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JUN 03 2005

DEPARTMENT OF
WATER RESOURCES

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Attorneys for Idaho Power Company

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION)
OF WATER TO WATER RIGHTS NOS)
36-02356A, 36-07210, AND 36-07427)
_____)

**IDAHO POWER COMPANY'S
PETITION FOR HEARING ON
MAY 19, 2005, ORDER AND
REQUEST FOR
INDEPENDENT HEARING
OFFICER**

Idaho Power Company ("Idaho Power"), by and through its counsel, respectively submits this Petition for a Hearing on the Order issued by the Director of the Idaho Department of Water Resources, Karl Dreher, on May 19, 2005 (the "Blue Lakes Order"), in accordance with Idaho Code § 42-1701A(3), and Idaho Department of Water Resources ("IDWR"), Procedure Rule 740.02 b. IDAPA 37.01.01 740.02.b. Idaho Power also hereby requests appointment of an independent hearing office in accordance with Idaho Code § 42-1701A(2).

I. INTRODUCTION

Idaho Power holds water rights in Basin 36, water rights at Swan Falls, and minimum flow rights under the Swan Falls Agreement, which may be adversely impacted by the Blue Lakes Order. Idaho Power is therefore an aggrieved party with standing to petition for a hearing and appointment of an independent hearing officer

The Blue Lakes Order attempts to minimize and disregard the rights of senior water rights holders by looking beyond the terms of the decreed water rights to reduce the claim and provide less than the full decreed supply of water. This attempt to selectively enforce the decreed water rights of seniors is contrary to Idaho law and threatens senior water rights, including Idaho Power's senior decreed water rights.

II. ARGUMENT

A. Idaho Power Has Standing and is an Aggrieved Party

In order to initiate a contested hearing on an order issued by the Director, an aggrieved party must file a written petition stating the grounds for contesting the action by the Director and requesting a hearing. Idaho Code § 42-1701A(3); IDAPA 37.01 01.740. The form and content of the petition is provided by Idaho Department of Water Resources, Procedure Rule 230. IDAPA 37.01 01.230.

Idaho Power is an aggrieved party in this action because it holds water rights in Basin 36, water rights at Swan Falls, and contract rights for minimum flows at Swan Falls. These senior water rights and minimum flow rights confer standing on Idaho Power. Accordingly, Idaho Power is an aggrieved party and seeks a hearing to challenge the Blue Lakes Order.

1. Idaho Power's Water Rights in Basin 36

Idaho Power's water rights in Basin 36 include the following, all of which have been partially decreed by the SRBA District Court:

<u>Water Right #/Basis</u>	<u>Source</u>	<u>Priority</u>	<u>Amount</u>	<u>Use</u>
36-2704	Niagara Springs	01/31/1966	120.0 cfs	Irrigation, Domestic, Fire Protection, Fish Propagation
36-2082	Billingsley Creek	12/10/1948	5.0 cfs	Irrigation, Cooling, Fire Protection
36-2710	Clear Lake Springs	07/24/1940	0.1 cfs	Irrigation, Cooling, Domestic
36-2037	Spring	10/29/1921	0.3 cfs	Irrigation, Cooling Commercial, Domestic 3 Homes
36-15221	Niagara Springs	03/03/1982	0.04 cfs	Domestic
36-15357	Snow Bank Springs Thousand Springs	09/30/1936	0.11 cfs	Irrigation, Domestic 3 Homes
36-15358	Snow Bank Springs Thousand Springs	06/20/1924	0.03 cfs	Irrigation
36-7104	Springs	12/10/1969	0.3 cfs	Domestic, Irrigation
36-2478	Upper Tucker Springs	10/21/1939	3.21 cfs	Irrigation, Stockwater, Cooling, Domestic, Fire Protection
36-15388	Spring	12/10/1949	0.15 cfs	Commercial, Domestic

See EXHIBIT A.

2. Idaho Power's Rights at Swan Falls

Idaho Power holds four water rights at Swan Falls: three licensed rights for 4000 cfs, 1,840 cfs and 1,460 cfs, – and a decreed water right with a 1900 priority for 4,000 cfs. (Water right Nos. 02-2032, 02-4000, 02-4001, and 02-0100 respectively). These water rights are subject

to the Swan Falls Agreement (October 25, 1984) and the minimum flow, and other, provisions contained therein, and were decreed by the Ada County District Court in Case Nos. 81375 and 62237. See EXHIBIT B.

B. Grounds for Contesting the Action

The State's various modeling scenarios demonstrate that the ESPA is hydraulically connected to the Snake River, and that junior pumpers have a depletionary effect on the surface water resources of the Snake River by decreasing reach gains and increasing reach losses.¹ Though Idaho Power does not concede the sufficiency and accuracy of the modeling, the results produced to date demonstrate that curtailment of junior pumpers will have a positive effect on reach gains throughout the Snake River.² In short, the results of the various modeling scenarios demonstrate what IDWR has stated publicly and determined in numerous other contexts: the Snake River and hydraulically connected ESPA are over-appropriated.

