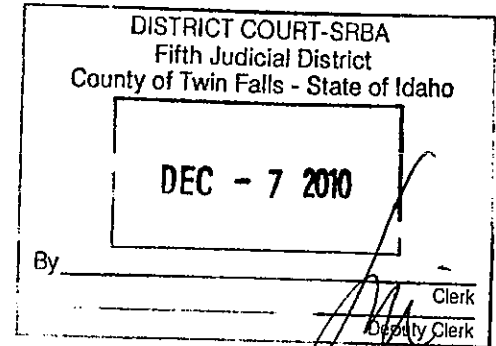


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IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase No. 01-02064
	)	(Hydropower Storage Claim at American Falls)
Case No. 39576	)	
	)	AFFIDAVIT OF ADAM T. DEVOE
	)	

I, ADAM T. DEVOE, being first duly sworn, deposes and states:

1. I am a competent adult over the age of eighteen years, and the statements made herein are based upon my own personal knowledge of the events described.
2. I am counsel for Idaho Power Company in the above-referenced SRBA proceeding.
3. Attached to this affidavit are true and correct copies of the following documents:

Exhibit	Date	Description
71.	08/29/1978	Notice of Filing Reporter's Transcript, Deposition of Robert A. Hogg in Case No. 1-76-204, William Kerner, et al. v. United States of America, et al.

Further your affiant sayeth naught.



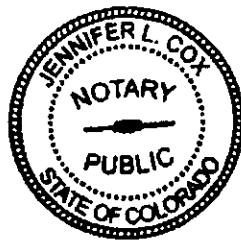
ADAM T. DEVOE, ESQ.

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 7th day of December, 2010 by Adam T. DeVoe.

Witness my hand and official seal.

My commission expires: 6/6/12



8607\5 1477778 1

My Commission Expires June 5, 2012

Notary Public

EXHIBIT 71

**TO THE AFFIDAVIT OF ADAM T. DEVOE
AND REPLY OF IDAHO POWER COMPANY TO
THE UNITED STATES AND STATE OF IDAHO'S
RESPONSE TO IDAHO POWER COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

COURT UNITED STATES DISTRICT, IDAHO Case No. 1-76-204CAPTION WILLIAM KERNER vs. UNITED STATES OF AMERICADEPOSITION OF ROBERT A. HOGG Taken on August 29, 1978~~XXXXXXXX~~ delivered to the Clerk of the District Court on November 3, 1978NOTICE OF FILING TO:

ANNEST & ANDERSON (James D. Annest)
 ELAM BURKE JEPPESEN EVANS BOYD (John S. Simko)
 PARRY ROBERTSON DALY LARSON (Thomas G. Nelson)
 MOFFATT THOMAS BARRETT BLANTON (Jeffrey A. Strother)
 Debra Bail (Assistant U. S. Attorney)

CHANGES OR CORRECTIONS:

<u>Page</u>	<u>Line</u>	<u>Reads</u>	<u>Should Read</u>
23	7	to the	<u>by</u> the
41	18	companies	<u>company</u>
44	6	provide them	provide <u>for</u> them
44	7	plan	<u>plant</u>
45	8	hundreds	hundred
59	11	even the	even <u>when</u> the
79	25	rate are you	rate <u>you are</u>
101	13	I do not	I do <u>know</u>
102	15	what it	(omit <u>it</u>)
102	16	would do	could be done
112	13 & 14	(Omit [and stuff like that])	
153	23	directly	<u>correctly</u>
153	26	to sell	to <u>fill</u>
169	21	new plan	new <u>plant</u>
221	5	grounded	drowned

NOTICE OF FILING REPORTER'S TRANSCRIPT

TUCKER & ASSOCIATES
 COURT AND DEPOSITION REPORTERS
 POST OFFICE BOX 1829 BOISE, IDAHO 83701

MAIL 104528

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WILLIAM KERNER, et al,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
et al,

Defendants.

