

## **STATE OF IDAHO**

OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE WASDEN

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### **Attorney General obtains decision upholding Swan Falls Settlement**

(Boise) – The State of Idaho has obtained a court decision that maintains state control of Snake River Water above Swan Falls Dam, Attorney General Lawrence Wasden said. Fifth District Judge John Melanson, the Presiding Judge in the Snake River Basin Adjudication, issued his decision today.

The decision also reaffirms the 1984 Swan Falls Settlement with Idaho Power Company.

“The decision is a major victory for the State of Idaho because the state, not Idaho Power Company, will continue to control the use of the waters of the Snake River,” Attorney General Wasden said. “The contractual and legislative history left no room for doubt about the outcome of this case. In essence, the court has affirmed the principle that a deal is a deal.”

In 1984, after a bitter battle in the courts and the legislature, Idaho Power Company and the State agreed to resolve their differences by legislatively placing the company’s water rights above the minimum flows at Swan Falls Dam in a State-controlled trust. The trust provided for reallocation of water rights to new water uses in accordance with a legislative plan.

Recently, Idaho Power sued the State to invalidate the trust and have the hydropower water rights decreed in the name of the company.

In deciding the case in the State’s favor, Judge Melanson held that “Exhibit 7B [of the Agreement] clearly and unambiguously provides that any portion of Idaho Power’s water rights in excess of the minimum flows are held in trust by the State, by and through the Governor, for the use and benefit of Idaho Power for power purposes and of the people of the State of Idaho.”

The court rejected Idaho Power’s argument that the contract did not provide for a trust. “It is inconceivable that Idaho Power would enter into a contract with one of the conditions of the contract being that the State pass legislation entirely inconsistent with the body of the contract or the intent of the parties,” Judge Melanson wrote in his decision.