

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

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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)
)
)
Case No. 39576)
)
_____)

MOTION FOR STAY OF
PROCEEDINGS ON IDAHO POWER
COMPANY WATER RIGHTS IN
BASINS 2, 36 AND 37, OR
ALTERNATIVELY TO
CONSOLIDATE PROCEEDINGS,
AND REQUEST FOR EXPEDITED
HEARING

The Idaho Power Company ("Idaho Power") hereby moves the SRBA Court for a stay of

proceedings on Idaho Power Company's water rights in Basins 2, 36 and 37, in light of the Complaint and Petition for Declaratory and Injunctive Relief filed by Idaho Power.

Alternatively, should the SRBA Court decline to stay these subcases, Idaho Power moves to consolidate the proceedings on its water rights in Basins 2, 36 and 37 into a unified proceeding before the Court, since only the SRBA Court has jurisdiction over the partial decrees issued on Idaho Power's water rights in Basin 36.

A. Idaho Power's Water Rights in Basins 2, 36 and 37 Involve Common Issues Regarding the Meaning and Effect of the Swan Falls Agreement

One of the major matters which must be addressed in conjunction with adjudication of Idaho Power's water rights in the SRBA is the effect of the 1984 Swan Falls Agreement. As stated by the SRBA Court, "[t]he *Swan Falls* Agreement needs to be addressed in the context of the SRBA to avoid future ambiguity regarding the subsequent effect of the SRBA." Order Designating Basin-Wide Issue No. 13 at 5, August 23, 2005.

Idaho Power water rights listed in and subject to the Swan Falls Agreement include: (a) thirteen water rights in Basin 2 (Water Right Nos. 02-2057, 02-2001A, 02-2001B, 02-2059, 02-2060, 02-2064, 02-2065, 02-2056, 02-2036, 02-2032, 02-4000, 02-4001 and Decree No. 02-100); (b) three water rights in Basin 36 (Water Right Nos. 36-2013, 36-2018 and 36-2026); and (c) three water rights Basin 37 (Water Right Nos. 37-2128, 37-2472 and 37-2471). Although these water rights are in three separate subbasins for purposes of IDWR Director's Reports and partial decrees of the SRBA Court, they involve common issues related to the meaning and effect of the Swan Falls Agreement.

B. The SRBA Court Should Make a Comprehensive Determination of Issues Regarding the Meaning and Effect of the Swan Falls Agreement Through the SRBA Action Initiated by Idaho Power's Complaint and Petition

On or about May 10, 2007, Idaho Power filed a Complaint and Petition for Declaratory and Injunctive Relief (“Complaint and Petition”) with the SRBA Court. The Complaint and Petition seeks relief with respect to a number of issues concerning the meaning and effect of the Swan Falls Agreement, including but not limited to: (a) a declaration that there was no “trust water” available when the Agreement was executed in 1984, and therefore no trust *res* and no valid trust established under the Swan Falls Settlement; (b) a reformation of the Swan Falls Settlement based on mutual mistake of fact regarding the existence of trust water, eliminating any asserted trust while retaining provisions unrelated to the purported trust; (c) a declaration that to the extent there is a valid trust, the trust *res* is water and not water rights, the State of Idaho does not hold legal title to Idaho Power’s water rights, and title to the water rights referenced in the Swan Falls Agreement is quieted in Idaho Power; (d) a declaration that Idaho Power’s water rights for hydropower generation are not, through the Swan Falls Settlement or otherwise, subordinate to the use of water for ground water recharge. The Complaint and Petition seeks other declaratory and injunctive relief with respect to issues related to the Swan Falls Agreement.

Idaho Power's Complaint and Petition comprehensively frames the issues raised by the Swan Falls Agreement which Idaho Power believes must be determined by the SRBA Court in conjunction with the Court's adjudication of its water rights. To the extent that the State of Idaho or other parties believe other issues need to be litigated as part of the comprehensive determination of issues raised by the Agreement, they may seek to raise such issues through the filing of appropriate pleadings. In any event, such comprehensive determination by the SRBA

Court of issues regarding the meaning and effect of the Swan Falls Agreement will serve judicial economy, and will avoid the risk of inconsistent rulings by special masters handling the Idaho Power water rights in different subbasins and on different schedules.

C. The Court Should Reject the Idaho Attorney General's Attempt to Obtain a Piecemeal Determination in One Subbasin of a Single Issue Regarding the Meaning and Effect of the Swan Falls Agreement

On December 22, 2006 and January 2, 2007, the Idaho Attorney General filed with the Idaho Department of Water Resources ("IDWR"), a number of "Notice[s] of Change in Water Right Ownership" concerning water right claims of Idaho Power. The Attorney General's Notices assert that the State of Idaho owns "legal title" to all or a portion of various Idaho Power water rights in Basins 2, 36 and 37, including water rights listed in the Swan Falls Agreement. These filings were apparently coordinated with IDWR, as less than a week after the Attorney General's initial filing, IDWR filed with the SRBA Court its Director's Report for Basin 2, which essentially tracked the ownership claims as asserted in the Attorney General's Notices and recommended them accordingly.