However, instead of ordering curtailment of junior water rights or requiring mitigation to fully satisfy the senior calling right, the Director looks beyond the decree to minimize the claim of senior water rights, reduce the ability of senior water rights to call out juniors, question the legitimacy of the calls and claims for relief and provide the minimum curtailment and mitigation possible under all of the circumstances considered. Thus, the Blue Lakes Order sets a dangerous precedent by minimizing senior water rights claims instead of conjunctively administering junior water rights.

In addition, Idaho Power intends to challenge the Blue Lakes Order on questions of law and fact, including, but not limited to, the issues raised in this petition for a hearing. For

¹ Snake River Aquifer Model Scenario: *Hydrologic Effects of Continued 1980-2002 Water Supply and Use Conditions*, "Base Case Scenario," November 2004, Cosgrove, Contor, Wylie, Rinehart, and Johnson, Page 4.

² Id.

example, Idaho Power intends to argue that the Director erred in relying on the computer model because it is not sufficiently complete, accurate and reliable to conjunctively administer water rights in the Snake River and the Eastern Snake Plains Aquifer. Without limiting the scope of discovery or the hearing in this matter, Idaho Power reserves and by such reservation shall be entitled to determine through discovery or otherwise whether the IDWR's computer model is sufficiently and adequately calibrated, whether the calibration was conducted appropriately and whether the hydrogeologic basis for the IDWR's computer model, such as the direction and location of the movement of groundwater, and the assumptions used in developing and utilizing the model, such as transmissivity, are accurate and appropriate. Finally, Idaho Power shall be entitled to ascertain the basis and assumptions by the Director in using the model as the basis for the findings in the Blue Lakes Order

Idaho Power incorporates by reference the grounds for protest as may be submitted by other parties contesting this order. Idaho Power also expressly reserves the right to raise additional issues as they come to light during discovery and the hearing process.

C. Request for Independent Hearing Officer

In addition to the above, Idaho Power respectfully requests that the Director appoint an independent hearing officer in this matter. Idaho Code § 42-1701A(2) allows the Director, in his discretion, to appoint a hearing officer. Rule 410 of the IDWR Rules of Procedure also call for an independent hearing officer, other than the agency head, to hear contested cases. IDAPA 37.01.01.410.

In this matter, an independent hearing officer should be appointed to hear the contested case and review the Blue Lakes Order because it would be inappropriate for the Director to preside over an administrative matter contesting his own order. Further, the Director has

apparently taken part in the IDWR factual investigations that informed the Blue Lakes Order. In that regard, the Director may be a fact witness in the hearing process to determine how the factual investigations were conducted and what information was gathered. The Director has also been a participant in past settlement negotiations, and has had direct contact and communications with the parties to these matters that could potentially bias his involvement in an administrative hearing contesting the Blue Lakes Order. The Director has also been involved in the supervision and calibration of the model, and for that reason may be called as a fact witness. For all of these reasons, an independent hearing officer should be appointed to conduct a hearing on the Blue Lakes Order.

D. Standard of Review at Requested Hearing

The hearing requested by Idaho Power, if granted, will be the first formal hearing before an independent hearing officer in this matter. Since there is no administrative record at this time, Idaho Power is not requesting a review of the Blue Lakes Order; rather, Idaho Power seeks the opportunity to present evidence, develop the record, and obtain a *de novo* review of the Blue Lakes call. In that regard, an independent hearing officer is not bound by the determinations of the Director; instead, the independent hearing officer will be considering the matter on a fully developed factual and legal record for the first time, and must make a determination based on all of the evidence presented at the hearing.

E. Burden of Proof

In the Blue Lakes Order, and in previous interim orders from the Director, the Director contorts the burden of proof to remove any obligation on the part of the junior ground water pumpers to demonstrate that they are not causing injury to senior water rights. In the Blue Lakes Order, and other orders, the Director improperly shifted the burden of proof to the senior water

rights holders to demonstrate that injury to their water rights is material, that their claims should not be reduced, that they have made full beneficial use of their claimed diversions, and that they should receive their full amount of permitted, decreed and adjudicated claims.

Contrary to the erroneous findings of the Director, senior water rights holders are entitled to the full amount of their permitted, decreed and adjudicated claims. Senior water rights holders have made a *prima facie* showing that senior water rights are receiving less than their permitted, decreed and adjudicated claims for water, and senior water rights holders are not required to do more than make this *prima facie* showing.

At the requested hearing, the junior ground water pumpers must have the burden of proof in demonstrating that their diversions are not causing harm to senior water rights. The burden of proof is on the junior water rights holders to demonstrate that the injury to senior water rights holders is not material, that a call is futile, that the seniors' claims should be reduced or, for any other reason, a senior should not receive the full permitted, decreed, and adjudicated amount of the claimed water right.

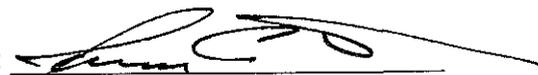
III. CONCLUSION

Idaho Power is an aggrieved party with standing to contest the Blue Lakes Order. The Blue Lakes Order is insufficient to protect senior water rights holders. Accordingly, Idaho Power respectfully requests a hearing to contest the actions of the Director before an independent hearing officer as provided by Idaho Code § 42-1701A.

WHEREFORE, Idaho Power respectfully requests a hearing on the Blue Lakes Order before an independent hearing officer.

