahowaterlaw.com

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Trial Attorney, Natural Resources Section
Environment & Natural Resources Div.
United States Department of Justice
1961 Stout Street – 8th Floor
Denver, Colorado 80294

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John A. Rosholt
Travis C. Thompson
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113 Main Ave W., Suite 303
P.O. Box 485
Twin Falls, Idaho 83303-0485

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- ☐ Facsimile: 208.735.2444
- ☒ E-mail: jar@idahowaters.com
- ☒ E-mail: flt@idahowaters.com

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: _____

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

Michael C. Orr

Supplementary Orr Affidavit
Exhibit 1

Excerpted pages of the
“Framework Reaffirming
The Swan Falls Settlement”
(Mar. 25, 2009)

Framework Reaffirming the Swan Falls Settlement

Article I

Over twenty years ago, the Governor, Attorney General and Idaho Power Company entered into the historic Swan Falls Settlement to resolve the nature and extent of water rights for the use of water for hydropower production at the Company's hydropower projects on the Snake River and its tributaries between Milner Dam and the Murphy Gaging Station. At the heart of that Settlement was the recognition that Idaho's water resources are the life-blood of Idaho's agricultural, industrial, municipal, recreational, and environmental values and that the effective management of those resources benefits all of Idaho's citizenry. The parties to that Settlement also recognized that Idaho's water, by providing a firm and consistent hydropower base, kept Idaho's electrical rates among the lowest in the nation and Idaho's economy robust.

The Swan Falls Settlement recognized that the resolution of the Company's water rights together with the State Water Plan provide for a comprehensive plan for the management of the Snake River watershed. It also recognized the need to develop further information to permit the State to make informed decisions on methods to enhance and manage the water supply in the Snake River for the benefit of agriculture, hydropower and other beneficial uses.

Since the Swan Falls Settlement, the underlying value of water to Idaho has remained unchanged. The effective management of Idaho's water resources remains critical to the public interest of the State by sustaining economic growth, maintaining reasonable electric rates, protecting and preserving existing water rights, and protecting

water quality and environmental values. Balancing these objectives is a fundamental public policy issue.

While the underlying principles of the Swan Falls Settlement have remained unchanged, questions concerning the intent and interpretation of certain aspects of the Swan Falls Settlement have resulted in litigation between the State and Idaho Power. One such question involves whether the Settlement's subordination provisions extended to the use of water for aquifer recharge, a question that is related to broad public policy issues related to the management of southern Idaho's water resources. The parties recognize and agree litigation is not the best starting point for exploring the resolution of such issues.

Through this Framework, and attached Exhibits, the Parties reconfirm the continuing validity of the Swan Falls Settlement and commit to resolving the questions raised in the litigation in accordance with the terms set forth herein. The parties also agree to cooperate in exploring approaches to resolving other matters of mutual concern to the parties regarding the management of southern Idaho's water resources, including the relicensing of Idaho Power's Hells Canyon Complex ("HCC"), and defining the nature and extent of Idaho Power's right to water from American Falls Reservoir.

Article II

The parties therefore agree as follows:

1. That due to the timing of pending litigation, the parties will jointly request that the SRBA Court enter an order that withholds any ruling on pending motions in Consolidated Subcase No. 00-92023 (92-23); for a period of ninety (90) days

from the date of entry of said order, and will submit with their joint request the proposed order attached hereto as Exhibit 1.

2. That upon execution of this Framework, the parties will jointly, expeditiously and in good faith propose and support execution of the Memorandum of Agreement attached hereto as Exhibit 2 by the Idaho Water Resource Board, the Idaho Power Company and the Governor.
3. That upon execution of this Framework and the Memorandum of Agreement, the parties will jointly, expeditiously and in good faith propose and support passage by the Idaho Legislature of the proposed legislation attached hereto as Exhibits 3, 4 and 5.
4. That within fifteen days after the passage of the proposed legislation attached hereto as Exhibits 3, 4 and 5, the parties will: a) jointly submit to the SRBA Court the proposed forms of partial decrees attached hereto as Exhibit 6, with such technical or clerical modifications as mutually agreed to, as full and final resolution of the hydropower water rights at issue in Consolidated Subcase No. 00-92023 (92-23); b) jointly move for and support immediate entry of the partial decrees for the Basin 02 and Basin 37 hydropower water rights at issue in Consolidated Subcase No. 00-92023 (92-23); c) jointly move to correspondingly modify the partial decrees for the Basin 36 hydropower water rights at issue in Consolidated Subcase No. 00-92023 (92-23); and d) jointly file the stipulation and motion to dismiss Idaho Power's "Complaint and Petition for Declaratory and

Injunctive Relief” in Consolidated Subcase No. 00-92023 (92-23) in the form attached hereto as Exhibit 7.

