MEMORANDUM OF AGREEMENT

Between:

Idaho Department of Fish and Game
Idaho Department of Environmental Quality
Idaho Rivers United
Trout Unlimited
Henry's Fork Foundation
Idaho Water Users Association
Idaho Power Company
A&B Irrigation District
Burley Irrigation District
Milner Irrigation District
Twin Falls Canal Co.
American Fall Reservoir District No. 2
United States Bureau of Land Management
Idaho Water Resource Board

Regarding:

Establishment of an Environmental Resources Technical Working Group and Protocol for Review and Recommendations Concerning Potential Impact of Managed Ground Water Recharge Under the Idaho Water Resource Board's Water Right Permit Nos. 01-07142 and 01-10609 on Aquatic, Wildlife, and Recreation Resources and on Water Quality.

WHEREAS, the goal of the Eastern Snake Plain Aquifer Management Plan ("ESPA CAMP") is to sustain the economic viability and social and environmental health of the Eastern Snake Plain by adaptively managing a balance between water use and supplies; and

WHEREAS, the ESPA CAMP provides for continued effort to identify and address all water use needs affected by the ESPA CAMP, including the integration of environmental considerations in decision making; and

WHEREAS, the objectives of the ESPA CAMP are to:

1. Increase predictability for water users by managing for a reliable supply
2. Create alternatives to administrative curtailment
3. Manage overall demand for water within the Eastern Snake Plain
4. Increase discharge to the aquifer
5. Reduce withdrawals from the aquifer; and

WHEREAS, the ESPA CAMP provides opportunities for managing available water supply and demand to address current and future water use needs including, but not limited to, those for irrigated agriculture, aquaculture, industry, hydropower,

municipalities, real estate development, and domestic users and to protect environmental values; and

WHEREAS, the ESPA CAMP provides for the establishment of an Implementation Committee and operating protocol to ensure continued public involvement and participation in the implementation of the ESPA CAMP; and

WHEREAS, under the ESPA CAMP, the Implementation Committee is to provide a forum for discussing Phase I implementation, establishing benchmarks for evaluating the effectiveness of actions, coordinating with water users and managers, evaluating and addressing environmental issues and identifying and pursuing funding opportunities; and

WHEREAS, the ESPA CAMP provides for an ongoing process for assessing, among other things, environmental issues related to implementation of aquifer management strategies, including managed aquifer recharge

NOW THEREFORE, in consideration of these recitals, the promises and covenants contained herein and other good and valuable consideration, including the time, effort, and expense of the Parties to negotiate and enter into this Memorandum of Agreement, the parties agree as follows:

(a) Upon issuance of the water right permits 01-07142 and 01-10609, the Idaho Water Resource Board ("IWRB") will establish an Environmental Resources and Technical Working Group ("Working Group") as a component of the Implementation Committee to provide information and recommendations to the IWRB regarding any potential impact on aquatic, wildlife, and recreation resources and on water quality resulting from the exercise of the water right permits.
(b) The Working Group will be composed of representatives from the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, Idaho Rivers United, Trout Unlimited, the Henry's Fork Foundation, the Idaho Water Users Association, Idaho Power Company, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Co., Twin Falls Canal Co., American Fall Reservoir District No. 2, United States Bureau of Land Management, and other stakeholders with technical expertise relevant to the potential impact of managed ground water recharge under the IWRB water right permits on aquatic, wildlife, and recreation resources and on water quality.
(c) The Working Group will be convened at least twice annually. Additional meetings will be held as needed or requested.
(d) One meeting will be held each calendar year prior to the initiation of any planned recharge activities. The meetings will provide an opportunity for discussion of potential impacts of the planned recharge activities on aquatic, wildlife, and recreation resources and on water quality and consideration of recommendations for minimizing and/or mitigating any potential impacts.

(e) The Working Group's recommendations will be set out in a memorandum and submitted to the IWRB for consideration at the next regularly scheduled IWRB meeting, prior to the implementation of the planned recharge activities.
(f) Working Group members will also have an opportunity to provide additional information to the IWRB should they wish to do so.
(g) Each calendar year, following the termination of managed recharge activities Working Group participants will meet to consider:
    (1) Actual managed recharge accomplishments
    (2) Information related to any impacts on aquatic, wildlife, and recreation resources, and on water quality resulting from managed recharge activities
    (3) Information needs related to future recharge activities
    (4) Protocols necessary to ensure consideration of potential impacts on aquatic, wildlife, and recreation resources and on water quality of future recharge activities
(h) The Working Group's review and recommendations for future recharge activities will be set out in a memorandum and submitted to the IWRB for consideration at the next regularly scheduled IWRB meeting.
(i) Working Group members will also have an opportunity to provide additional information to the IWRB should they wish to do so.
(j) The IWRB will consider the Working Group's review and recommendations in subsequent decision making regarding managed recharge activities.

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James C. Tucker
Senior Counsel
JTucker@idahopower.com

January 21, 2016

sbedke@house.idaho.gov
Scott Bedke
Speaker of the House
P.O. Box 89
Oakley, Idaho 83346

Re: Draft Senate Concurrent Resolution [DRKAG080]

Dear Speaker Bedke:

Thank you for giving Idaho Power the opportunity to review the draft Senate Concurrent Resolution [DRKAG080] currently being considered by the Legislature. Passage of the draft resolution will result in a change in the Eastern Snake River Plain Aquifer Comprehensive Aquifer Management Plan (ESPA CAMP) Phase I annual average recharge target from 100,000 acre-feet to 250,000 acre-feet. We understand that this change in the Phase I target is being proposed by the Idaho Water Resource Board (Board), and considered by the Legislature, in furtherance of the June 30, 2015 settlement agreement between certain surface water users, collectively known as the Surface Water Coalition (SWC), and various ground water users on the ESPA, collectively known as the Idaho Ground Water Appropriators, Inc. (IGWA). We further understand that the central purpose of that agreement is to stabilize and ultimately reverse declining ground water levels in the ESPA in an effort to ensure a certain and sustainable water supply for not only those water users participating in the settlement but also to other water users that rely on the ESPA and the connected Snake River to support their water rights. In this context, the Idaho Power Company supports the settlement agreement and the draft resolution which the Company understands is important to its implementation.

