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DEPARTMENT OF
WATER RESOURCES

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

In In Re SRBA	)	Subcase Nos.: 01- 02064
	)	(American Falls Power Right)
Case No. 39576	)	
	)	UNITED STATES' SUBPOENA
	)	DUCES TECUM TO THE IDAHO
	)	POWER COMPANY PURSUANT
	)	TO I.R.C.P. 30(b)(6)

TO: The Idaho Power Company

PLEASE TAKE NOTICE that, pursuant to Idaho Rules of Civil Procedure 30(b)(6) and 45, the United States of America, by and through its counsel of record, will take the testimony on oral examination of **THE IDAHO POWER COMPANY** on the date and at the time and location set forth below.

Examination will commence at 9:00 AM on May 3, 2010 at the offices of Idaho Power Company, 1221 W. Idaho St., Boise, ID 83702.

The deposition will be taken upon oral examination before an officer authorized by law to

administer oaths and will be recorded stenographically by a certified court reporter at the location specified. The deposition will be taken for the purpose of discovery, for use at trial, or for such other purposes as are permitted by law.

The deposition will continue from day to day until completed. Additional time may be required depending upon documents to be produced and other factors.

As required by Rule 30(b)(6), the Company shall identify and designate one or more supervisors, officers, managers, employees, or other representatives to testify on its behalf **on each of the matters described below**. The person(s) so designated shall testify as to matters known or reasonably available to the Company. If more than one person is identified, the Company shall identify with in writing, using the numbering below, the examination topics as to which each person will testify.

PLEASE TAKE FURTHER NOTICE that, pursuant to Idaho Rules of Civil Procedure 30(b)(5), 45(b)(1), and 45(f)(1), the United States is requiring **production of the documents described below**.

EXAMINATION. Matters upon which examination is requested include:

1. Each and every allegation in Idaho Power's Amended Objections to water right 01-2064, including, but not limited to:

a. Idaho Power's interest in American Falls Reservoir under its contract nos. Ilr-733 and Ilr-733S.

b. The basis, meaning and necessity of the proposed remark: "This water right includes the right of storage, regulation, downstream delivery and refill under the priority date of this water right to satisfy the United States' contracts."

c. The basis for the proposal that irrigation use be quantified at 1,655,000 AFY

d. The basis for the proposal that power use be quantified at 300,000 AFY.

e. The basis and meaning of the proposed remark: "The exercise of this water right is subject to the obligation of the United States to comply with the terms and conditions contained in contract nos. Ilr-733 and Ilr-733S between the United States Bureau of Reclamation and Idaho Power Company."

f. The basis, meaning, and necessity of the proposed remark: "the 45,000 acre-feet of primary reservoir storage held by Idaho Power Company in American Falls Reservoir under its contracts, including contract nos. Ilr-733 and Ilr-733S, is for power uses at Idaho Power's hydroelectric projects downstream from American Falls Reservoir."

g. The basis for the statement that "the United States granted to Idaho Power, and Idaho Power reserved, storage capacity and a water right in the [American Falls] Reservoir of 45,000 acre-feet of active or primary storage for hydropower use."

h. The basis for the statement that "under the 1923 Contract, the United States granted to Idaho Power, and Idaho Power reserved, secondary storage capacity 'when such capacity is not then required and not being used by the owners of irrigation rights to the use of such capacity,' and a water right for the use of up to 255,000 acre-feet of water during the period October 1 - June 15, for the purpose of storing and regulating water in, and delivering water through, the Reservoir during such period so as to meet specified flows for hydropower use at Idaho Power's hydroelectric projects downstream from American Falls Reservoir, subject to specified terms and conditions."

i. The meaning and effect of the Director of IDWR's Memorandum Decision dated April 21, 1971.

j. Differences between the Company's initial Objections to water right 01-2064 and its Amended Objections.

2. The terms of the contract dated June 15, 1923, symbol Ilr-733 (the 1923 Contract).

3. The terms of the contract dated Dec. 15, 1950, contract no. 174-1506.

4. The terms of the contracts dated March 31, 1976, symbol Ilr-733s (the 1976 Placeholder Contract).

5. The terms of the contracts dated March 31, 1976 by and between the American Falls Reservoir District and the Idaho Power Company (the Falling Water Contract).