5. That either party shall have the option in its sole and absolute discretion to declare this Framework void and without any effect if, within sixty days of the execution of this Framework: the SRBA Court does not enter the proposed order attached hereto as Exhibit 1 in the same form as proposed therein; or if the Idaho Water Resource Board, the Governor or Idaho Power Company do not execute the Memorandum of Agreement attached hereto as Exhibit 2 in the same form as proposed therein; or if the Idaho Legislature does not pass the legislation attached hereto as Exhibits 3, 4 and 5 in the same form as proposed.
6. That either party shall have the option in its sole and absolute discretion to declare this Framework void and without any effect should the SRBA Court: deny the parties’ joint motions for entry and modification of partial decrees; or enter or modify partial decrees that are different from the form of partial decrees attached hereto as Exhibit 6; or deny the parties’ joint motion to dismiss the “Complaint and Petition for Declaratory and Injunctive Relief”; or enter a dismissal order that is different from the form of dismissal order proposed by the stipulation and joint motion attached hereto as Exhibit 7.

Article III

The parties recognize that the relationship established by the Swan Falls Settlement is important to the State of Idaho and Idaho Power Company, and that it is in their mutual long-term interest to cooperate regarding management of the water resources

of the Snake River basin. In furtherance of that mutual interest the parties will endeavor, with good faith and comity, to cooperatively explore the resolution of issues associated with the subjects described below, and other issues that may arise, to the parties' mutual satisfaction, while also expressly recognizing and agreeing that nothing in this Framework limits or conditions the parties' rights to seek executive, administrative or judicial resolution of any such issues:

1. Development of a mutually acceptable program to monitor and measure the spring and surface flows for the reach of the Snake River from Milner Dam through the Murphy Gaging Station, and to account for water delivered to or past the Murphy Gaging Station that is in addition to the average daily flows at the Murphy Gaging Station, including but not limited to the Company's interest in water stored in American Falls Reservoir, and water purchased, leased, owned or otherwise acquired by Idaho Power Company from sources upstream of Milner Dam and conveyed to and past its power plants below Milner Dam;
2. Development of appropriate means and/or mechanisms to enable the State to meet its obligation under the Swan Falls Settlement to take reasonable steps to insure that the average daily flows established at the Murphy Gaging Station are maintained;
3. Development of procedures for re-evaluating term permits approved under the provisions of Idaho Code § 42-203C;
4. Resolution of water management issues associated with the "trust" and "non-trust" water areas;

5. Establishment of an effective water marketing system consistent with state law and existing water rights to accommodate the purchase, lease or conveyance of water for use at Idaho Power's hydroelectric facilities, including below Milner Dam, in addition to the average daily flows at the Murphy Gaging Station, while also optimizing use of the waters of the Snake River basin;
6. Resolution of the State's objections to Idaho Power's water right claims for the American Falls hydropower project, including clarification of the extent to which the use of water at the American Falls hydropower project for generation of hydropower is incidental to upstream irrigation and other uses authorized by state law;
7. In conjunction with the United States, clarification and resolution of the storage rights inuring to Idaho Power in the American Falls Reservoir; and
8. Discussion and resolution of any remaining issues associated with the relicensing of the HCC, including exploration of opportunities for integrating portions of the watershed improvement program proposed as a component of relicensing with other water management efforts to sustain and enhance water resources in the Snake River basin.
9. Resolution of any water right issues associated with the expanded hydropower production capacity at the Swan Falls hydroelectric plant installed after the execution of the Swan Falls Agreement. The resolution of any such issues will be without prejudice to either party with respect to permit no. 02-7379, SRBA notice of claim no. 4420 or any other basis for a water right for the additional

capacity; provided, however, both parties expressly agree that any water rights for the expanded production capacity of the Swan Falls hydroelectric plant will carry a priority date junior to the Swan Falls Agreement and will be subordinated to existing and future upstream uses established pursuant to state law.

Article IV

The parties through this Framework and its Exhibits reaffirm all aspects of the Swan Falls Settlement. This Framework and its Exhibits are consistent with the Swan Falls Settlement and clarify the original intent of the Swan Falls Settlement. Nothing in this Framework or its Exhibits changes, modifies, amends or alters any aspect of the Swan Falls Settlement.