The change in the Phase I target is being proposed by the Board, and considered by the Legislature, consistent with the Framework Reaffirming the Swan Falls Agreement (Reaffirmation Agreement, March 2009), and the complementary Memorandum of Agreement (MOA, May 2009), between the State of Idaho and Idaho Power Company. Through the Reaffirmation Agreement the State and the Company reconfirmed the continuing validity of the 1984 Swan Falls Agreement and recognized that the effective management of Idaho's water resources remains critical to the public interest of the State by sustaining economic growth, maintaining reasonable electric rates, protecting and preserving existing water rights, and protecting water quality and environmental values. The State and the Company further recognized that it was in their long-term interest to cooperate regarding management of the water resources of the Snake River basin, including the development of a mutually acceptable management plan to monitor, measure and sustain spring and surface water flows for the reach of



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Boise, ID 83702

the Snake River from Milner Dam to the Murphy gaging station. The Company continues to work with the State on these important issues and recognizes that the SWC-IGWA settlement may have some application to the below Milner management plan being developed.

The 2009 MOA referenced that the ESPA CAMP, as component of the state water plan, established a long-term target for managed recharge from 150,000 to 250,000 acre-feet on an annual average basis and provided that any change in that long term target would constitute a change in the state water plan as contemplated by Article 15, § 7 of the Idaho Constitution and the legislation approving the ESPA CAMP. We understand that this draft resolution does not result in a change in that long-term recharge target and therefore is not a change or amendment to the state water plan. The resolution simply addresses the obligation of the Board, as required by the MOA, to obtain legislative approval for any increase in the Phase I ESPA CAMP recharge target of 100,000 acre-feet by more than 75,000 acre-feet prior to January 1, 2019. Consistent with the MOA, any proposed change to the ESPA-CAMP long-term target of 250,000 acre-feet on an annual average basis would still constitute a change in the state water plan and require the requisite legislative approval.

The MOA further recognized that it was in the mutual interests of the State and the Company to work cooperatively to explore and develop a managed recharge program for the Snake River Basin above Swan Falls Dam that benefits all water uses including hydropower. In furtherance of that objective, the MOA provided that in considering and developing managed recharge alternatives that the Board would provide the Company with notice of the proposed alternative and an opportunity to confer with the Board on opportunities for implementing managed recharge in a manner that addresses the mutual interests of the State and the Company. Over the past several years, the Company has been cooperating with the Board, and IDWR, on recharge and related water management issues. The Company looks forward to continuing to work with the Board on the implementation of an effective managed recharge program for the ESPA that promotes the sustainability of the ESPA and the connected Snake River and also addresses the objectives of the SWC-IGWA settlement. As Governor Otter recently recognized "preserving and protecting Idaho's water is crucial to our continued economic growth and increased prosperity. Our renewable and "green" hydroelectric resources alone make Idaho the envy of other states in the West and a magnet for businesses that put a premium on environmental sustainability."

Again, thank you for the opportunity to review the draft resolution.

Sincerely,

James C. Tucker

JCT:sh
cc: Governor Butch Otter
Senator Steve Bair
Roger Chase, IWRB
Clive Strong, Idaho Attorney General

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RECEIVED
MAR 21 2013
DEPARTMENT OF WATER RESOURCES

James C. Tucker
jtucker@idahopower.com
208-388-2112

March 19, 2013

Craig L. Saxton
Water Rights Supervisor
Idaho Department of Water Resources
P.O. Box 83270
Boise, Idaho 83702-0098

Re: IWRB Applications: 1-10612, 1-10609, 1-10613, 1-7142, 21-13160, 21-7577, 21-7578, 21-7580

Dear Mr. Saxton:

Thank you for your letter of February 25, 2013 regarding the above recharge applications filed by the Idaho Water Resource Board (Board). As your letter acknowledges, the Idaho Power Company (Company) filed a Notice of Protest to the original applications filed by the Board that form the basis for the four consolidated applications. With the consolidation of these applications, together with the four applications that were not modified, the Board now has a total of eight (8) applications pending before the Department. Idaho Power Company wishes to continue to participate in the processing of all of the pending applications.

The Board's letter of January 15, 2013 resubmitting the above applications references the 2009 Framework Reaffirming the Swan Falls Settlement, where the State and the Company recognized that it was in their mutual interest to work cooperatively to explore and develop a managed recharge program for the Snake River Basin that achieves, to the extent possible, benefits for all water uses, including hydropower. While the Company's participation with the pending applications will be as a protestant, it is in furtherance of that common objective that the Company participates in the processing of these applications.

Please notify the undersigned of any ongoing administrative action on the above applications.

Sincerely,

James C. Tucker

JCT:sh
cc: Harriet Hensley/Idaho AG-IDWR
IWRB, Chairman Roger Chase, c/o IDWR.

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**SUMMARY**
**OF**
**SWAN FALLS REAFFIRMATION SETTLEMENT**

**Prepared by State of Idaho and Idaho Power Company**

The 2009 Framework Reaffirming the Swan Falls Settlement (2009 Framework) sets forth the conditions for settling the current litigation. The terms "Framework" and "Reaffirming" are used intentionally to connote two key points. First, the 2009 Framework is a road map for reaching settlement rather than a final settlement document. Article II of the 2009 Framework describes the executive, legislative and judicial actions that collectively will constitute the settlement of the pending litigation and lays the foundation for cooperative resolution of other important issues. Second, the parties intend the proposed 2009 Reaffirmation Settlement to reconfirm rather than change any of the terms and conditions of the 1984 Swan Falls Settlement. This intent is reflected in the following language from the Framework:

> The parties through this Framework and its Exhibits reaffirm all aspects of the Swan Falls Settlement. This Framework and its Exhibits are consistent with the Swan Falls Settlement and clarify the original intent of the Swan Falls Settlement. Nothing in this Framework or its Exhibits changes, modifies, amends or alters any aspect of the Swan Falls Settlement.