DATED this 3rd day of June 2005.

IDAHO POWER COMPANY

By: 
James Tucker, Senior Attorney
IDAHO POWER COMPANY

and

James S. Lochhead
Adam T. DeVoe
BROWNSTEIN HYATT & FARBER, P.C.
410 17th Street
Twenty-Second Floor
Denver, CO 80202

CERTIFICATE OF MAILING

I hereby certify that on this 6th day of June, 2005, I served a copy of **IDAHO POWER COMPANY'S PETITION FOR HEARING ON MAY 19, 2005, ORDER AND REQUEST FOR INDEPENDENT HEARING OFFICER**, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Jeffrey C. Fereday
Michael C Creamer
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720
cf@givenspursley.com
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cindy.yenter@idwr.idaho.gov

Director Karl Dreher
Idaho Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098
karl.dreher@idwr.idaho.gov

Greg Kaslo
Blue Lakes Trout Farm
P. O. Box 1237
Twin Falls, Idaho 83303-1237

Daniel V. Steenson
Ringer Clark, Chartered
P. O. Box 2773
Boise, Idaho 83701-2773

A handwritten signature in black ink, appearing to be "Karl Dreher", written over a horizontal line.

EXHIBIT A

WATER RIGHT
NO. 36-2704

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

2002 OCT 18 AM 10 48

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) ORDER OF PARTIAL DECREE
_____) For Water Right 36-02704
_____)

On August 29, 2002, a *Special Master's Report and Recommendation* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 36-02704 is hereby decreed as set forth in the attached *Partial Decree* Pursuant to I.R.C.P. 54(b).

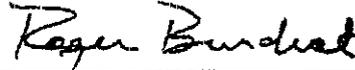
DATED October 18, 2002



ROGER S. BURDICK
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.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

WATER RIGHT
NO. 36-2082

1997 NOV 25 AM 10 59

DISTRICT COURT
TWIN FALLS COUNTY IDAHO
FILED _____

**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)	ORDER OF PARTIAL DECREE
)	
Case No. 39576)	For Water Right 36-02082
_____)	

On August 1, 1997, a *Special Master's Report and Recommendation* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 36-02082 is hereby decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED November 25, 1997.



 DANIEL C. HURLBUTT, JR.
 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 36-02082

1997 NOV 25 AM 10:58
DISTRICT COURT OF THE FIFTH
TWIN FALLS COUNTY IDAHO
FILED _____

NAME & ADDRESS: IDAHO POWER CO
PO BOX 70
BOISE ID 83707-0070

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 5.00 CFS

PRIORITY DATE: 12/10/1948

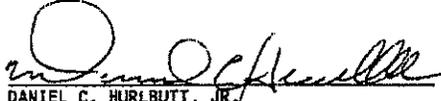
POINT OF DIVERSION: T07S R13E S11 NWSWNE Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	0.12 CFS
	COOLING	01-01 12-31	5.00 CFS
	FIRE PROTECTION	01-01 12-31	5.00 CFS

COOLING AT LOWER SALMON FALLS POWER PLANT.

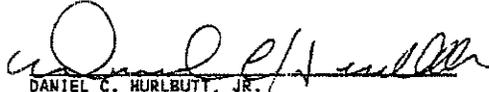
PLACE OF USE:

IRRIGATION	Within GOODING County
T07S R13E S02 Lot 7 (SESW) 2	
S11 Lot 2 (NENW) 3 Lot 2 (NWNW) 1	
6 ACRES TOTAL	
COOLING	Within GOODING County
T07S R13E S02 Lot 7 (SESW)	
FIRE PROTECTION	Within GOODING County
T07S R13E S02 Lot 7 (SESW)	
S11 Lot 2 (NENW)	


DANIEL C. HURLBUTT, JR.
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.


DANIEL C. HURLBUTT, JR.
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 36-02082

**ORDER AMENDING IRRIGATION PERIOD OF USE ELEMENT
IN PARTIAL DECREE AND INCORPORATING INTO PARTIAL
DECREE AN EXPRESS STATEMENT REGARDING GENERAL
PROVISIONS, *NUNC PRO TUNC***

A *Partial Decree* was entered for the above-captioned irrigation water right on November 25, 1997. The period of use element was decreed as "irrigation season." In *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998), the Idaho Supreme Court remanded with the directive to include specific dates for the period of use element. Following remand, IDWR filed a *Supplemental Director's Report, Reporting Area 3, IDWR Basin 36, Regarding Revision of Period of use (For Irrigation Water Uses) and Conjunctive Management General Provisions*, which included an irrigation period of use recommendation for this water right. No objections were filed to this recommendation and the time period for filing objections has now expired.

THEREFORE, IT IS ORDERED that the period of use for the irrigation element of the above-captioned water right is hereby amended and decreed as:

PERIOD OF USE: 02-15 11-30

IT IS FURTHER ORDERED that the *Partial Decree* for the above-captioned water right is hereby amended and decreed to contain the following:

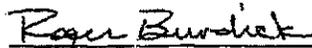
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I.C. section 42-1412(6).

