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OCT 19 2009

DEPARTMENT OF
WATER RESOURCES

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OCT 19 2019

DEPT. OF WATER RESOURCES

**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	)	
_____	)	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.

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 1996 *Idaho State Water Plan* (Idaho Water Res. Bd., Dec. 1996).

4. Attached hereto as **Exhibit 2** are true and correct copies of excerpted pages of *The Objectives – State Water Plan – Part One* (Idaho Water Res. Bd., June 1974).

5. Attached hereto as **Exhibit 3** are true and correct copies of excerpted pages of the *State Water Plan – Part Two* (Idaho Water Res. Bd., Dec. 1976).

6. Attached hereto as **Exhibit 4** are true and correct copies of excerpted pages of the 1982 *Idaho State Water Plan* (Idaho Water Res. Bd., Jan. 19, 1982).

7. Attached hereto as **Exhibit 5** is a true and correct copy of Exhibit 30 of the “Affidavit of Michael C. Orr In Support of State of Idaho’s Motion for Partial Summary Judgment,” filed in SRBA Consolidated Subcase 00-92023 on January 9, 2008 (hereinafter, “the First Orr Affidavit in Subcase 00-92023”).

8. Attached hereto as **Exhibit 6** is a true and correct copy of Exhibit 15 of the First Orr Affidavit in Subcase 00-92023.

9. Attached hereto as **Exhibit 7** are true and correct copies of excerpted pages of the 1986 *Idaho State Water Plan* (Idaho Water Res. Bd., Dec. 12, 1986).

10. Attached hereto as **Exhibit 8** are true and correct copies of excerpted pages of the 1992 *Idaho State Water Plan* (Idaho Water Res. Bd., Jan. 1992).

11. Attached hereto as **Exhibit 9** are true and correct copies of partial decrees proposed under *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*, filed in SRBA Consolidated Subcase 00-92023 on June 25, 2009.

12. Attached hereto as **Exhibit 10** is a true and correct copy of Exhibit 19 of the "Third Affidavit of Michael C. Orr," filed in SRBA Consolidated Subcase 00-92023 on July 1, 2008 (hereinafter, "the Third Orr Affidavit in Subcase 00-92023").

13. Attached hereto as **Exhibit 11** is a true and correct copy of Exhibit 44 of the First Orr Affidavit in Subcase 00-92023.

14. Attached hereto as **Exhibit 12** is a true and correct copy of Exhibit 46 of the First Orr Affidavit in Subcase 00-92023.

15. Attached hereto as **Exhibit 13** is a true and correct copy of Exhibit 60 of the "Fourth Affidavit of Michael C. Orr," filed in SRBA Consolidated Subcase 00-92023 on October 16, 2008 (hereinafter, "the Fourth Orr Affidavit in Subcase 00-92023").

16. Attached hereto as **Exhibit 14** is a true and correct copy of Exhibit 23 of the Third Orr Affidavit in Subcase 00-92023.

17. Attached hereto as **Exhibit 15** is a true and correct copy of Exhibit 24 of the Third Orr Affidavit in Subcase 00-92023.

18. Attached hereto as **Exhibit 16** is a true and correct copy of Exhibit 28 of the Third Orr Affidavit in Subcase 00-92023.

19. Attached hereto as **Exhibit 17** is a true and correct copy of Exhibit 52 of the First Orr Affidavit in Subcase 00-92023.

20. Attached hereto as **Exhibit 18** is a true and correct copy of Exhibit 91 of the Fourth Orr Affidavit in Subcase 00-92023.

21. Attached hereto as **Exhibit 19** is a true and correct copy of a letter from attorney John A. Rosholt to Norman C. Young, Administrator of the Resource Administration Division of the Idaho Department of Water Resources, dated Oct. 12,

1988; and a true and correct copy of Exhibit 24 of the Fourth Orr Affidavit in Subcase 00-92023.