2009 Framework Reaffirming the Swan Falls Settlement at 7. Thus, the parties intend that the 2009 Framework and its Exhibits will be interpreted in harmony with the 1984 Swan Falls Settlement.

The proposed 2009 Reaffirmation Settlement will resolve three issues regarding the interpretation of the 1984 Swan Falls Settlement. First, consistent with I.C. 42-203B, it will reaffirm 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 are to be considered. As such, the hydropower water rights for the Idaho Power Company facilities located on the reach of the Snake River between Milner Dam and the Murphy Gage carry no entitlement to demand the release of natural flow past Milner Dam or to seek administration of the water rights diverting the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam. Second, it will reaffirm the Swan Falls Agreement by decreeing the hydropower water rights for Idaho Power Company's facilities between the Milner Dam and the Murphy Gage consistent with the SRBA District Court's Memorandum Decision and Order on Cross-Motions for Summary Judgment in Consolidated Subcase 00-92023(92-(23) dated April 18, 2008. Finally, it will reaffirm that the 1984 Swan Falls Settlement does not preclude use of water for aquifer recharge.

There are four Articles in the 2009 Framework Reaffirming the Swan Falls Settlement – each has a separate purpose.

Article I provides general background principles from the 1984 Swan Fall Settlement drawn from the 1984 Swan Falls Agreement, the 1984 Swan Falls Framework and the 1985 Idaho Water Resource Board resolution approving amendments to the Idaho State Water Plan that are relevant to the issues being resolved through the 2009 Reaffirmation Settlement. The fact that the 2009 Framework does not recite all of the provisions of the 1984 Swan Falls Settlement does not diminish the continuing importance or effect of other provisions of the 1984 Settlement. Rather, the 2009 Framework expressly reaffirms all aspects of the 1984 Swan Falls Settlement and does not alter or revise in any way the statutory provisions adopted as part of that Settlement, including but not limited to those provisions applicable to agriculture and the family farming tradition in Idaho.

Article II, as noted above, is the road map for resolving the current litigation. It provides for entry of partial decrees for the hydropower water rights at issue and for entry of an order dismissing Idaho Power Company's complaint, but only if the proposed legislation and Memorandum of Agreement are completed to the satisfaction of the State and Idaho Power Company. Assuming these actions are taken and the SRBA District Court enters partial decrees and a dismissal order acceptable to the State, Idaho Power Company and the other parties to Subcase 00-92023, the current litigation will be resolved. Otherwise, either the State or Idaho Power Company has the option of voiding the Framework and the proposed settlement and continuing the litigation.

Article III identifies certain issues that will be the subject of future discussions between the State, Idaho Power Company and other affected interests. The parties intend such discussions to be inclusive rather than exclusive. Moreover, nothing in Article III is intended to define the rights or obligations of any person, reinterpret the Swan Falls Settlement, or prejudice any party affected by such issues. For example, the reference to discussions regarding the establishment of an effective marketing system does not require any action by, or impose any obligations on, any person or entity. It is a commitment to have a good faith discussion of the issues associated with the water marketing issue and does not presuppose any particular outcome from such discussions. Likewise, the discussions regarding an acceptable program to monitor and measure flows at the Murphy Gage and procedures for re-evaluating term permits approved under Idaho Code § 42-203C do not contemplate any changes to the Swan Falls Settlement. Rather, these two issues, like the others identified in Article III, are illustrative of issues that warrant further discussion to determine whether an accord can be reached. Again, they do not presuppose any particular outcome from such discussions.

Article IV of the 2009 Framework contains general provisions relating to the intent and effect of the Settlement. This Article begins with the

> confirmation recited above that the Framework and its Exhibits reaffirm the Swan Falls Settlement and neither modify, amend or alter any aspect of the Swan Falls Settlement. The remaining provisions of the Article are generally recitations of provisions of the Swan Falls Settlement, including the recognition that "upon implementation of the conditions contained in Article II of this Framework, any subsequent order by a court of competent jurisdiction, legislative enactment or administrative ruling shall not affect the validity of the Framework or the Swan Falls Settlement." *Id.* at 8; and that "the Framework does not confer or create any additional vested, compensable or enforceable rights or interest of any kind whatsoever in any legislative enactments passed pursuant to this Framework beyond those rights otherwise available under applicable law." *Id.* at 8.

The proposed Memorandum of Agreement between the Idaho Water Resource Board, the Governor and Idaho Power Company sets forth an understanding between the parties regarding certain protocols for implementation of managed recharge. Like the 2009 Framework, the preamble language in the Memorandum is drawn primarily from the 1984 Swan Falls Agreement, the 1984 Swan Falls Framework and the 1985 State Water Plan amendments. Again, the recitation of some but not all of the provisions of these documents is not intended to diminish or alter in any way the importance, or effect, of other provisions of the 1984 Swan Falls Settlement. Rather, the provisions cited are intended to provide context for the substantive aspects of the Memorandum of Agreement and relating that Agreement to the provisions of the 1984 Swan Falls Settlement that are being clarified by the 2009 Settlement.

Three aspects of the Memorandum of Agreement warrant discussion. First, the Memorandum acknowledges that through the 1984 Swan Falls Settlement the State and the Company have a shared interest in ensuring that the Swan Falls minimum flows are maintained and recognizes that it is in their mutual interest to work cooperatively to explore and develop a managed recharge program that achieves to the extent possible benefits for all uses including hydropower. In this context, the Memorandum of Agreement memorializes Idaho Power Company's right to participate in the public process before the Board for evaluating and approving managed recharge as provided by state law and present information relative to any issues associated with a managed recharged proposal.