This order is being entered *nunc pro tunc* as of the date the *Partial Decree* was issued and is not intended to modify any subsequent administrative changes for the water right, if any, which occurred following entry of the *Partial Decree*.

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.

Dated August 27, 2001



ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

WATER RIGHT
NO. 36-2710

1998 MAR -2 PM 2: 45

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

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

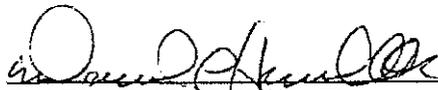
In Re SRBA)	ORDER OF PARTIAL DECREE
)	
Case No. 39576)	For Water Right 36-02710
_____)	

On January 13, 1998, a *Special Master's Report and Recommendation* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own

Therefore, IT IS ORDERED that water right 36-02710 is hereby decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*

DATED March 2, 1998.



 DANIEL C. HURLBUTT, JR.
 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 36-02710

1998 MAR -2 PM 2:45
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

NAME & ADDRESS: IDAHO POWER CO
PO BOX 70
BOISE ID 83707

SOURCE: SPRINGS CLEAR LAKE TRIBUTARY: CLEAR LAKE SNAKE RIVER

QUANTITY: 0.1 CFS

PRIORITY DATE: 07/24/1940

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

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	0.05 CFS
	COOLING	01-01 12-31	0.01 CFS
	DOMESTIC	01-01 12-31	0.04 CFS

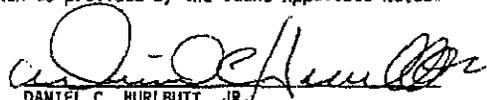
DOMESTIC USE FOR 1 HOME AND PARK RESTROOMS.

PLACE OF USE:

IRRIGATION	Within GOODING County
T09S R14E S02 Lot 7 (SWSE) 1	
S11 Lot 6 (NWNE) 0.5	
1.5 ACRES TOTAL	
COOLING	Within GOODING County
T09S R14E S02 Lot 7 (SWSE)	
DOMESTIC	Within GOODING County
T09S R14E S02 Lot 7 (SWSE)	

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.


DANIEL C. HURLBUTT, JR.
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 36-02710

ORDER AMENDING IRRIGATION PERIOD OF USE ELEMENT
IN PARTIAL DECREE AND INCORPORATING INTO PARTIAL
DECREE AN EXPRESS STATEMENT REGARDING GENERAL
PROVISIONS, *NUNC PRO TUNC*

A *Partial Decree* was entered for the above-captioned irrigation water right on March 02, 1998. The period of use element was decreed as "irrigation season." In *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998), the Idaho Supreme Court remanded with the directive to include specific dates for the period of use element. Following remand, IDWR filed a *Supplemental Director's Report, Reporting Area 3, IDWR Basin 36, Regarding Revision of Period of use (For Irrigation Water Uses) and Conjunctive Management General Provisions*, which included an irrigation period of use recommendation for this water right. No objections were filed to this recommendation and the time period for filing objections has now expired.

THEREFORE, IT IS ORDERED that the period of use for the irrigation element of the above-captioned water right is hereby amended and decreed as:

PERIOD OF USE: 03-15 11-15

IT IS FURTHER ORDERED that the *Partial Decree* for the above-captioned water right is hereby amended and decreed to contain the following:

This partial decree is subject to such general provisions necessary for the definition of the 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 42-1412(6).

This order is being entered *nunc pro tunc* as of the date the *Partial Decree* was issued and is not intended to modify any subsequent administrative changes for the water right, if any, which occurred following entry of the *Partial Decree*.

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.

Dated August 27, 2001



ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

WATER RIGHT
NO. 36-2037

1997 NOV 25 AM 10:58

DISTRICT COURT
TWIN FALLS COUNTY
FILED

**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)	ORDER OF PARTIAL DECREE
)	
Case No. 39576)	For Water Right 36--02037
_____)	

On August 27, 1997, a *Special Master's Report and Recommendation* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 36-02037 is hereby decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED November 25, 1997.



 DANIEL C. HURLBUTT, JR.
 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 36-02037

1997 NOV 25 AM 10:53

DISTRICT COURT-S
TWIN FALLS CO, IDAHO
FILED _____

NAME & ADDRESS: IDAHO POWER CO
PO BOX 70
BOISE ID 83707-0070

SOURCE: SPRING TRIBUTARY: SNAKE RIVER

QUANTITY: 0.3 CFS

PRIORITY DATE: 10/29/1921

POINT OF DIVERSION: T09S R18E S31 LOT 3 (NWSNW) Within JEROME County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	0.06 CFS
	COMMERCIAL	01-01 12-31	0.02 CFS
	COOLING	01-01 12-31	0.3 CFS
	DOMESTIC 3 HOMES	01-01 12-31	0.06 CFS

COOLING USE IS FOR TURBINES/BEARINGS AND COMMERCIAL USE FOR OFFICE/BATHROOMS.

PLACE OF USE:

IRRIGATION	Within JEROME County
T09S R17E S36 Lot 15 (NESE) 0.2	
R18E S31 Lot 9 (NWSW) 1.6	
1.8 ACRES TOTAL	
COMMERCIAL	Within JEROME County
T09S R17E S36 Lot 15 (NESE)	
COOLING	Within JEROME County
T09S R17E S36 Lot 15 (NESE)	
DOMESTIC	Within JEROME County
T09S R18E S31 Lot 9 (NWSW)	

DANIEL C. HURLBUTT, JR.
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.