22. Attached hereto as **Exhibit 20** is a true and correct copy of Exhibit 69 of the Fourth Orr Affidavit in Subcase 00-92023.

23. Attached hereto as **Exhibit 21** is a true and correct copy of Exhibit 41 of the Third Orr Affidavit in Subcase 00-92023.

24. Attached hereto as **Exhibit 22** is a true and correct copy of Exhibit 74 of the Fourth Orr Affidavit in Subcase 00-92023.

25. Attached hereto as **Exhibit 23** is a true and correct copy of Exhibit 55 of the Fourth Orr Affidavit in Subcase 00-92023.

26. Attached hereto as **Exhibit 24** is a true and correct copy of Exhibit 58 of the Fourth Orr Affidavit in Subcase 00-92023.

27. Attached hereto as **Exhibit 25** is a true and correct copy of Exhibit 60 of the First Orr Affidavit in Subcase 00-92023.

28. Attached hereto as **Exhibit 26** is a true and correct copy of Exhibit 62 of the First Orr Affidavit in Subcase 00-92023.

29. Attached hereto as **Exhibit 27** is a true and correct copy of Resolution 19 of the Committee of Nine and the water users of Water District 1, approved on March 4, 1986.

30. Attached hereto as **Exhibit 28** is a true and correct copy of Exhibit 6 of the Fourth Orr Affidavit.

31. Attached hereto as **Exhibit 29** are true and correct copies of excerpted pages of the "Report Of Board Of Engineers To Consider Projects In Snake River Valley

Which May Affect The Proposed American Falls Reservoir,” dated April 10, 1920.

32. Attached hereto as **Exhibit 30** are true and correct copies of excerpted pages of “Report Relative To Application of Idaho Power Company for Preliminary Permit to Develop Upper Salmon Falls Site on Snake River, Idaho – Permit No. 19, Federal Power Commission,” by U.S. Geological Survey Hydraulic Engineer W.G. Hoyt, dated July 1921.

33. Attached hereto as **Exhibit 31** is a true and correct copy of *Irrigation In The Snake River Valley: An Historical Overview*, by Leonard J. Arrington, published in IDAHO YESTERDAYS, Spring/Summer Issue, 1986, Vol. 30, Numbers 1-2.

34. Attached hereto as **Exhibit 32** are true and correct copies of excerpted pages of “Report Relative to Water Power Resources of Snake River and Status of Public Lands Between Milner and Weiser, Idaho,” by W.G. Hoyt of the U. S. Geological Survey (August 1922).

35. Attached hereto as **Exhibit 33** are true and correct copies of excerpted pages of “Report Covering Water Measurements and Studies of Stream Flow of Snake River Between Milner and Shoshone Falls,” by C.E. Tappan (Idaho Power Company 1923).

36. Attached hereto as **Exhibit 34** is a true and correct copy of Exhibit 2 of the Fourth Orr Affidavit in Subcase 00-92023.

37. Attached hereto as **Exhibit 35** is a true and correct copy of a letter from A.P. Davis, Director of the U.S. Reclamation Service, to Idaho Power Company, dated November 2, 1920.

38. Attached hereto as **Exhibit 36** are true and correct copies of excerpted

pages of "Supplementary Water For Irrigation In Idaho, With Particular Reference To Boise And Snake River Valleys," by R.W. Faris, Idaho State Commissioner of Reclamation, dated October 15, 1934.

39. Attached hereto as Exhibit 37 are true and correct copies of excerpted pages of U.S. Department of the Interior Water Supply Paper 657, "Water Utilization In The Snake River Basin," by W.G. Hoyt, dated 1935.

40. Attached hereto as Exhibit 38 are true and correct copies of excerpted pages of the "Special Report – Upper Snake River Basin (Above Powder River) – Irrigation And Associated Developments," by the U.S. Department of the Interior, Bureau of Reclamation, Regional Office, Boise, dated February 1955.