With respect to Basin 37, IDWR had filed with the SRBA Court on or about November 1, 2005 a Director's Report which recognized Idaho Power as the sole owner of the water rights in Basin 37 referenced in the Swan Falls Agreement. However, following the Attorney General's filings, on February 14, 2007, IDWR filed various pages comprising an "Amended Director's Report" which also essentially tracked the ownership claims as asserted in the Notices filed by the Attorney General and recommended them accordingly.

Idaho Power's water rights in Basin 36 have already been determined in partial decrees issued by the SRBA Court in 1997. Indeed, as part of the earlier SRBA proceedings in Basin 36, IDWR had issued a Director's Report for Basin 36 recommending that the SRBA Court decree

these water rights as claimed in the name of Idaho Power Company. No objections were filed to the IDWR recommendations, by the State or any other parties, relating to ownership of the water rights. Nevertheless, the Idaho Attorney General filings several months ago included a Notice of Change in Water Right Ownership asserting that the State of Idaho holds "legal title" to these Basin 36 water rights. The Attorney General's filings provided no indication that these water rights had been already partially decreed by the SRBA Court in the name of Idaho Power almost a decade earlier. Nor have the Attorney General, or IDWR, provided any indication as to how the SRBA Court should proceed in light of the fact that these Basin 36 water rights have already been partially decreed.

Remarkably, the Attorney General has taken the position before the Special Master handling the Basin 37 water rights: (1) that the master should proceed to resolve the sole issue of the State's alleged "legal title" to the Idaho Power water rights; and (2) that this issue should be resolved solely in connection with Idaho Power's water rights in Basin 37 -- separate and apart from the proceedings in Basin 2, which encompasses most of Idaho Power's water rights subject to the Swan Falls Agreement, and in which Objections are not even due until December 5, 2007 and Responses are not due until February 5, 2008, and separate and apart from proceedings in Basin 36, in which Idaho Power's water rights have already been partially decreed in the name of Idaho Power Company.

The SRBA Court should reject the Attorney General's attempt to obtain a piecemeal determination of a single issue regarding the Swan Falls Agreement in one subbasin. The issue raised by the Attorney General concerning the State's alleged "legal title" to Idaho Power's water rights is included in the interrelated issues concerning the Swan Falls Agreement raised in Idaho Power's comprehensive Complaint and Petition. Therefore, it can and should be addressed in the

context of those interrelated issues.

Accordingly, Idaho Power requests that the SRBA Court stay the proceedings in Basins 2, 36 and 37, so that the Court can comprehensively address in an integrated proceeding issues regarding the meaning and effect of the Swan Falls Agreement. With Idaho Power's filing of its Complaint and Petition, the SRBA Court has a vehicle to proceed with resolution of these issues. Not only will the requested stay serve judicial economy, but it will avoid the risk of inconsistent rulings by special masters handling the Idaho Power water rights in different subbasins and on different schedules.

D. Alternatively, the SRBA Court Should Consolidate the Subcases Involving Idaho Power's Water Rights in Basins 2, 36 and 37

Idaho Power strongly believes that the SRBA Court should proceed to comprehensively resolve all issues related to the meaning and effect of the Swan Falls Agreement in an integrated proceeding pursuant to Idaho Power's Complaint and Petition. However, in the event that the SRBA Court is not inclined to issue the requested stay, Idaho Power requests that the Court consolidate the Basin 2, 36 and 37 proceedings regarding Idaho Power's water rights affected by the Swan Falls Agreement before the SRBA Court, since only the SRBA Court has jurisdiction over the partial decrees it issued on Idaho Power's water rights in Basin 36. This approach would also serve judicial economy and avoid the risk of inconsistent rulings on Swan Falls issues from different special masters handling different water rights on different schedules.

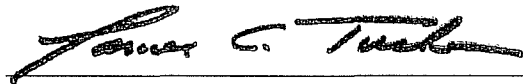
CONCLUSION

For the reasons set forth above, Idaho Power respectfully requests that the SRBA Court stay the proceedings on Idaho Power's water rights in Basins 2, 36 and 37, in light of the Complaint and Petition for Declaratory and Injunctive Relief filed by Idaho Power.

Alternatively, should the SRBA Court decline to stay these subcases, Idaho Power requests that the Court consolidate the proceedings on its water rights in Basins 2, 36 and 37 into a unified proceeding before the SRBA Court. Idaho Power respectfully requests an expedited hearing on this motion.

Dated this 10th day of May, 2007

Respectfully submitted,



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CERTIFICATE OF MAILING

I certify that on May 10th, 2007, I mailed copies of the **Motion for Stay of Basin Wide Issue No. 13, Motion for Stay of Proceedings on Idaho Power Company Water Rights in Basins 2, 36 and 37 or Alternatively to Consolidate Proceedings, and Complaint and Petition for Declaratory and Injunctive Relief**, to the following persons:

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