The parties agree to actively and in good faith support any action by the SRBA Court or the Idaho Legislature or the Idaho Water Resource Board that by this Framework and the attached Exhibits the parties have agreed to propose or support. The parties shall not take any position before the Idaho Legislature or any State or Federal court, board or agency which is inconsistent with the Swan Falls Settlement, this Framework, and the referenced Exhibits. The parties agree to cooperate in good faith to implement and to support actions that are consistent with the Swan Falls Settlement, this Framework and the referenced Exhibits.

The parties agree that this Framework constitutes an attempt to compromise pending litigation, and it shall not be considered an admission, waiver or abandonment of any issue of fact or law by any party, and no party will assert or contend that this Framework has any legal effect until the SRBA Court, the Governor, the Idaho

Legislature and the Idaho Water Resource Board have taken the actions described above in Article II.2-II.5.

The parties agree that this Framework shall not be construed to waive, limit, condition or interfere with the authority or duty of the Idaho Department of Water Resources or the Idaho Water Resource Board to enforce or administer any of the laws of the State which either is authorized to enforce or administer, and does not modify the Swan Falls Settlement.

The parties further recognize that like the Swan Falls Agreement, this Framework is contingent upon certain enactments of law by the State and action by the Idaho Water Resource Board. Within this Framework as in the Swan Falls Agreement, reference is made to state law in defining respective rights and obligations of the parties. Therefore, upon implementation of the conditions contained in Article II of this Framework, any subsequent order by a court of competent jurisdiction, legislative enactment or administrative ruling shall not affect the validity of this Framework or the Swan Falls Settlement. This Framework does not confer or create any additional vested, compensable or enforceable rights or interest of any kind whatsoever in any legislative enactments passed pursuant to this Framework beyond those rights otherwise available under applicable law. The parties recognize and agree that the Idaho Legislature may, in accordance with state law, subsequently modify, amend, repeal or otherwise alter the enactments of law contemplated by Article II of this Framework without violating any right or interest of the parties, and that no party is entitled to judicial relief of any kind for any such modification, amendment, repeal or alteration.

The Swan Falls Agreement and this Framework, together with their referenced Exhibits, set forth all the covenants, promises, provisions, agreements, conditions and understandings between the parties and there are no covenants, promises, provisions, agreements, conditions, or understandings, written or oral, between the parties other than are herein set forth.

This Framework is executed in quadruplicate. Each of the four (4) Frameworks with an original signature of each party shall be an original.

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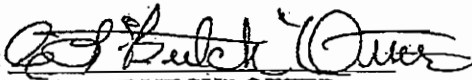
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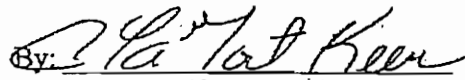
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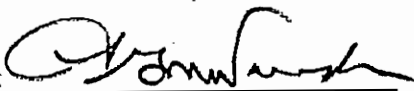
In witness hereof, the parties have executed this Framework at Boise, Idaho, this
25th day of March, 2009.

STATE OF IDAHO

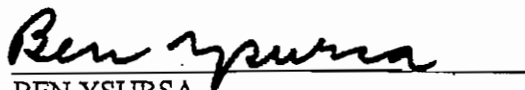
IDAHO POWER COMPANY

By: 
C.L. "BUTCH" OTTER
Governor of the
State of Idaho

By: 
J. LAMONT KEEN
President
and Chief Executive Officer

By: 
LAWRENCE G. WASDEN
Attorney General of the
State of Idaho

ATTEST:


BEN YSURSA
Secretary of State
State of Idaho

(Seal of the State of Idaho)

ATTEST:

(Corporate Seal of Idaho Power Company)

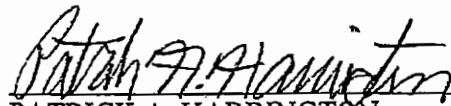

PATRICK A. HARRINGTON
Secretary of Idaho Power Company

CERTIFICATE OF SECRETARY

PATRICK A. HARRINGTON, as secretary of Idaho Power Corporation, an Idaho corporation, hereby certifies as follows:

- (1) That the corporate seal, or facsimile thereof, affixed to the instrument is in fact the seal of the corporation, or a true facsimile thereof, as the case may be; and
- (2) That any officer of the corporation executing the instrument does in fact occupy the official position indicated, that one in such position is duly authorized to execute such instrument on behalf of the corporation, and that the signature of such officer subscribed thereunto is genuine; and
- (3) That the execution of the instrument on behalf of the corporation has been duly authorized.