DANIEL C. HURLBUTT, JR.
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 36-02037

ORDER AMENDING IRRIGATION PERIOD OF USE ELEMENT
IN PARTIAL DECREE AND INCORPORATING INTO PARTIAL
DECREE AN EXPRESS STATEMENT REGARDING GENERAL
PROVISIONS, *NUNC PRO TUNC*

A *Partial Decree* was entered for the above-captioned irrigation water right on November 25, 1997. The period of use element was decreed as "irrigation season." In *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998), the Idaho Supreme Court remanded with the directive to include specific dates for the period of use element. Following remand, IDWR filed a *Supplemental Director's Report, Reporting Area 3, IDWR Basin 36, Regarding Revision of Period of use (For Irrigation Water Uses) and Conjunctive Management General Provisions*, which included an irrigation period of use recommendation for this water right. No objections were filed to this recommendation and the time period for filing objections has now expired.

THEREFORE, IT IS ORDERED that the period of use for the irrigation element of the above-captioned water right is hereby amended and decreed as:

PERIOD OF USE: 03-15 11-15

IT IS FURTHER ORDERED that the *Partial Decree* for the above-captioned water right is hereby amended and decreed to contain the following:

This partial decree is subject to such general provisions necessary for the definition of the 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 42-1412(6).

This order is being entered *nunc pro tunc* as of the date the *Partial Decree* was issued and is not intended to modify any subsequent administrative changes for the water right, if any, which occurred following entry of the *Partial Decree*.

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.

Dated August 27, 2001


ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

**WATER RIGHT
NO. 36-15221**

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

2002 OCT 18 AM 10 47

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

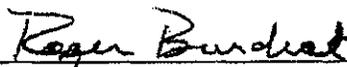
In Re SRBA)
Case No. 39576) **ORDER OF PARTIAL DECREE**
_____) **For Water Right 36-15221**
_____)

On August 29, 2002, a *Special Master's Report and Recommendation* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 36-15221 is hereby decreed as set forth in the attached *Partial Decree* Pursuant to I.R.C.P. 54(b).

DATED October 18, 2002



ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

ORDER OF PARTIAL DECREE

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.


Roger Byrdick
Presiding Judge of the
Snake River Basin Adjudication

WATER RIGHT
NO. 36-15357

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 36-15357

ORDER AMENDING IRRIGATION PERIOD OF USE ELEMENT
IN PARTIAL DECREE AND INCORPORATING INTO PARTIAL
DECREE AN EXPRESS STATEMENT REGARDING GENERAL
PROVISIONS, *NUNC PRO TUNC*

A *Partial Decree* was entered for the above-captioned irrigation water right on November 28, 1997. The period of use element was decreed as "irrigation season." In *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998), the Idaho Supreme Court remanded with the directive to include specific dates for the period of use element. Following remand, IDWR filed a *Supplemental Director's Report, Reporting Area 3, IDWR Basin 36, Regarding Revision of Period of use (For Irrigation Water Uses) and Conjunctive Management General Provisions*, which included an irrigation period of use recommendation for this water right. No objections were filed to this recommendation and the time period for filing objections has now expired.

THEREFORE, IT IS ORDERED that the period of use for the irrigation element of the above-captioned water right is hereby amended and decreed as:

PERIOD OF USE: 02-15 11-30

IT IS FURTHER ORDERED that the *Partial Decree* for the above-captioned water right is hereby amended and decreed to contain the following:

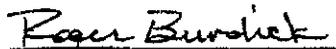
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I.C. section 42-1412(6)

This order is being entered *nunc pro tunc* as of the date the *Partial Decree* was issued and is not intended to modify any subsequent administrative changes for the water right, if any, which occurred following entry of the *Partial Decree*.

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.

Dated August 27, 2001



ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

WATER RIGHT
NO. 36-15358

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
Case No. 39576) I.R.C.P. 54(b) FOR
) Water Right 36-15358

1997 NOV 26 PM 2:42

DISTRICT COURT-SNAKE
TWIN FALLS COUNTY, IDAHO
FILED

NAME & ADDRESS: IDAHO POWER CO
PO BOX 70
BOISE ID 83707-0070

SOURCE: THOUSAND SPRINGS TRIBUTARY: SNAKE RIVER
 SNOW BANK SPRINGS SNAKE RIVER

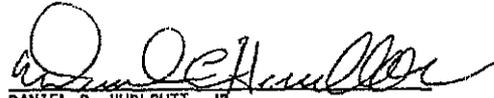
QUANTITY: 0.03 CFS

PRIORITY DATE: 06/20/1924

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

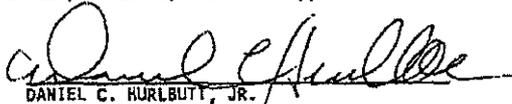
PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	0.03 CFS

PLACE OF USE: IRRIGATION Within GOODING County
 T08S R14E S08 Lot 4 (SESW) 1
 1 ACRES TOTAL


DANIEL C. HURLBUTT, JR.
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.