41. Attached hereto as Exhibit 39 is a true and correct copy of "Departmental Report No. 2 from May 1 To June 1, 1919 – To His Excellency C.C. Moore, Acting Governor Of The State Of Idaho," by W.G. Swendsen, Idaho State Commissioner of Reclamation.

42. Attached hereto as Exhibit 40 is a true and correct copy of a notice by W.G. Swendsen, Idaho State Commissioner of Reclamation, entitled "Re: Water District No. 36, To the Water Users on the Snake River," dated June 2, 1919.

43. Attached hereto as Exhibit 41 is a true and correct copy of a letter from B.E. Stoutemyer, District Counsel, U.S. Reclamation Service, to the Chief Counsel, U.S. Reclamation Service, dated June 26, 1919.

44. Attached hereto as Exhibit 42 is a true and correct copy of a letter from B.E. Stoutemyer, District Counsel, U.S. Reclamation Service, to the Chief Counsel, U.S. Reclamation Service, dated June 30, 1919.

45. Attached hereto as Exhibit 43 is a true and correct copy of a letter from W.G. Swendsen, Idaho State Reclamation Commissioner, to Governor C.C. Moore, dated July 9, 1923.

46. Attached hereto as Exhibit 44 is a true and correct copy of a letter from Barry Dibble, Minidoka Project Manager, to the Chief Engineer of the U.S. Reclamation Service, dated April 16, 1920.

47. Attached hereto as Exhibit 45 are true and correct copies of excerpted pages of Legacy of Light: A History of Idaho Power Company, by Susan M. Stacy (Idaho Power Co. 1991).

48. Attached hereto as Exhibit 46 is a true and correct copy of Exhibit 16 of the Fourth Orr Affidavit in Subcase 00-92023.

49. Attached hereto as Exhibit 47 is a true and correct copy of the "Statement" of Evan Kackley, Idaho Water Resource Board Member from District 4, to the Idaho Water Resource Board, June 1967.

50. Attached hereto as Exhibit 48 is a true and correct copy of a letter from U.S. Reclamation Service Director A.P. Davis to the Executive Secretary of Federal Power Commission forwarding a copy of a report by George L. Hoffman, U.S. Reclamation Service Engineer, on Idaho Power Company's application to the Federal Power Commission regarding the Twin Falls power site, dated April 5, 1921.

51. Attached hereto as Exhibit 49 is a true and correct copy of "Report on Application Before Federal Power Commission by Idaho Power Company, Serial No. 18, For Preliminary Permit covering Twin Falls site, on Snake River," by George L. Hoffman, U.S. Reclamation Service Engineer, dated Mar. 15, 1921.

52. Attached hereto as **Exhibit 50** is a true and correct copy of Exhibit 4 of the Third Orr Affidavit in Subcase 00-92023.

53. Attached hereto as **Exhibit 51** are true and correct copies of excerpted pages of the Contract Between the United States and the Idaho Power Company Relative to Power Rights at American Falls Reservoir, Idaho, dated June 15, 1923.

54. Attached hereto as **Exhibit 52** is a true and correct copy of a letter from A.P. Davis, Director of the U.S. Reclamation Service, to Mr. Merrill, Executive Secretary of the Federal Power Commission, dated March 26, 1921.

55. Attached hereto as **Exhibit 53** is a true and correct copy of a letter from James L. Boone, Secretary of Idaho Power Company, to Mr. Hibbard, Vice President of Idaho Power Company, dated May 29, 1931.

56. Attached hereto as **Exhibit 54** is a true and correct copy of a letter from M.L. Hibbard, Vice President and General Manager of Idaho Power Company, to E.B. Darlington, Superintendent, U.S. Reclamation Service, dated April 7, 1931.

57. Attached hereto as **Exhibit 55** is a true and correct copy of Exhibit 10 of the Third Orr Affidavit in Subcase 00-92023.