In witness thereof, I, PATRICK A. HARRINGTON, as the secretary of Idaho Power Company, an Idaho corporation, have executed this certificate and affixed the seal of Idaho Power Company, an Idaho corporation, on this 25 th day of MARCH 2009.

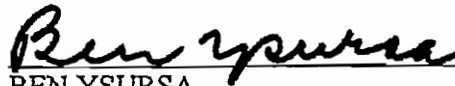

PATRICK A. HARRINGTON,
Secretary of Idaho Power Company

CERTIFICATE OF SECRETARY OF STATE
OF THE STATE OF IDAHO

BEN YSURSA, as Secretary of State of the State of Idaho, hereby certifies as follows:

1. That the State of Idaho seal, or facsimile thereof, affixed to the instrument is in fact the seal of the State of Idaho, or a true facsimile thereof, as the case may be; and
2. That the officials of the State of Idaho executing the instrument do in fact occupy the official positions indicated, that they are duly authorized to execute such instrument on behalf of the State of Idaho, and that the signatures of such officials of the State of Idaho subscribed thereunto are genuine; and
3. That the execution of the instrument on behalf of the State has been duly authorized.

In Witness Whereof, I, BEN YSURSA, Secretary of State of the State of Idaho, have executed this certificate and affixed the seal of State of Idaho on this 25th day of March 2009.



BEN YSURSA
Secretary of State
State of Idaho

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 25 th day of March 2009, before me, a Notary Public, in and for said County and State, personally appeared J. LAMONT KEEN, and PATRICK A. HARRINGTON, known or identified to me to be the President and Secretary, respectively, of Idaho Power Company, the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal that day and year in this certificate first above written.



Mary Gray
NOTARY PUBLIC FOR IDAHO
Residing at 7-17-2010

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 25 th day of March 2009, before me, a Notary Public, in and for said County and State, personally appeared C.L. "BUTCH" OTTER, known or identified to me to be the Governor of the State of Idaho, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal that day and year in this certificate first above written.



Ilene Goff
NOTARY PUBLIC FOR IDAHO
Residing at Ada County

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 25 th day of March, 2009, before me, a Notary Public, in and for said County and State, personally appeared LAWRENCE G. WARDEN, known or identified to me to be the Attorney General of the State of Idaho, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal that day and year in this certificate first above written.



Ilene Goff
NOTARY PUBLIC FOR IDAHO
Residing at Ada County

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 25 th day of March, 2009, before me, a Notary Public, in and for said County and State, personally appeared BEN YSURSA, known or identified to me to be the Secretary of State of the State of Idaho, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal that day and year in this certificate first above written.



Ilene Goff
NOTARY PUBLIC FOR IDAHO
Residing at Ada County

EXHIBIT 2

MEMORANDUM OF AGREEMENT

WHEREAS, the Swan Falls Settlement recognized that the resolution of Idaho Power Company's water rights and the recognition thereof by the State of Idaho, together with the State Water Plan, provided a sound comprehensive plan best adapted to develop, conserve, and utilize the water resources of the Snake River in the public interest; and

WHEREAS, the Swan Falls Settlement provided that the State shall enforce the State Water Plan and shall assert the existence of water rights held in trust by the State; and

WHEREAS, the Swan Falls Settlement reconfirmed that the minimum daily flow at Milner Dam shall remain at zero, and that 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; and

WHEREAS, the Swan Falls Settlement recognized that the establishment of a zero minimum flow at Milner Dam allowed existing uses above Milner to continue and for some additional development above Milner, and further recognized that the zero minimum flow means that river flows downstream from Milner Dam to Swan Falls Dam at times may consist almost entirely of ground-water discharge and that therefore the Eastern Snake Plain Aquifer (ESPA) must be managed as an integral part of the Snake River; and

WHEREAS, the Swan Falls Settlement recognized that the amount of development that can take place without affecting the average daily flows of 3,900 CFS from April 1 to October 31 and 5,600 CFS from November 1 to March 31 as measured at the Murphy Gaging Station would depend on the nature and location of each new development, as well as the implementation of new practices to augment the stream flows; and

WHEREAS, the Swan Falls Settlement recognized that maintenance of inexpensive hydropower resources contributes to a positive economic climate for the creation of new jobs for Idahoans and thus future water rights allocation decisions should weigh the benefits to be obtained from each development against the probable impact it will have on hydropower resources; and