Second, the Memorandum acknowledges that the Idaho Water Resource Board adopted the Comprehensive Aquifer Management Plan (CAMP) and that the CAMP establishes a long-term hydrologic target for managed recharge from 150,000 to 250,000 acre-feet on an average annual basis and that any amendment of this long-term hydrologic target shall constitute a change in the State Water Plan. The Memorandum memorializes the Board's intent to implement managed recharge in phases and sets forth a protocol for phasing in managed recharge consistent with the adaptive management provisions of the CAMP. It further recognizes that the Board has discretion on how to implement the components of CAMP but provides the Board will seek legislative approval if it seeks to increase the CAMP Phase I recharge target of 100,000 acre-feet by

more than 75,000 acre-feet prior to January 1, 2019. Nothing in the Memorandum of Agreement, however, precludes the Board or the Legislature from changing how managed recharge is to be implemented provided they do so in accordance with state law.

Third, paragraph 5 of the Memorandum of Agreement provides that the Governor and the Idaho Water Resource Board will cooperate with and inform the Public Utilities Commission of any direct effects of managed recharge on hydropower generation capacity. This provision does not divest the Public Utilities Commission of its authority to independently evaluate Idaho Power's request. Rather, paragraph 5 is merely an extension of the recognition under the original Swan Falls Settlement and this Reaffirmation that the State should make informed decisions with regard to water management in an effort to enhance and manage the water supply in the Snake River for the benefit of agriculture, hydropower and other beneficial uses. Consistent with that recognition, Paragraph 5 provides that upon making such an informed decision with regard to the implementation of managed recharge, the Governor and the Board will so inform the Public Utilities Commission of any "direct impacts" they determine may arise from implementation of managed recharge and acknowledge that such impacts may have an effect on the Company's ability to provide electrical energy. Paragraph 5 of the Memorandum does not require the Governor or the Board to take any affirmative position on whether a specific request by the Company is appropriate or necessary or on how any resulting rate impact should be allocated.

Senate Bill 1167 proposes that managed recharge projects be subject to the same review process applicable to storage reservoirs under Idaho Code § 42-1737 because managed recharge may have effects on surface flows similar to those of a storage reservoir. The bill does not apply to incidental recharge.

Senate Bill 1185 clarifies that the Swan Falls Agreement does not preclude use of water for recharge by removing the reference to the Agreement in Idaho Code § 42-234 and repealing Idaho Code § 42-4201A. In addition, this bill would consolidate state recharge policy in Idaho Code § 42-234. The parties anticipate amending this bill or submitting a substitute bill that will clarify the intent of subsection 3 of Senate Bill 1168.

Senate Bill 1169 reconfirms that the Company by reaffirming the 1984 Swan Falls Settlement is entitled to the same protection as contained in the uncodified provisions set forth in Chapter 14 of the 1985 Idaho Session Law at page 20-21. Because this Reaffirmation Settlement is an extension of the original Swan Falls Settlement, this bill is not intended to create any new or additional benefits for Idaho Power Company that do not already exist as a result of Chapter 14 of the 1985 Idaho Session Laws, it merely clarifies that the same protections afforded to Idaho Power by the 1985 legislation are extended to this reaffirmation settlement. This bill does not deprive the Public Utilities Commission of authority to independently determine the necessity or reasonableness of any of any rate request by Idaho Power Company.

The form of the partial decrees of the hydropower water rights are attached as Exhibit 6 to the 2009 Framework. The language of these decrees is consistent with the resolution of the three issues discussed above. In addition, the decrees recognized the

subordination provisions contained in the 1984 Swan Falls Agreement and the 1180 Contract executed as part of the 1984 Swan Falls Settlement.

In summary, the State and Idaho Power Company believe the terms of the proposed 2009 Reaffirmation Settlement are entirely consistent with the 1984 Swan Falls Settlement and provide an opportunity for the parties to set aside their differences and work in a cooperative manner to resolve other Snake River water management issues.

# 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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DATED this 6th day of May 2009.

STATE OF IDAHO

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

IDAHO POWER COMPANY

By: _____
J. LAMONT KEEN
President
and Chief Executive Officer

By: _____
TERRY T. UHLING
Chairman
Idaho Water Resource Board

1 Before the Idaho Water Resource Board

2 of the State of Idaho

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10 REPORTER'S TRANSCRIPT OF AUDIO RECORDING OF PROCEEDINGS

11 Meeting No. 7-09

12 April 30, 2009, 10:00 a.m.

13 before The Idaho Water Resource Board

14 Gary M. Chamberlain
Bob Graham
15 Charles "Chuck" Cuddy
Leonard Beck
16 Roger W. Chase
Vince Alberdi
17 Jerry R. Rigby

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24 Reported by
Debora Ann Kreidler
25 CSR No. 754

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Boise, ID 83701

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1 Before the Idaho Water Resource Board
2 of the State of Idaho
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10 REPORTER'S TRANSCRIPT OF AUDIO RECORDING OF PROCEEDINGS
11 Meeting No. 7-09
12 April 30, 2009, 10:00 a.m.
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Bob Graham
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16 Roger W. Chase
Vince Alberdi
17 Jerry R. Rigby
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22
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24 Reported by
Debora Ann Kreidler
25 CSR No. 754



1 ---oOo--
2 MS. McGOURTY: April 30, meeting 07.
3 THE CHAIRMAN: Let's take your seat. We're
4 going to call this meeting to order.
5 MR. RIGBY: Mr. Chairman, do I put on a tie?
6 THE CHAIRMAN: I don't care if you do. If
7 you want to put on a tie or not, that's up to you.
8 MS. McGOURTY: It's not done on the tape.
9 THE CHAIRMAN: We'll stall them for a minute
10 while Mr. Rigby puts on his tie.
11 MR. RIGBY: No, please don't. Please go
12 right ahead.
13 THE CHAIRMAN: Mr. Uhling hasn't showed up
14 yet. I'm sure he'll be along any minute. Let's
15 go ahead and get started. We've got a long day
16 ahead of us.
17 Let the record show that the Idaho Water
18 Resource Board Meeting No. 7-09 is now in session.
19 Role call.
20 MS. McGOURTY: Mr. Cuddy.
21 MR. CUDDY: Here.
22 MS. McGOURTY: Mr. Alberdi.
23 MR. ALBERDI: Here.
24 MS. McGOURTY: Mr. Chase.
25 MR. CHASE: Here.