58. Attached hereto as **Exhibit 56** is a true and correct copy of Exhibit 9 of the Third Orr Affidavit in Subcase 00-92023.

59. Attached hereto as **Exhibit 57** is a true and correct copy of Exhibit 7 of the Third Orr Affidavit in Subcase 00-92023.

60. Attached hereto as **Exhibit 58** is a true and correct copy of Exhibit 8 of the Fourth Orr Affidavit in Subcase 00-92023.

61. Attached hereto as **Exhibit 59** is a true and correct copy of Exhibit 7 of

the Fourth Orr Affidavit in Subcase 00-92023.

62. Attached hereto as **Exhibit 60** are true and correct copies of excerpted pages of "The Palisades Dam And Reservoir Project – Hearings before a Subcommittee On Irrigation And Reclamation Of The Committee On Public Lands, House of Representatives and a Special Subcommittee Of The Committee On Interior And Insular Affairs, United States Senate – Eighty-First Congress – First Session on H.R. 5506," printed by the U.S. Government Printing Office, 1949.

63. Attached hereto as **Exhibit 61** are true and correct copies of excerpted pages of "Report on Upper Snake River Storage Investigations – Volume I – Snake River Above Idaho Falls," by E.B. Debler, Hydraulic Engineer & J.R. Riter, Associate Engineer of the U.S. Department of the Interior, Bureau of Reclamation, dated June 1935.

64. Attached hereto as **Exhibit 62** is a true and correct copy of "Findings of the Secretary of the Interior as to net profits from the Black Canyon and the Minidoka Power Plants, through sales of power on the Minidoka project and towns adjacent thereto, during the year 1935," by T.A. Walters, Acting Secretary of the Interior (United States Department of the Interior, Bureau of Reclamation), dated March 12, 1936.

65. Attached hereto as **Exhibit 63** is a true and correct copy of the comments of Thomas R. Newell, U.S. Geological Survey engineer, on Baldwin, *Transmission and Delivery of Reservoir Water* in *Administrative Water Problems: A Symposium*, 94 TRANSACTIONS OF THE AMERICAN SOCIETY OF CIVIL ENGINEERS 321 (1930).

66. Attached hereto as **Exhibit 64** is a true and correct copy of a letter from Lynn Crandall to Elwood Mead, Commissioner, U.S. Bureau of Reclamation, dated February 21, 1934.

67. Attached hereto as Exhibit 65 are true and correct copies of excerpted pages of "Water Distribution And Hydrometric Work – Water District No. 36 – 1936," by Lynn Crandall, Watermaster for Water District No. 36.

68. Attached hereto as Exhibit 66 is a true and correct copy of a letter from District Engineer Lynn Crandall to B.E. Stoutemyer, District Counsel , U.S Reclamation Service, dated September 8, 1939.

69. Attached hereto as Exhibit 67 are true and correct copies of excerpted pages of the letter of B.E. Stoutemyer, District Counsel, U.S. Bureau of Reclamation, to the Commissioner, U. S. Bureau of Reclamation, dated March 12, 1940.

70. Attached hereto as Exhibit 68 is a true and correct copy of a letter from B.E. Stoutemyer, District Counsel, U.S. Reclamation Service, to W.H. Philbrick, President of Aberdeen-Springfield Canal Company, dated June 6, 1934.

71. Attached hereto as Exhibit 69 is a true and correct copy of a letter from B.E. Stoutemyer, District Counsel, U.S. Reclamation Service, to the Chief Engineer, U.S. Reclamation Service, dated August 16, 1926.

72. Attached hereto as Exhibit 70 is a true and correct copy of the contract between the United States and the Idaho Power Company for conservation of Snake River water and furnishing transmission service, dated October 1, 1934.

73. Attached hereto as Exhibit 71 is a true and correct copy of Exhibit 13 of the Third Orr Affidavit in Subcase 00-92023.

74. Attached hereto as Exhibit 72 is a true and correct copy of Exhibit 12 of the Third Orr Affidavit in Subcase 00-92023.