WHEREAS, the Swan Falls Settlement recognized methods that enhance stream flows, such as in-stream storage and aquifer recharge projects, benefit both agricultural development and hydropower generation and deserve study to determine their economic potential, their impact on the environment, and their impact on hydropower generation; and

WHEREAS, flows passing Milner Dam provide opportunities for hydropower generation and under the Swan Falls Settlement the Idaho Power Company has a right to use such flows when available at its facilities; and

WHEREAS, the State, through the Eastern Snake Plain Aquifer Comprehensive Aquifer Management Plan (ESPA CAMP), a component of the State Water Plan, intends to implement managed recharge as part of a series of comprehensive measures to enhance the water supply of the ESPA and the Snake River; and

WHEREAS, it is important that the effects of implementation of managed recharge be understood in order to permit the State to make informed water management and planning decisions that are in the public interest as provided by chapter 17 title 42 Idaho Code; and

WHEREAS, the Idaho Power Company participated in the development of the ESPA CAMP and as part of the Phase I actions is cooperating with the implementation of a recharge program between Milner Dam and American Falls; and

WHEREAS, the coordination and consideration of the respective interests of the State and Idaho Power Company with regard to managed recharge furthers their mutual interest in honoring the commitments made as part of the Swan Falls Settlement.

NOW THEREFORE, the parties agree as follows:

1. It is in the mutual interest of the parties to work cooperatively to uphold and implement the principles established by the Swan Falls Settlement.
2. ESPA CAMP, as adopted by the Idaho Water Resource Board (January 2009) and approved by the Idaho Legislature as a component of the state water plan, establishes a long-term hydrologic target for managed aquifer recharge from 150,000 to 250,000 acre feet on an average annual basis. Amendment of this long-term hydrologic target for managed recharge shall constitute a change in the state water plan as contemplated by Article 15, § 7 of the Idaho Constitution and the legislation approving CAMP, and therefore must be adopted pursuant to Idaho Code § 42-1734B, as it currently exists or as it may be amended hereafter.
3. The purpose of this memorandum of agreement is to recognize that implementation of managed recharge will have an effect on the flow characteristics of the Snake River above and below Milner Dam and to confirm that the relative merits of recharge proposals in addition to or different than that provided for in Phase I of ESPA CAMP will be considered through the adaptive management process set forth in Section 4 of ESPA CAMP. If the Board proposes to increase the 100,000 acre-foot average annual ESPA CAMP Phase I target for managed aquifer recharge by more than 75,000 acre-feet prior to January 1, 2019, the Board must obtain legislative approval for such increase.

The Board and the Director will consider, in accordance with state law, any information received in determining whether a managed recharge proposal is in the public interest.

4. Further, the parties recognize it is in their mutual interest to work cooperatively to explore and develop a managed recharge program for the Snake River Basin above Swan Falls Dam that achieves to the extent possible benefits for all uses including hydropower and therefore agree that in connection with the development and consideration of proposals for managed recharge that may be in addition to or different than that provided for in Phase I of the ESPA CAMP, the State of Idaho, through the Idaho Water Resource Board (the Board):
 - a. will provide notice to Idaho Power Company of such managed recharge proposals together with an opportunity to meet and confer with the Board on the potential costs and benefits of such proposals and ways to implement managed recharge to achieve the mutual interests of the State and Idaho Power Company; and
 - b. will provide an opportunity for Idaho Power Company to appear before the Board and present information relative to any concerns the Company may have about a managed recharge proposal;
5. The State, through the Governor and the Idaho Water Resource Board, will in good faith cooperate with and support Idaho Power Company in any regulatory proceeding before the Idaho Public Utilities Commission to address any rate, or other impacts directly attributable to the implementation of managed recharge.
6. Idaho Power Company acknowledges that the decision of whether to proceed with the implementation of managed recharge is fundamentally a public policy decision of the State of Idaho and that nothing in this memorandum of agreement shall be construed to limit or interfere with the authority of the State of Idaho to authorize managed recharge in accordance with applicable state law.
7. Nothing in this memorandum of agreement shall be construed to preclude Idaho Power Company from exercising any rights it may have under state law to challenge the State's implementation of managed recharge. While Idaho Power Company retains its right under the Swan Falls Settlement to contest any appropriation of water, including but not limited to appropriations for recharge, in accordance with State law, the Company shall not have a right to assert that implementation of managed recharge is precluded by the Swan Falls Settlement.

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DATED this _____ day of _____ 2009.