1 MS. McGOURTY: Mr. Beck.
2 MR. BECK: Here.
3 MS. McGOURTY: Mr. Chamberlain.
4 MR. CHAMBERLAIN: Here.
5 MS. McGOURTY: Mr. Graham.
6 MR. GRAHAM: Here.
7 MS. McGOURTY: Mr. Rigby.
8 MR. RIGBY: Here.
9 MS. McGOURTY: Chairman Uhling, not yet.
10 Seven present.
11 THE CHAIRMAN: Is there any public comment?
12 Anyone that's not going to be on the agenda that
13 would like to address the Board at this time?
14 Yes, sir. Please come forward.
15 MR. HAZEN: My name is Bill Hazen. I work
16 with the Idaho Water Alliance. I don't know when
17 the proper place to address the Board is, but this
18 is the time, I guess right now. It's a public
19 comment. And I'm as public as it gets.
20 I visited with Vince Alberdi the other day
21 regarding what is the proper format. And so I'll
22 just try to bring you up to date.
23 The Idaho Water Alliance, of course, works
24 with aquifer recharge issues in the Magic Valley,
25 primarily, but also all over the state. They've



1 been quite active in the last few months trying to
2 get some things going. And it's all because of
3 Board Member Leonard Beck. A couple of years ago
4 we met with him and he said -- you know, we asked
5 him, Leonard, is the Board going to really get
6 active and actually find and develop some of these
7 recharge sites? And he said, hmm, probably not.
8 So what are you going to do? And he said, we'll
9 just come to a super plan. And so that's what
10 we've kind of done.
11 The Board, as you know, has a water right on
12 the Little Wood, Big Wood for 800 CFS. We've only
13 really got one spot that we can use that water in.
14 And it's felt locally that if we can figure out
15 some kind of a way to get water out of the Little
16 Wood River at Dietrich -- or excuse me, at
17 Richfield going towards Dietrich. What we're
18 talking about, gentlemen, is Silver Creek water.
19 That's what the Little Wood is in the fall and
20 wintertime is Silver Creek water, probably our
21 premier Trout stream in the country.
22 So currently, a group, including the Magic
23 Valley Groundwater District, the Lower Snake River
24 Aquifer Recharge District and the Idaho Water
25 Alliance, each ponied up some dollars to drill

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1 some exploratory test holes along the Dietrich
2 canal. We dug three of them two weeks ago.
3 Eaton's drilled those. IDWR geologist Lynn
4 Campbell was there to make sure that we had the
5 good well logs that we need to make these kind of
6 decisions. Monday, two of them went up there and
7 videoed those holes to see if, in fact, we had
8 enough cracks and fractures and cinders and stuff
9 like that in order to proceed. And on two of the
10 three, we will be taking water -- potable water up
11 there in BLM trucks to see what kind of water will
12 go down. And once we've done that, we'll make
13 some kind of a decision as to where to go.
14 Gooding, Lincoln and Jerome counties are all
15 interested as counties of trying to see if they
16 can help in providing the infrastructure to
17 perpetuate and get some recharge going. So we're
18 trying to get some of this stuff put together so
19 that we can maybe include some bore holes or some
20 more, actually, injection wells that the counties
21 would fund.
22 I do encourage you, as you talk about the
23 implementation of the CAMP plan, to recognize the
24 extreme need to have grunts on the ground to see
25 these things are done. We can have committee

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1 meetings; we can have all kinds of things. But
2 unless you actually formulate and decide how
3 you're going to get those plans in effect, and
4 those people that are on the ground tell you where
5 the good spots are, who's the people that are
6 players, how we can get this done, it will never
7 happen. So please, please consider the grunt end
8 of the deal when we get down to actually getting
9 implementation plans done.
10 Thank you.
11 THE CHAIRMAN: Thank you for your comments.
12 Any other public comment?
13 Idaho Power Swan Falls Settlement Agreement.
14 HAL ANDERSON: Mr. Chairman, members of the
15 Board, first of all, I want to make sure that
16 everybody has the documents that we have included
17 for your consideration here. You should first
18 have a copy of a resolution. It says, "In the
19 Matter of a Memorandum of Agreement Regarding the
20 Implementation of Managed Recharge Under the
21 Eastern Snake Plain Aquifer Management Plan and
22 State Law." So you should have the resolution,
23 that is the resolution for the Board's
24 consideration today.
25 You should also have a Framework Reaffirming

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1 the Swan Falls Settlement Agreement. That is the
2 agreement that was signed between the attorney
3 general, the Governor, and Idaho Power that was
4 the framework associated with this agreement that
5 the State and Idaho Power has reached, which calls
6 for this Memorandum of Agreement. Mr. Chairman,
7 that has -- which is the subject of our discussion
8 primarily today.
9 The Board has been briefed by Mr. Clive
10 Strong, who's been negotiating on behalf of the
11 Board and the State with the -- with the Idaho
12 Power Company on this -- on this agreement. And
13 given that, Mr. Chairman, I would like to turn the
14 time over to Mr. Strong and let him go through the
15 details of the agreement for the Board and provide
16 opportunity for the Board to ask any questions
17 they might have.
18 THE CHAIRMAN: Mr. Strong, please.
19 MR. STRONG: Mr. Chairman, members of the
20 Board, what we're here today to do is to address
21 the -- one of the conditions for the
22 implementation of the Swan Falls reaffirmation
23 framework.
24 As you recall, the framework reaffirming the
25 Swan Falls Agreement itself is not a settlement

