

## MEMORANDUM OF AGREEMENT

WHEREAS, the Swan Falls Settlement recognized that the resolution of Idaho Power Company's water rights and the recognition thereof by the State of Idaho, together with the State Water Plan, provided a sound comprehensive plan best adapted to develop, conserve, and utilize the water resources of the Snake River in the public interest; and

WHEREAS, the Swan Falls Settlement provided that the State shall enforce the State Water Plan and shall assert the existence of water rights held in trust by the State; and

WHEREAS, the Swan Falls Settlement reconfirmed that the minimum daily flow at Milner Dam shall remain at zero, and that for the purposes of the determination and administration of rights to the use of the waters of the Snake River or its tributaries downstream from Milner Dam, no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered; and

WHEREAS, the Swan Falls Settlement recognized that the establishment of a zero minimum flow at Milner Dam allowed existing uses above Milner to continue and for some additional development above Milner, and further recognized that the zero minimum flow means that river flows downstream from Milner Dam to Swan Falls Dam at times may consist almost entirely of ground-water discharge and that therefore the Eastern Snake Plain Aquifer (ESPA) must be managed as an integral part of the Snake River; and

WHEREAS, the Swan Falls Settlement recognized that the amount of development that can take place without affecting the average daily flows of 3,900 CFS from April 1 to October 31 and 5,600 CFS from November 1 to March 31 as measured at the Murphy Gaging Station would depend on the nature and location of each new development, as well as the implementation of new practices to augment the stream flows; and

WHEREAS, the Swan Falls Settlement recognized that maintenance of inexpensive hydropower resources contributes to a positive economic climate for the creation of new jobs for Idahoans and thus future water rights allocation decisions should weigh the benefits to be obtained from each development against the probable impact it will have on hydropower resources; and

WHEREAS, the Swan Falls Settlement recognized methods that enhance stream flows, such as in-stream storage and aquifer recharge projects, benefit both agricultural development and hydropower generation and deserve study to determine their economic potential, their impact on the environment, and their impact on hydropower generation; and

WHEREAS, flows passing Milner Dam provide opportunities for hydropower generation and under the Swan Falls Settlement the Idaho Power Company has a right to use such flows when available at its facilities; and

WHEREAS, the State, through the Eastern Snake Plain Aquifer Comprehensive Aquifer Management Plan (ESPA CAMP), a component of the State Water Plan, intends to implement managed recharge as part of a series of comprehensive measures to enhance the water supply of the ESPA and the Snake River; and

WHEREAS, it is important that the effects of implementation of managed recharge be understood in order to permit the State to make informed water management and planning decisions that are in the public interest as provided by chapter 17 title 42 Idaho Code; and

WHEREAS, the Idaho Power Company participated in the development of the ESPA CAMP and as part of the Phase I actions is cooperating with the implementation of a recharge program between Milner Dam and American Falls; and

WHEREAS, the coordination and consideration of the respective interests of the State and Idaho Power Company with regard to managed recharge furthers their mutual interest in honoring the commitments made as part of the Swan Falls Settlement.

NOW THEREFORE, the parties agree as follows:

1. It is in the mutual interest of the parties to work cooperatively to uphold and implement the principles established by the Swan Falls Settlement.
2. ESPA CAMP, as adopted by the Idaho Water Resource Board (January 2009) and approved by the Idaho Legislature as a component of the state water plan, establishes a long-term hydrologic target for managed aquifer recharge from 150,000 to 250,000 acre feet on an average annual basis. Amendment of this long-term hydrologic target for managed recharge shall constitute a change in the state water plan as contemplated by Article 15, § 7 of the Idaho Constitution and the legislation approving CAMP, and therefore must be adopted pursuant to Idaho Code § 42-1734B, as it currently exists or as it may be amended hereafter.
3. The purpose of this memorandum of agreement is to recognize that implementation of managed recharge will have an effect on the flow characteristics of the Snake River above and below Milner Dam and to confirm that the relative merits of recharge proposals in addition to or different than that provided for in Phase I of ESPA CAMP will be considered through the adaptive management process set forth in Section 4 of ESPA CAMP. If the Board proposes to increase the 100,000 acre-foot average annual ESPA CAMP Phase I target for managed aquifer recharge by more than 75,000 acre-feet prior to January 1, 2019, the Board must obtain legislative approval for such increase.

The Board and the Director will consider, in accordance with state law, any information received in determining whether a managed recharge proposal is in the public interest.

4. Further, the parties recognize it is in their mutual interest to work cooperatively to explore and develop a managed recharge program for the Snake River Basin above Swan Falls Dam that achieves to the extent possible benefits for all uses including hydropower and therefore agree that in connection with the development and consideration of proposals for managed recharge that may be in addition to or different than that provided for in Phase I of the ESPA CAMP, the State of Idaho, through the Idaho Water Resource Board (the Board):
  - a. will provide notice to Idaho Power Company of such managed recharge proposals together with an opportunity to meet and confer with the Board on the potential costs and benefits of such proposals and ways to implement managed recharge to achieve the mutual interests of the State and Idaho Power Company; and
  - b. will provide an opportunity for Idaho Power Company to appear before the Board and present information relative to any concerns the Company may have about a managed recharge proposal;
5. The State, through the Governor and the Idaho Water Resource Board, will in good faith cooperate with and support Idaho Power Company in any regulatory proceeding before the Idaho Public Utilities Commission to address any rate, or other impacts directly attributable to the implementation of managed recharge.
6. Idaho Power Company acknowledges that the decision of whether to proceed with the implementation of managed recharge is fundamentally a public policy decision of the State of Idaho and that nothing in this memorandum of agreement shall be construed to limit or interfere with the authority of the State of Idaho to authorize managed recharge in accordance with applicable state law.
7. Nothing in this memorandum of agreement shall be construed to preclude Idaho Power Company from exercising any rights it may have under state law to challenge the State's implementation of managed recharge. While Idaho Power Company retains its right under the Swan Falls Settlement to contest any appropriation of water, including but not limited to appropriations for recharge, in accordance with State law, the Company shall not have a right to assert that implementation of managed recharge is precluded by the Swan Falls Settlement.

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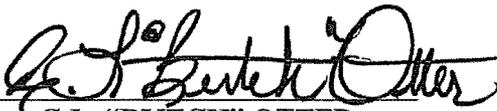
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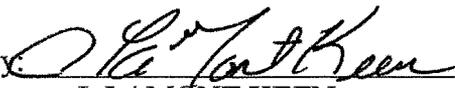
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DATED this 6<sup>th</sup> day of May 2009.

STATE OF IDAHO

IDAHO POWER COMPANY

By:   
C.L. "BUTCH" OTTER  
Governor of the  
State of Idaho

By:   
J. LAMONT KEEN  
President  
and Chief Executive Officer

By:   
TERRY T. UHLING  
Chairman  
Idaho Water Resource Board