75. Attached hereto as Exhibit 73 is a true and correct copy of a letter from

B.E. Stoutemyer, District Counsel, U.S. Reclamation Service, to Commissioner, U. S. Bureau of Reclamation, dated September 5, 1939.

76. Attached hereto as **Exhibit 74** is a true and correct copy of a letter from Watermaster Lynn Crandall to E.V. Berg, Idaho State Commissioner of Reclamation, dated September 25, 1941.

77. Attached hereto as **Exhibit 75** is a true and correct copy of "Status Report – Workings of Palisades Water Savings Agreement," by the U.S. Bureau of Reclamation, Boise, Idaho, dated August 5, 1968.

78. Attached hereto as **Exhibit 76** is a true and correct copy of Exhibit 13 of the Fourth Orr Affidavit in Subcase 00-92023.

79. Attached hereto as **Exhibit 77** is a true and correct copy of Exhibit 17 of the Fourth Orr Affidavit in Subcase 00-92023.

80. Attached hereto as **Exhibit 78** are true and correct copies of excerpted pages of the "Minutes of Meeting No. 4-72" of the Idaho Water Resource Board, dated June 13, 1972.

81. Attached hereto as **Exhibit 79** are true and correct copies of excerpted pages of the Minutes of the Meeting on Snake River Flood Control Problems, dated Dec. 16, 1957.

82. Attached hereto as **Exhibit 80** is a true and correct copy of Exhibit 10 of the Fourth Orr Affidavit in Subcase 00-92023.

83. Attached hereto as **Exhibit 81** is a true and correct copy of Exhibit 15 of the Fourth Orr Affidavit in Subcase 00-92023.

84. Attached hereto as **Exhibit 82** is a true and correct copy of a letter from

U.S. Bureau of Reclamation Commissioner Floyd Dominy to Senator Len Jordan, dated January 5, 1968.

85. Attached hereto as **Exhibit 83** is a true and correct copy of House of Representatives Report No. 94-531, entitled "Tax Exempt Status Of Obligations Used To Provide Certain Irrigation Facilities," by the House Ways And Means Committee, dated October. 3, 1975 (94th Congress, 1st Session).

86. Attached hereto as **Exhibit 84** is a true and correct copy of Senate Report No. 94-570, entitled "Tax Exempt Status Of Obligations Used To Provide Certain Irrigation Facilities," by the Senate Finance Committee, dated December 16, 1975 (94th Congress, 1st Session).

87. Attached hereto as **Exhibit 85** are true and correct copies of excerpted pages of the "Contract between The United States Of America and The American Falls Reservoir District for Construction And Operation And Maintenance Of The American Falls Replacement Dam Program, Dated as of March 31, 1976."

88. Attached hereto as **Exhibit 86** are true and correct copies of excerpted pages of the "Falling Water Contract Dated as of March 31, 1976 by and between American Falls Reservoir District and Idaho Power Company."

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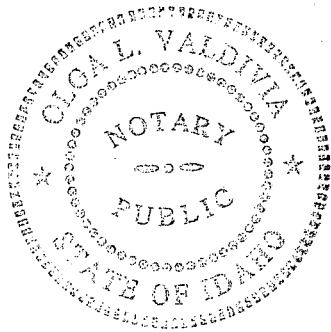
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Further your affiant sayeth naught.

DATED this 16th day of OCTOBER 2009.

Michael C. Orr
MICHAEL C. ORR

SUBSCRIBED AND SWORN to before me this 16th day of October 2009.



[Signature]
Notary Public for Idaho

Residing at: Boise, ID

My commission expires: 2/5/2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16TH day of OCTOBER 2009,
I caused a true and correct copy of the foregoing AFFIDAVIT OF MICHAEL C. ORR to
be filed with the Court and served on the following parties by the indicated methods:

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Twin Falls, Idaho 83303-2707

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