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1 document, but rather lays forward a suite of
2 measures that, if taken, would ultimately
3 constitute the settlement. And those suite of
4 measures are, one, signing reaffirmation
5 framework, which was done. Second was passage of
6 three pieces of legislation, one dealing with the
7 Board's review of managed recharge projects in
8 excess of 10,000 acre feet on an average annual
9 basis. The second modification of 42-234 and
10 42-4201A to remove the 1984 amendments and reflect
11 the fact that managed recharge is an appropriate
12 state tool to move forward with. And then
13 finally, implementation of legislation that would
14 reaffirm the same protections to Idaho Power
15 Company that are received under the original Swan
16 Falls Agreement in terms of PUC consideration of
17 whether entry into the Swan Falls Agreement itself
18 constitutes something that's contrary to the
19 public interest.
20 Those three measures were signed last Friday
21 by the Governor. And so the remaining steps that
22 need to be taken, one is the Board and the
23 Governor's approval of the Memorandum of
24 Agreement, which I will discuss in more detail in
25 a moment. And then the final step would be

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1 submission of the proposed form of final decrees
2 to the SRBA District Court for approval.
3 If those remaining two actions occur, then
4 as between the company and the State of Idaho,
5 that would constitute a resolution of the action
6 brought by Idaho Power Company challenging the
7 Swan Falls -- the State's implementation of the
8 Swan Falls Agreement. I emphasize that that's an
9 agreement between the State and Idaho Power
10 Company, because other water users may have
11 different opinions or interests in this matter.
12 And they certainly have their right to participate
13 in each of these forums, and to make their views
14 known on the adequacy of the settlement.
15 MR. CHASE: You know, Mr. Chairman --
16 THE CHAIRMAN: Mr. Chase.
17 MR. CHASE: I might note too, you know, I
18 probably have a conflict of interest on this
19 subject. And so, I'm going to listen to the
20 debate, but I probably won't be able to vote on
21 this one.
22 THE CHAIRMAN: Thank you for your --
23 MR. CHASE: I've talked to attorneys about
24 that, and that's what they told me I should
25 probably do.

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1 THE CHAIRMAN: Thank you for your candor,
2 Mr. Chase.
3 MR. CHASE: Okay.
4 MR. RIGBY: Well, Mr. Chairman, while we're
5 on that subject, obviously, I'm one of the counsel
6 that represents the Upper Snake River users. And
7 we were party participants in the actual hearings
8 themselves. And although I've not spoken to
9 Mr. Strong, I know that today I've been
10 participating because I've not felt that conflict.
11 But if -- if anyone is concerned of this, or if
12 Mr. Strong, on behalf of the State is, then I will
13 need to withhold as well.
14 THE CHAIRMAN: Okay.
15 MR. STRONG: Mr. Chairman, members of the
16 Board, from a conflict standpoint, if you're
17 adverse -- if your clients are adverse to the
18 State, then that would be a provision that would
19 require disqualification. My understanding,
20 though, is that your clients have indicated that
21 they are supporting of the agreement. If that's
22 the event, then I would say conflict them in. It
23 depends upon where you're at with your clients.
24 MR. RIGBY: And Mr. Chairman, Mr. Strong,
25 obviously, the -- we've had a lot of dialogue just

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1 in a last little while, both your office, mine and
2 other counsel that are representing the
3 independent, I guess, party participants.
4 Obviously, with the condition that Idaho Power
5 confirmed the letter of -- that you'll be
6 discussing, then I can represent to this Board and
7 to you that we are in agreement.
8 THE CHAIRMAN: Thank you, Mr. Rigby.
9 Mr. Strong.
10 MR. STRONG: Mr. Chairman, members of the
11 Board, which having said that, I've laid out the
12 framework. I don't intend to revisit the
13 framework. Instead, I'll now focus primarily on
14 the Memorandum of Agreement to which the Board is
15 being asked to consider approval.
16 The Memorandum of Agreement is -- it's
17 important to set out what it does and what it
18 doesn't do. The Memorandum of Agreement is
19 intended to reflect understandings between the
20 State and Idaho Power Company with respect to how
21 we would move forward -- we the State would move
22 forward with managed recharge.
23 As I've previously advised the Board, under
24 the Swan Falls -- proposed Swan Falls settlement,
25 if it's implemented, there would be an

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1 acknowledgment from the company that the issue of
2 how managed recharge is conducted is a state
3 policy issue. And what this Memorandum of
4 Agreement attempts to do is to reflect the fact
5 that, between the power company and the State,
6 that there needs to be some dialogue that goes
7 back and forth on these particular issues. Not
8 that the company has a right to control the state
9 process, but it's reaffirmation of its rights to
10 participate like other users in decisions that are
11 made through the State process, and also
12 reaffirmation of the fact that we do have a
13 contract with the company that reflects an
14 understanding with regard to minimum flows that
15 would be established at the Murphy Gauge and at
16 the Milner Guage. And that, as the State moves
17 forward with its management actions, those actions
18 can have implications of -- in terms of the
19 implementation of that underlying Swan Falls
20 Agreement that we are committing ourselves under
21 this MOA to have a dialogue on those issues short
22 of going forward with litigation.
23 Now, nothing in the Memorandum of Agreement
24 would preclude or change any parties' position,
25 either the Board or the company's right to seek

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1 judicial relief. It's simply an expression of the
2 goodwill and intent that we should attempt to
3 dialogue on those issues before we have to resort
4 to litigation.
5 Having said that, the Memorandum of
6 Agreement has certain whereas clauses. Those
7 whereas clauses, if you go back and follow the
8 pedigree of them, can be traced back to the
9 original Swan Falls Agreement, to the Swan Falls
10 framework, which was the conceptual structure for
11 the Swan Falls Agreement that was entered into
12 back in 1984, and then provisions of the State
13 water plan that were amended by this Board back in
14 1985 to reflect the Swan Falls Agreement.
15 Just I'm going to note issues as we go
16 along. One concern has been expressed by some of
17 the party participants in the litigation is the
18 fact that this -- these whereases only reference,
19 primarily, the recharge issue, and concern that,
20 by not referencing other provisions of the
21 original Swan Falls Agreement, that somehow those
22 have a lesser standing. And I'd represent to the
23 Board that that is not the intent. In fact, among
24 the documents I've provided to you is a joint
25 statement from the Idaho Power Company and the