STATE OF IDAHO

IDAHO POWER COMPANY

By: _____
C.L. "BUTCH" OTTER
Governor of the
State of Idaho

By: _____
J. LAMONT KEEN
President
and Chief Executive Officer

By: _____
TERRY T. UHLING
Chairman
Idaho Water Resource Board

EXHIBIT 6

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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 02-00100

NAME & ADDRESS: IDAHO POWER COMPANY
PO BOX 83720
BOISE ID 83707

SOURCES:	SNAKE RIVER	Tributary: COLUMBIA RIVER
	COVE CREEK	Tributary: MALAD RIVER
	MALAD RIVER	Tributary: SNAKE RIVER
	THOUSAND SPRINGS	Tributary: SNAKE RIVER
	SNOW BANK SPRINGS	Tributary: SNAKE RIVER
	CLEAR LAKE	Tributary: SNAKE RIVER
	SAND SPRINGS CREEK	Tributary: SNAKE RIVER

QUANTITY: 2150.00 CFS

PRIORITY DATE: 01-17-1900

POINTS OF DIVERSION:	T02S R01E S18 LOT 10	(SESWSE) Within Owyhee County
	LOT 11	(NWSESE) Within Ada County (Swan Falls Dam)
	T09S R18E S31 LOT 8	(NESW) Within Twin Falls County
	LOT 9	(NWSW) Within Jerome County (Shoshone Falls)
	T10S R18E S04 LOT 2	(NWNW) Within Twin Falls County (Twin Falls)
	LOT 3	(NENW)
	T06S R12E S07 LOT 10	(SWNESE) Within Elmore County
	LOT 5	(SWNESE) Within Gooding County (Bliss Dam)
	T07S R13E S02 LOT 7	(SESW) Within Gooding County (Lower Salmon
	LOT 8	(SWSW) Falls)
	T08S R13E S02 LOT 1	(NWNE) Within Gooding County
	LOT 2	(NWNE) Within Twin Falls County (Upper Salmon
		Falls)
	T06S R13E S25	SWSW Within Gooding County
	S35	NENW
		NENW (Injection)
		NENW (Rediversion) (Malad River)
	T06S R13E S25	SWSW Within Gooding County (Malad River)
	T06S R13E S36	NWNW
	T08S R14E S08	SWNWSE Within Gooding County
		NESWSE
		NWSWSE
		SESWSE (Thousand Springs, Snowbank Springs)
	T09S R14E S02 LOT 7	(NESWSE) Within Gooding County (Clear Lake)
	T08S R14E S17	SENWSE Within Gooding County (Sand Springs
		Creek)

PURPOSE AND			
PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	POWER	01-01 TO 12-31	2150.00 CFS

Power generation is at Swan Falls Dam Power Plant, Shoshone Falls Power Plant, Twin Falls Power Plant, Bliss Dam Power Plant, Lower Salmon Falls Power Plant, Upper Salmon Falls Power Plant, Lower Malad Gorge Power Plant, Upper Malad Gorge Power Plant, Clear Lake Power Plant and Thousand Spring Power Plant.

PLACES OF USE:

POWER T02S R01E S18 LOT 11	Within Ada County (SESE) (Swan Falls Dam Power Plant)
POWER T09S R17E S36 LOT 15	Within Jerome County (NESE) (Shoshone Falls Power Plant)
POWER T10S R18E S04 LOT 3	Within Twin Falls County (NENW) (Twin Falls Power Plant)
POWER T06S R12E S07 LOT 5	Within Gooding County (NESE) (Bliss Dam Power Plant)
POWER T07S R13E S02 LOT 7	Within Gooding County (SESW) (Lower Salmon Falls Power Plant)
POWER T08S R13E S02 LOT 4 S03 LOT 1 LOT 3	Within Twin Falls County (NWNW) (NENE) (NWNW) (Upper Salmon Falls Power Plant)
POWER T06S R13E S27 LOT 2	Within Gooding County (SWSW) (Lower Malad Gorge Power Plant)
POWER T06S R13E S35	Within Gooding County NENW (Upper Malad Gorge Power Plant)
POWER T08S R14E S08 Lot 3	Within Gooding County (NESW) (Thousand Springs Power Plant)
POWER T09S R14E S02 LOT 7	Within Gooding County (SWSE) (Clear Lake Power Plant)
POWER T08S R14E S08 LOT 3	Within Gooding County (NESW) (Thousand Springs Power Plant)

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

1. Water right nos. 02-00100, 02-02032A, 02-04000A, and 02-04001A collectively entitle Idaho Power Company to an unsubordinated water right, except as provided in paragraph nos. 3 and 4 below, to average daily flows of 3900 CFS from April 1 to October 31 and 5600 CFS from November 1 to March 31 as measured at the "Murphy Gaging Station" described below in paragraph no. 2. These flows are not subject to depletion, except for depletions caused by the lawful exercise of those water rights identified in paragraph nos. 3 and 4 below, and except for depletions resulting from any diversions or uses of the waters identified in paragraph 5 below. Water right nos. 02-00100, 02-02032A, 02-04000A, and 02-04001A are satisfied when the average daily flows set forth herein are met or exceeded. 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. 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).