DANIEL C. HURLBUTT, JR.
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 36-15358

ORDER AMENDING IRRIGATION PERIOD OF USE ELEMENT
IN PARTIAL DECREE AND INCORPORATING INTO PARTIAL
DECREE AN EXPRESS STATEMENT REGARDING GENERAL
PROVISIONS, *NUNC PRO TUNC*

A *Partial Decree* was entered for the above-captioned irrigation water right on November 28, 1997. The period of use element was decreed as "irrigation season." In *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998), the Idaho Supreme Court remanded with the directive to include specific dates for the period of use element. Following remand, IDWR filed a *Supplemental Director's Report, Reporting Area 3, IDWR Basin 36, Regarding Revision of Period of use (For Irrigation Water Uses) and Conjunctive Management General Provisions*, which included an irrigation period of use recommendation for this water right. No objections were filed to this recommendation and the time period for filing objections has now expired.

THEREFORE, IT IS ORDERED that the period of use for the irrigation element of the above-captioned water right is hereby amended and decreed as:

PERIOD OF USE: 02-15 11-30

IT IS FURTHER ORDERED that the *Partial Decree* for the above-captioned water right is hereby amended and decreed to contain the following:

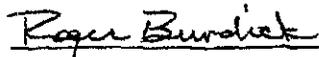
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I.C. section 42-1412(6).

This order is being entered *nunc pro tunc* as of the date the *Partial Decree* was issued and is not intended to modify any subsequent administrative changes for the water right, if any, which occurred following entry of the *Partial Decree*.

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.

Dated August 27, 2001


ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

WATER RIGHT
NO. 36-7104

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

2001 DEC 19 PM 4:18

In Re SRBA)
PARTIAL DECREE PURSUANT TO
Case No. 39576) I.R.C.P. 54(b) FOR
Water Right 36-07104

TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: IDAHO POWER COMPANY
PO BOX 70
BOISE, ID 83707

SOURCE: SPRINGS TRIBUTARY: SNAKE RIVER

QUANTITY: 0.30 CFS
81.20 AFY

THE QUANTITY OF WATER UNDER THIS RIGHT FOR DOMESTIC USE SHALL
NOT EXCEED 13,000 GALLONS PER DAY

PRIORITY DATE: 12/10/1969

POINT OF DIVERSION: T08S R14E S33 LOT 01 (SEWNNE) Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic	01-01 TO 12-31	0.04 CFS 1.20 AFY
	Irrigation	02-01 TO 10-31	0.30 CFS 80.00 AFY

DOMESTIC USE IS FOR A YEAR ROUND SCOUT CAMP FACILITY
THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY CONTINUE
TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT
ARE NOT EXCEEDED. THE USE OF WATER AFTER OCTOBER 31 UNDER THIS
REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED
LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A
PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE: Irrigation Within Gooding County
T08S R14E S33 LOT 01 (NWNE)20.0
20.0 Acres Total

Domestic Within Gooding County
Same as Irrigation

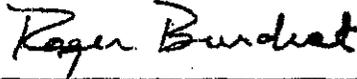
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
DOMESTIC USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE 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 42-1412(6)

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.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

WATER RIGHT
NO. 36-2478

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 36-02478

NOV 24 PM 4:01
DISTRICT COURT - 5
TWIN FALLS CO, IDAH
FILED

NAME & ADDRESS: IDAHO POWER CO
PO BOX 70
BOISE ID 83707-0070

SOURCE: TUCKER SPRINGS, UPPER TRIBUTARY: RILEY CREEK

QUANTITY: 3.21 CFS

THE APPROPRIATOR IS ENTITLED TO THE QUANTITY OF WATER DESCRIBED FOR STOCK WATER PURPOSES AT A POINT OF MEASUREMENT WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED, SO LONG AS THE QUANTITY DIVERTED AT THE POINT OF DIVERSION DOES NOT CONSTITUTE UNREASONABLE WASTE.

PRIORITY DATE: 10/21/1939

POINT OF DIVERSION: T07S R13E S36 NWSESE Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	0.06 CFS
	STOCKWATER	01-01 12-31	0.02 CFS
	COOLING	01-01 12-31	3.00 CFS
	DOMESTIC 8 HOUSES	01-01 12-31	0.13 CFS
	FIRE PROTECTION	01-01 12-31	3.00 CFS

COOLING IS FOR 2 POWER PLANTS.

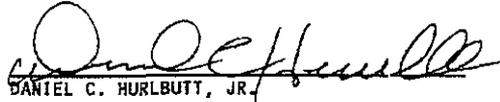
PLACE OF USE:

- IRRIGATION Within TWIN FALLS County
T08S R13E S02 Lot 4 (NWNW) 2
2 ACRES TOTAL
- STOCKWATER Within TWIN FALLS County
T07S R13E S34 Lot 6 (SWSW)
- COOLING Within TWIN FALLS County
T08S R13E S02 Lot 4 (NWNW)
S03 Lot 3 (NWNW)
- DOMESTIC Within TWIN FALLS County
T07S R13E S34 Lot 6 (SWSW)
T08S R13E S02 Lot 4 (NWNW)
- FIRE PROTECTION Within TWIN FALLS County
T07S R13E S34 Lot 6 (SWSW)
T08S R13E S02 Lot 4 (NWNW)
S03 Lot 3 (NWNW)


DANIEL C. HURLBUTT, JR.
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.