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1 State of Idaho that goes into this issue in more
2 depth.
3 But basically, the reason these provisions
4 were called out was we were trying to put the
5 framework of how this relates back to the Swan
6 Falls -- the original Swan Falls Agreement, how
7 this is consistent with those original
8 understandings and intent. And it is not intended
9 to reflect any change in terms of State policy, or
10 the agreements that were reached in the context of
11 the original Swan Falls Agreement. In fact, in
12 the framework, we have an express provision that
13 reaffirms all aspects of the original Swan Falls
14 Agreement.
15 Turning from the whereas clauses to the
16 therefore clauses, which are the critical ones,
17 let's walk through those. Paragraph No. 1 on page
18 2 is a codification of what I just expressed to
19 you, the idea that we, as a State, and Idaho Power
20 Company, entered into an agreement back in '84.
21 We're reaffirming that agreement, and recommitting
22 ourselves to work cooperatively to implement the
23 principles of the Swan Falls Agreement, not to
24 change them, but to implement them. And from a
25 fundamental public policy standpoint, it makes

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1 sense that, when you have a contractor, when you
2 have an agreement with a party, that you sit down
3 and you try to work cooperatively through those
4 issues. And that's what paragraph 1 attempts to
5 recognize.
6 Paragraph 2 is an understanding about the
7 ESPA CAMP process, which I should mention for the
8 purposes of the record that the CAMP legislation
9 was approved and signed into law by the Governor.
10 And under CAMP, as you're -- as this Board is well
11 aware, it provides for a managed recharge of up to
12 a hundred -- between 150,000 and 250,000 acre feet
13 on the average annual basis. But it provides that
14 that's going to be phased in over time, and that
15 the original intent was to phase in a hundred
16 thousand acre feet of recharge on the average
17 annual basis in the first ten-year period.
18 And so what we're reflecting here is that
19 the State water plan represents, as a matter of
20 law, what the State's policy is with regard to
21 recharge at this time. Doesn't mean that it can't
22 be changed in the future. In fact, the framework
23 makes clear that it can. But as it's presently
24 implemented, that provision of State law in CAMP
25 reflects what our recharge policy would be in the

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1 Upper Snake River Basin. And it's an
2 acknowledgment that, if we, as a state, choose to
3 change that policy in the future, that that would
4 constitute a requirement to go back through and
5 amend the State water plan pursuant to state law.
6 So again, it's just a reflection of an
7 understanding that that's what CAMP means. And
8 that's the process that we would use to change
9 those targets.
10 Paragraph 3 deals with ESPA CAMP 1 phase-in.
11 One of the kind of important issues in terms of
12 management of the waters of Snake River is to
13 recognize that -- and something we haven't done as
14 adequately as we should have in the past is that
15 one action affects other rights in the river. And
16 so, to extent that we implement recharge in the --
17 pursuant to the CAMP process, that will
18 necessarily mean that the waters that flow down
19 through the Snake River above Milner, for example,
20 will be altered, depending upon where we do that
21 recharge. The return flows from that recharge
22 will impact flows in various segments or reaches
23 of the river. And in particular, it could affect
24 the flows that currently unregulated flows that go
25 over the Milner Dam, and are available pursuant to

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1 the Swan Falls Agreement for use for hydropower
2 generation at those facilities.
3 And again in the Swan Falls Agreement, it's
4 the State's -- State has the authority to use
5 those waters above Milner, and to use them in a
6 way for recharge without violating the Swan Falls
7 Agreement. But as a consequence of that, if we
8 take water out during certain times of the year
9 immediately above Milner, that means, in terms of
10 meeting the 3900 CFS -- 3900 CFS flow in the
11 irrigation season, or 5600 CFS flow in the winter
12 season, that we have to be cognizant that that
13 action could impact what happens at those reaches.
14 And so what we're expressing here is an
15 understanding that we're all going to be committed
16 to moving forward with phase 1. The company has
17 fully expressed its support for moving forward
18 with phase 1. But it wants to be able to
19 participate in how we implement that to try to
20 minimize those impacts, and to avoid future
21 potential conflicts between us.
22 And so, from that perspective, there's an
23 understanding that, as the Board moves forward,
24 we're going to look at that hundred thousand acre
25 foot target for the first ten-year period. We

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1 recognize that adaptive management needs to be a
2 part of the CAMP process. And so built into this
3 is the notion that during that ten-year period,
4 we're not going to go more than 75,000 acre feet
5 above the hundred thousand acre foot target
6 without coming back to the Board and going through
7 a process and evaluating the consequences of that
8 decision. Again, it's your decision to make.
9 It's a process paragraph that we have there.
10 Paragraph 4 is the recognition, No. 1, that
11 by entering into this agreement, the company is
12 not waiving any of its rights to participate
13 pursuant to state law as any other citizen would
14 to come before the Board or to come before the
15 legislature and to express its views with regard
16 to managed recharge and what implications it may
17 have on generation of hydropower at those
18 facilities below the Milner Dam. It also
19 recognizes that the Board will work with the
20 company to sit down and to work through those
21 issues, to receive information from the company,
22 and to try to make -- use that information in a
23 meaningful way to make better decisions in terms
24 of water management.
25 Oftentimes, the major problem we've had with

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1 water management in the Snake River basin is that
2 we move forward independently of one another
3 without taking into account the implications from
4 a particular decision, and then we revisit those
5 problems in subsequent litigation or conflicts
6 that arise. And the idea here is that, rather
7 than allow issues to build, let's talk about them
8 up front. Let's work through them in a
9 constructive way.
10 Paragraph 5 is one that bears a significant
11 amount of description for the reason that there is
12 a concern that, by having the Board and the
13 Governor work in good faith and cooperate with the
14 company and support the company's attempt to get
15 regulatory relief from the implications or impacts
16 of managed recharge, that that somehow makes the
17 Board or the Governor an institutional adversary
18 of the other water users in the basin,
19 particularly the groundwater users. And that's
20 been a concern from Mr. Rigby's clients, from
21 Idaho groundwater users, and from the City of
22 Pocatello. And first, I describe what the
23 understanding is between the State and Idaho Power
24 Company, and then how we have attempted to remedy
25 or reconcile those concerns with the other