4. 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.

5. 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.

6. 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.

7. 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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
) Water Right 02-4000B

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

SOURCE: SNAKE RIVER Tributary: COLUMBIA RIVER

QUANTITY: 90.00 CFS

PRIORITY DATE: 01-17-1900

POINT OF DIVERSION: T02S R01E S18 LOT 10 (SESWSE) Within Owyhee County
 LOT 11 (NWSESE) Within Ada County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	POWER	04-01 TO 10-31	90.00 CFS

Power generation is at the Swan Falls Dam Power Plant.

PLACE OF USE: POWER Within Ada County
 T02S R01E S18 LOT 11 (SESE)

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 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

Supplementary Orr Affidavit
Exhibit 2

“Memorandum Of Agreement”
(May 6, 2009)

MEMORANDUM OF AGREEMENT

WHEREAS, the Swan Falls Settlement recognized that the resolution of Idaho Power Company's water rights and the recognition thereof by the State of Idaho, together with the State Water Plan, provided a sound comprehensive plan best adapted to develop, conserve, and utilize the water resources of the Snake River in the public interest; and

WHEREAS, the Swan Falls Settlement provided that the State shall enforce the State Water Plan and shall assert the existence of water rights held in trust by the State; and

WHEREAS, the Swan Falls Settlement reconfirmed that the minimum daily flow at Milner Dam shall remain at zero, and that 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; and

WHEREAS, the Swan Falls Settlement recognized that the establishment of a zero minimum flow at Milner Dam allowed existing uses above Milner to continue and for some additional development above Milner, and further recognized that the zero minimum flow means that river flows downstream from Milner Dam to Swan Falls Dam at times may consist almost entirely of ground-water discharge and that therefore the Eastern Snake Plain Aquifer (ESPA) must be managed as an integral part of the Snake River; and

WHEREAS, the Swan Falls Settlement recognized that the amount of development that can take place without affecting the average daily flows of 3,900 CFS from April 1 to October 31 and 5,600 CFS from November 1 to March 31 as measured at the Murphy Gaging Station would depend on the nature and location of each new development, as well as the implementation of new practices to augment the stream flows; and

WHEREAS, the Swan Falls Settlement recognized that maintenance of inexpensive hydropower resources contributes to a positive economic climate for the creation of new jobs for Idahoans and thus future water rights allocation decisions should weigh the benefits to be obtained from each development against the probable impact it will have on hydropower resources; and

WHEREAS, the Swan Falls Settlement recognized methods that enhance stream flows, such as in-stream storage and aquifer recharge projects, benefit both agricultural development and hydropower generation and deserve study to determine their economic potential, their impact on the environment, and their impact on hydropower generation; and

WHEREAS, flows passing Milner Dam provide opportunities for hydropower generation and under the Swan Falls Settlement the Idaho Power Company has a right to use such flows when available at its facilities; and

WHEREAS, the State, through the Eastern Snake Plain Aquifer Comprehensive Aquifer Management Plan (ESPA CAMP), a component of the State Water Plan, intends to implement managed recharge as part of a series of comprehensive measures to enhance the water supply of the ESPA and the Snake River; and

WHEREAS, it is important that the effects of implementation of managed recharge be understood in order to permit the State to make informed water management and planning decisions that are in the public interest as provided by chapter 17 title 42 Idaho Code; and

WHEREAS, the Idaho Power Company participated in the development of the ESPA CAMP and as part of the Phase I actions is cooperating with the implementation of a recharge program between Milner Dam and American Falls; and

WHEREAS, the coordination and consideration of the respective interests of the State and Idaho Power Company with regard to managed recharge furthers their mutual interest in honoring the commitments made as part of the Swan Falls Settlement.