DANIEL C. HURLBUTT, JR.
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 36-02478

ORDER AMENDING IRRIGATION PERIOD OF USE ELEMENT
IN PARTIAL DECREE AND INCORPORATING INTO PARTIAL
DECREE AN EXPRESS STATEMENT REGARDING GENERAL
PROVISIONS, *NUNC PRO TUNC*

A *Partial Decree* was entered for the above-captioned irrigation water right on November 24, 1997. The period of use element was decreed as "irrigation season." In *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998), the Idaho Supreme Court remanded with the directive to include specific dates for the period of use element. Following remand, IDWR filed a *Supplemental Director's Report, Reporting Area 3, IDWR Basin 36, Regarding Revision of Period of use (For Irrigation Water Uses) and Conjunctive Management General Provisions*, which included an irrigation period of use recommendation for this water right. No objections were filed to this recommendation and the time period for filing objections has now expired.

THEREFORE, IT IS ORDERED that the period of use for the irrigation element of the above-captioned water right is hereby amended and decreed as:

PERIOD OF USE: 02-15 11-30

IT IS FURTHER ORDERED that the *Partial Decree* for the above-captioned water right is hereby amended and decreed to contain the following:

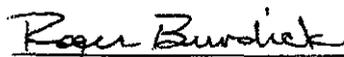
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I. C. section 42-1412(6).

This order is being entered *nunc pro tunc* as of the date the *Partial Decree* was issued and is not intended to modify any subsequent administrative changes for the water right, if any, which occurred following entry of the *Partial Decree*.

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.

Dated August 27, 2001



ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

WATER RIGHT
NO. 36-15388

EXHIBIT B

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NO. _____
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P.M. 2:05
FEB 16 1990
JOHN BASTIDA, CLERK
BY [Signature]

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IDAHO POWER COMPANY,) Case No. 81375
a corporation,)
)
Plaintiff,)
)
vs.) CONSENT JUDGMENT
)
STATE OF IDAHO, IDAHO DEPARTMENT)
OF WATER RESOURCES, et al.)
)
Defendants.)

Upon stipulation of Plaintiff and the State
Defendants, and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Idaho Power Company's water rights shall be as
follows (bracketed names below refer to Company projects):

- A. State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad), -37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls) entitle the Company to an unsubordinated right of 3900 c.f.s. average

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daily flow from April 1 to October 31, and 5600 c.f.s. average daily flow from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion. The Murphy gauging station is located at latitude 43°17'31", Longitude 116°25'12", in NW1/4 NE1/4 SE1/4 of Section 35 in Township 1 South, Range 1 West, Boise Meridian, Ada County Hydrologic Unit 17050103, on right bank 4.2 miles downstream from Swan Falls Power Plant, 7.5 miles NE of Murphy, at river mile 453.5.

B. The Company is also entitled to use the flow of the Snake River at its facilities to the extent of its actual beneficial use, but not to exceed those amounts stated in State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad), 37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls), but such rights in excess of the amounts stated in 1(A) shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the State in accordance with State law unless the depletion violates or will violate paragraph 1(A). Company retains its right to contest any appropriation of water in accordance with State law. Company further retains the right to compel State to take reasonable steps to insure the average daily flows established by this Agreement at the Murphy U.S.G.S. gauging station. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein. This paragraph shall constitute a subordination condition.

C. The Company's rights listed in paragraph 1(A) and 1(B) are also subordinate to the uses of those persons dismissed from this case pursuant to the contract executed between the State and Company implementing the terms of Idaho Code §§61-539 and 61-540.

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D. The Company's rights listed in paragraph 1(A) and 1(B) are also subordinate to those persons who have beneficially used water prior to October 1, 1984, and who have filed an application or claim for said use by June 30, 1985.

E. Company's ability to purchase, lease, own, or otherwise acquire water from sources upstream of its power plants and convey it to and past its power plants below Milner Dam shall not be limited by this agreement. Such flows shall be considered fluctuations resulting from operation of Company facilities.

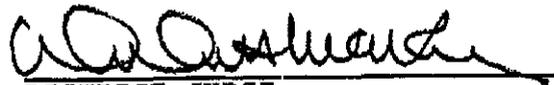
2. The above-captioned case is hereby dismissed without prejudice as to all remaining defendants other than the State defendants.

3. The above-captioned case is hereby dismissed with prejudice as against the State defendants as to all claims of plaintiff not resolved by the decisions of the Idaho Supreme Court reported as Idaho Power Company v. State of Idaho, 104 Idaho 570, 661 P.2d 736 and 104 Idaho 575, 661 P.2d 741 (1983) or by the entry of this Judgment.

4. The Swan Falls Agreement, dated October 25, 1984, shall not be merged into nor integrated with this Judgment, but shall remain in full force and effect independent of this Judgment.

5. Each and all parties shall bear their own costs.

DATED this 12th day of February, 1990.