Case No. 1-76-204

DEPOSITION OF ROBERT A. HOGG

August 29, 1978

ORIGINAL

Reported by:
JAYLEEN A. TILLMAN
CSR No. 68

TUCKER & ASSOCIATES
COURT AND DEPOSITION REPORTERS
POST OFFICE BOX 1628 BOISE, IDAHO 83701
TELEPHONE 345-3704

DEPOSITION OF ROBERT A. HOGG, taken at the instance of the plaintiffs, at the offices of Tucker & Associates, 300 North Sixth Street, and the Grand Jury Room, Federal Building, 550 W. Fort Street, in the City of Boise, State of Idaho, commencing at 10:00 a.m., on Wednesday, August 29, 1978, and 9:10 a.m., on Thursday, August 30, 1978, before Jayleen A. Tillman, Certified Shorthand Reporter, Registered Professional Reporter, and a Notary Public in and for the State of Idaho, pursuant to notice and stipulation by and between counsel, and in accordance with the Federal Rules of Civil Procedure.

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1 proposal to the provisions of the Reclamation Act
2 which provide that revenues from power generation
3 should be applied not only to the cost of
4 construction but also after that to the costs of
5 operation and maintenance?

6 MR. SPIOTTO: Objection to the form of the
7 question.

8 Q BY MR. ANNEST: Go ahead and answer it,
9 Mr. Hogg, if you understand the question.

10 A Well, I don't understand how the thing
11 can operate that way because you're talking about
12 us complying with reclamation law, which doesn't
13 apply to us.

14 Q So there was nothing in your proposal
15 that would compensate for the future loss of
16 operating and maintenance funds that would be
17 derived from the power revenues that were potentially
18 available at this site?

19 A Well, I think that's an incorrect
20 statement because --

21 Q Explain why you think it is incorrect.

22 A Because the Idaho Power Company
23 participates in the O&M operation of the dam and
24 the reservoir, and particularly we pay -- instead of
25 paying O&M costs exactly based upon our 45,000

1 acre-feet of prime storage, which is 2.6 per cent of
2 the total, we pay in excess of 7 per cent because of
3 our secondary storage right.

4 And also in the contract, the new
5 contract, we also agreed to pay an extra portion on
6 the cost of operating and maintaining the dam per se.
7 In other words, solely the dam, not including the
8 rest of the reservoir.

9 Q What percentage of the operation and
10 maintenance have you undertaken to pay under the new
11 contract which was in excess of what you paid before?

12 A Well, I haven't a number in mind,
13 percentage. I don't know what it would be in
14 percentage, Mr. Annest.

15 Q Now, Mr. Hogg, the amount that the
16 company actually pays towards operation and
17 maintenance of the dam is directly related to the
18 use which the company makes of the dam by its
19 power generating facility, isn't it?

20 A Well, not necessarily. It's a fixed
21 number that occurs every year, a certain percentage
22 of the actual cost which is not related to the use
23 of the dam.

24 Q What is the basis for that figure? Is
25 there a contractual arrangement between you and the

1 government that sets that figure? Or how is it
2 established?

3 A It's a contractual arrangement.

4 Q Which contract are you referring to?

5 A I'm referring to a contract between the
6 United States Government and the Idaho Power Company
7 as a spaceholder.

8 Q Dating back to when?

9 A Well, it began with the 1923 contract.
10 And when the next contract becomes effective, why,
11 it will be increased.

12 Q Does the power company pay a portion, or
13 will the power company in any way pay a portion of
14 the operating and maintenance expense of each of
15 the spaceholding districts under its arrangement
16 with the American Falls Reservoir District?

17 A Well, I would answer you this way, that
18 the operation and maintenance expense of each of
19 the districts is reduced by the participation of
20 the Idaho Power Company.

21 Q Under the contractual arrangements which
22 you now have, is it correct that the irrigators or
23 the spaceholding entities which would be entitled
24 to receive a preferential use of power from this
25 project will not be entitled to that preference?