NOW THEREFORE, the parties agree as follows:

1. It is in the mutual interest of the parties to work cooperatively to uphold and implement the principles established by the Swan Falls Settlement.
2. ESPA CAMP, as adopted by the Idaho Water Resource Board (January 2009) and approved by the Idaho Legislature as a component of the state water plan, establishes a long-term hydrologic target for managed aquifer recharge from 150,000 to 250,000 acre feet on an average annual basis. Amendment of this long-term hydrologic target for managed recharge shall constitute a change in the state water plan as contemplated by Article 15, § 7 of the Idaho Constitution and the legislation approving CAMP, and therefore must be adopted pursuant to Idaho Code § 42-1734B, as it currently exists or as it may be amended hereafter.
3. The purpose of this memorandum of agreement is to recognize that implementation of managed recharge will have an effect on the flow characteristics of the Snake River above and below Milner Dam and to confirm that the relative merits of recharge proposals in addition to or different than that provided for in Phase I of ESPA CAMP will be considered through the adaptive management process set forth in Section 4 of ESPA CAMP. If the Board proposes to increase the 100,000 acre-foot average annual ESPA CAMP Phase I target for managed aquifer recharge by more than 75,000 acre-feet prior to January 1, 2019, the Board must obtain legislative approval for such increase.

The Board and the Director will consider, in accordance with state law, any information received in determining whether a managed recharge proposal is in the public interest.

4. Further, the parties recognize it is in their mutual interest to work cooperatively to explore and develop a managed recharge program for the Snake River Basin above Swan Falls Dam that achieves to the extent possible benefits for all uses including hydropower and therefore agree that in connection with the development and consideration of proposals for managed recharge that may be in addition to or different than that provided for in Phase I of the ESPA CAMP, the State of Idaho, through the Idaho Water Resource Board (the Board):
 - a. will provide notice to Idaho Power Company of such managed recharge proposals together with an opportunity to meet and confer with the Board on the potential costs and benefits of such proposals and ways to implement managed recharge to achieve the mutual interests of the State and Idaho Power Company; and
 - b. will provide an opportunity for Idaho Power Company to appear before the Board and present information relative to any concerns the Company may have about a managed recharge proposal;
5. The State, through the Governor and the Idaho Water Resource Board, will in good faith cooperate with and support Idaho Power Company in any regulatory proceeding before the Idaho Public Utilities Commission to address any rate, or other impacts directly attributable to the implementation of managed recharge.
6. Idaho Power Company acknowledges that the decision of whether to proceed with the implementation of managed recharge is fundamentally a public policy decision of the State of Idaho and that nothing in this memorandum of agreement shall be construed to limit or interfere with the authority of the State of Idaho to authorize managed recharge in accordance with applicable state law.
7. Nothing in this memorandum of agreement shall be construed to preclude Idaho Power Company from exercising any rights it may have under state law to challenge the State's implementation of managed recharge. While Idaho Power Company retains its right under the Swan Falls Settlement to contest any appropriation of water, including but not limited to appropriations for recharge, in accordance with State law, the Company shall not have a right to assert that implementation of managed recharge is precluded by the Swan Falls Settlement.

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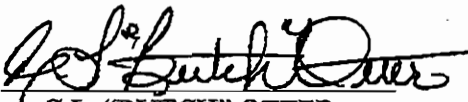
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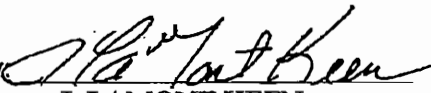
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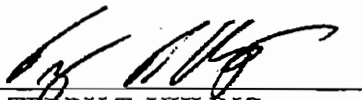
DATED this 6th day of May 2009.

STATE OF IDAHO

By: 
C.L. "BUTCH" OTTER
Governor of the
State of Idaho

IDAHO POWER COMPANY

By: 
J. LAMONT KEEN
President
and Chief Executive Officer

By: 
TERRY T. UHLING
Chairman
Idaho Water Resource Board



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

RECEIVED

MAY 20 2009

DEPARTMENT OF
WATER RESOURCES

May 19, 2009

Sent Via Statehouse Mail

Idaho Water Resource Board
c/o Hal Anderson
Idaho Department of Water Resources
P.O. box 83720
Boise, Idaho 83720-0098

Dear Hal:

Please find enclosed a fully executed original of the "Memorandum of Agreement" signed by the Governor, Terry T. Uhling of the Idaho Water Resource Board, and J. Lamont Keen of Idaho Power Company on May 6, 2009. There are three other fully executed originals. One is being provided to the Governor's office, one will be retained in the files of the office of the Attorney General, and one was retained by Idaho Power Company.

Very Truly Yours,

A handwritten signature in cursive script that reads "Michael C. Orr".

Michael C. Orr
Deputy Attorney General

MCO/olv

Enclosures