DISTRICT JUDGE

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FILED 4/15 P.M.
MAR 9 1990
JOHN EASTDA - CLERK
BY *Michael M. ...* DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IDAHO POWER COMPANY,) Case No. 62237
a corporation,)
)
Plaintiff,)
)
vs.) CONSENT JUDGMENT
)
STATE OF IDAHO, IDAHO DEPARTMENT)
OF WATER RESOURCES, et al.)
)
Defendants.)

Upon stipulation of Plaintiff and the State
Defendants, and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Idaho Power Company's water rights shall be as
follows (bracketed names below refer to Company projects):

- A. State Water License Numbers 36-2013
(Thousand Springs), 37-2128 & 37-2472 (Lower
Malad), 37-2471 (Upper Malad), 36-2018
(Clear Lake), 36-2026 (Sand Springs),
02-2057 (Upper Salmon), 02-2001A, 02-2001B,
02-2059, 02-2060 (Lower Salmon), 02-2064,
02-2065 (Bliss), 02-2056 (Twin Falls),
02-2036 (Shoshone Falls), 02-2032, 02-4000,
02-4001, and Decree Number 02-0100 (Swan

1 Falls) entitle the Company to an
 2 unsubordinated right of 3900 c.f.s. average
 3 daily flow from April 1 to October 31, and
 4 5600 c.f.s. average daily flow from November
 5 1 to March 31, both to be measured at the
 6 Murphy U.S.G.S. gauging station immediately
 7 below Swan Falls. These flows are not
 8 subject to depletion. The Murphy gauging
 station is located at latitude 43°17'31",
 Longitude 116°25'12", in NW1/4 NE1/4 SE1/4
 of Section 35 in Township 1 South, Range 1
 West, Boise Meridian, Ada County Hydrologic
 Unit 17050103, on right bank 4.2 miles
 downstream from Swan Falls Power Plant, 7.5
 miles NE of Murphy, at river mile 453.5.

9 B. The Company is also entitled to use the
 10 flow of the Snake River at its facilities to
 11 the extent of its actual beneficial use, but
 12 not to exceed those amounts stated in State
 13 Water License Numbers 36-2013 (Thousand
 14 Springs), 37-2128 & 37-2472 (Lower Malad),
 15 37-2471 (Upper Malad), 36-2018 (Clear Lake),
 16 36-2026 (Sand Springs), 02-2057 (Upper
 17 Salmon), 02-2001A, 02-2001B, 02-2059,
 18 02-2060 (Lower Salmon), 02-2064, 02-2065
 19 (Bliss), 02-2056 (Twin Falls), 02-2036
 20 (Shoshone Falls), 02-2032, 02-4000, 02-4001,
 21 and Decree Number 02-0100 (Swan Falls), but
 22 such rights in excess of the amounts stated
 23 in 1(A) shall be subordinate to subsequent
 24 beneficial upstream uses upon approval of
 25 such uses by the State in accordance with
 26 State law unless the depletion violates or
 27 will violate paragraph 1(A). Company
 28 retains its right to contest any
 appropriation of water in accordance with
 State law. Company further retains the
 right to compel State to take reasonable
 steps to insure the average daily flows
 established by this Agreement at the Murphy
 U.S.G.S. gauging station. Average daily
 flow, as used herein, shall be based upon
 actual flow conditions; thus, any
 fluctuations resulting from the operation of
 Company facilities shall not be considered
 in the calculation of the minimum daily
 stream flows set forth herein. This
 paragraph shall constitute a subordination
 condition.

C. The Company's rights listed in
 paragraph 1(A) and 1(B) are also subordinate
 to the uses of those persons dismissed from
 Ada County Case No. 81375 pursuant to the

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contract executed between the State and Company implementing the terms of Idaho Code §§61-539 and 61-540.

D. The Company's rights listed in paragraph 1(A) and 1(B) are also subordinate to those persons who have beneficially used water prior to October 1, 1984, and who have filed an application or claim for said use by June 30, 1985.

E. Company's ability to purchase, lease, own, or otherwise acquire water from sources upstream of its power plants and convey it to and past its power plants below Milner Dam shall not be limited by this agreement. Such flows shall be considered fluctuations resulting from operation of Company facilities.

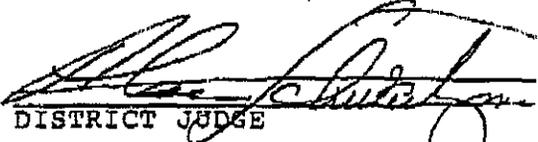
2. The above-captioned case is hereby dismissed without prejudice as to all remaining defendants other than the State Defendants.

3. The above-captioned case is hereby dismissed with prejudice as against the State defendants as to all claims of plaintiff not resolved by the decisions of the Idaho Supreme Court reported as Idaho Power Company v. State of Idaho, 10 Idaho 570, 661 P.2d 736 and 104 Idaho 575, 661 P.2d 741 (1983) or by the entry of this Judgment.

4. The Swan Falls Agreement, dated October 25, 1984 shall not be merged into nor integrated with this Judgment, but shall remain in full force and effect independent of this Judgment.

5. Each and all parties shall bear their own costs.

DATED this 7th day of March, 1990


DISTRICT JUDGE