6. The terms of the contracts dated March 31, 1976 between the United States of America and the American Falls Reservoir District Construction and Operation and Maintenance of the American Falls Replacement Dam Program (the Government Contract).

7. Statements made by representatives of Idaho Power Company ("Company") during hearings before the House Subcommittee on Water and Power Resources on H.R. 6781, H.R. 6782, S. 1528, and S. 1529 to Authorize Replacement of the American Falls Dam in Idaho, 93rd Cong. 43, 47, and 107 (1973).

8. Actions and knowledge of the Company relating to Public Law 93-206, 87 Stat. 904 (1973).

9. Actions and knowledge of the Company relating to the 1975 Revenue Adjustment Act, Public Law 94-164 also referred to as the "1975 Bond Legislation."

10. The nature and extent of the right or legal entitlement claimed by Company to 300,000 acre-feet of storage in American Falls, including the distinction between the 45,000 acre-feet, referred to as "primary reservoir storage" in the Company's amended objection, and the remaining 255,000 acre-feet, referred to as "secondary storage capacity" in the Company's amended objection.

11. The effect of the Company's claimed right or legal entitlement to 255,000 acre-feet of "secondary storage capacity" in American Falls on (a) the fill of American Falls reservoir, (b) the fill of Palisades reservoir, (c) the fill of space held by other spaceholders in American Falls reservoir, and (d) the fill of space held by other spaceholders in Palisades reservoir.

12. The Company's Answer to Show Cause filed with the Idaho Department of Water Resources on December 1, 1970, regarding Permit No. R-273.

13. Limits on the use of water for hydropower generation at American Falls pursuant to orders issued by the Federal Power Commission, including Order Issuing Major License (Constructed) Project No. 2258 (FPC Mar. 31, 1975) and Order Issuing Major License (Unconstructed) Project No. 2736 (FPC Mar. 31, 1975).

14. In the Matter of Petition of the Boards of Directors of the American Falls Reservoir District, CV No. 28378 (Idaho 5th Dist. Ct. 1976-77), including, but not limited to, the court's Amended Findings of Fact and Conclusions of Law.

15. Kerner v. United States, CV No. 1-76-204 (D. Idaho 1976-79), including, but not limited to, the Reply Brief of the Non-Federal Defendants and the Answers and Objections of Idaho Power Company to Plaintiff's First Requests for Admissions.

16. Idaho Public Utilities Commission case no. U-1006-171 and Bond Counsel Opinion (Chapman and Cutler Dec. 1, 1980).

17. Idaho Public Utilities Commission case no. IPC-E-89-15 and Bond Counsel Opinion (Chapman and Cutler Feb. 21, 1990).

18. The Company's exercise and/or attempts to exercise its claimed right or legal entitlement to 255,000 acre-feet of "secondary storage capacity" in American Falls Reservoir since the construction of Palisades Reservoir.

19. Any representations made by the Company to other water users, the States and/or the United States regarding the nature and extent of the Company's interests at American Falls Reservoir, including, but not limited to, the Company's asserted right to call for, or otherwise require the release of, water from the Reservoir.

DOCUMENTS. You are directed to produce or permit inspection and copying of the following documents, including electronically stored information:

1. Any internal memoranda or other documentary evidence that prior to 1998 Idaho Power tracked flows for purposes of determining compliance with alleged obligations under the "secondary storage" provisions of the 1923 Contract.

2. Any internal memoranda or other documents evidencing Idaho Power's understanding that the Company holds a "secondary storage right," or other entitlement to the use of up to either 255,000 acre-feet, or a total of 300,000 acre-feet of water pursuant to the 1923 Contract.

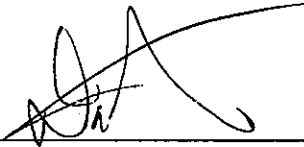
The documents must be produced, **no later than 30 days from the date of service of this subpoena**, at a location to be determined by agreement of the parties. Alternatively, you may

mail the documents, no later than 30 days from the date of service of this subpoena, to David Gehlert, United States Dept. of Justice, 1961 Stout St., 8th Floor, Denver, CO 80294.

You are further notified that if you fail to appear at the place and time specified above, or to produce or permit copying or inspection as specified above, that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100 and all damages which the party may sustain by your failure to comply with this subpoena.

DATED this 16th day of April, 2010.

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