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1 affected water users.
2 When this provision was being developed, the
3 concern from the company's perspective, and from
4 my opinion rightfully so, was that, okay, if we as
5 a company are going to agree that the State could
6 move forward and make decisions about managed
7 recharge, that if you make those decisions, you
8 ought to own the decision you made. In other
9 words, if our decision is we want to use water
10 above Milner, and that's going to impact flows
11 below Milner, and the ability to make energy from
12 that water, that we ought to acknowledge that
13 we're making that decision, and what the
14 consequences of that decision are. And that was
15 all that was really intended. Because, oftentimes
16 in these battles, you get into them, what happens
17 is we make a decision, and then when someone seeks
18 relief, then they're viewed as a culprit for that
19 particular problem.
20 And what this is intended to do is to simply
21 have us acknowledge as a government what the
22 consequences of our decisions are. It's not
23 intended to have the Board or the Governor be in a
24 position of being an advocate for a particular
25 proposal for the PUC. It's not intended to

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1 deprive the PUC of it's authority to make
2 decisions about the adequacy of the requests being
3 made of the PUC, nor is it intended to have the
4 Governor or the Board take a position with regard
5 to that specific request. It's simply an
6 acknowledgment that we will recognize, based on
7 our own independent determinations what we think
8 the impact of the decisions we're making are so
9 that that can be part of the public record.
10 The concern is focused on the word support
11 and the view that that could be interpreted more
12 broadly. And in response to that, in
13 conversations with various counsel and with others
14 that are concerned, the State and Idaho Power
15 Company put together a joint summary of this
16 particular MOA and the framework, and expressly
17 addressed this issue, and I would represent
18 reflect with comments I just made to you that this
19 is intended to simply be an acknowledgment by the
20 State of the consequences of its decisions as
21 opposed to taking a particular position before the
22 PUC.
23 As the legislation was moving forward
24 through the legislature, that concern continued to
25 resonate, and as a consequence, we received the

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1 letter that I've provided to each of you, and I
2 would ask be made part of the record for Mr. Randy
3 Budge, that on behalf of the water users who
4 express their concerns over this particular
5 provision and the legislation.
6 Now, in addition to his letter, you will see
7 in the materials I provided, and I ask to be made
8 part of the record as well, a response that our
9 office, the Office of the Attorney General
10 prepared in conjunction with the Governor's office
11 to reflect our understanding of this provision as
12 well as others. And it's about a 19-page letter.
13 And it has that statement of concern attached to
14 it as well.
15 MR. RIGBY: Excuse me, Mr. Strong, that's
16 the April 13th?
17 MR. STRONG: That's correct.
18 So what we're proposing is to have those
19 issues made part of the record. We have -- in
20 order to also give the other parties a comfort
21 level that, in fact, the representations that I am
22 making to you today, and that I am assuming
23 Mr. Tucker will make to you as well, are reflected
24 in the resolution for approval of the MOA. And
25 hopefully, with that, we'll address at least the

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1 concerns of some of the groundwater users. I'll
2 let them speak from their own perspective. But my
3 understanding, at least from Mr. Budge on that, on
4 behalf of his clients, making these a part of the
5 record, along with the resolution, would
6 adequately address their concerns about the
7 interpretation of this particular paragraph.
8 Paragraph 6 is one that -- from the -- from
9 your perspective and Governor's perspective is an
10 important one. It's an acknowledgement both by
11 the company and the State that managed recharge is
12 fundamentally a public policy issue that needs to
13 be decided pursuant to state law. It's not a
14 matter of contract. It's a matter of state law.
15 And so as a matter of state law, it's subject to
16 change or modification in the future based upon
17 the policy directions that you or the legislature
18 adopt.
19 And then finally, paragraph 7. Paragraph 7
20 is an acknowledgment to the company that, by
21 entering into this MOA, and entering into the
22 general agreement, that they do have the right,
23 pursuant to state law, to continue to participate,
24 and that neither the Swan Falls Agreement nor this
25 MOA or the reaffirmation agreement precludes them

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1 from exercising those rights that are available
2 pursuant to state law to express their views and
3 concerns with regard to managed recharge.
4 So Mr. Chairman, members of the Board, in
5 summary, what we're bringing to you today, in my
6 opinion, is a Memorandum of Agreement that
7 reflects a process for coordination, cooperation
8 between the company, between the State on managed
9 recharge. It's not intended to create a new
10 forum, but instead, it's intended to reflect
11 understandings that will allow us to move forward,
12 implement the policies of the State of Idaho with
13 regard to managed recharge in terms of CAMP. It
14 will allow the company to exercise its right in
15 the public forum with everyone else.
16 And so with that, Mr. Chairman, I would
17 stand for questions.
18 THE CHAIRMAN: Any questions of Mr. Strong?
19 MR. BECK: Mr. Chairman?
20 THE CHAIRMAN: Mr. Beck.
21 MR. BECK: Thank you, Mr. Chairman.
22 Mr. Strong, from this memorandum, it appears
23 that there is a tremendous -- or I shouldn't say
24 tremendous, but a concern for the decrease of
25 flows because of recharge. Certainly on the other

Page 25

1 hand, there has to be an approach, or an effort to
2 notice that the recharge would be to increase the
3 aquifer levels, which would greatly reduce deep
4 well pumping. And in those levels being raised,
5 it might also cause more flow in the river.
6 Are we -- I'm more concerned about the
7 negativism versus the positive what a recharge
8 would look on it.
9 MR. STRONG: Mr. Chairman, Mr. Beck, perhaps
10 in my presentation, I was too -- too much pointing
11 on the downside, because that's the concerns that
12 have been expressed. But the reality is you're
13 correct. Recharge has both positives and
14 negatives. And to the extent that recharge may
15 not be going over Milner, it's certainly
16 augmenting the aquifer. It provides a more stable
17 supply, and it will help in those springs. And so
18 it's a balancing act we're going to go through on
19 recharge.
20 I think really what's been kind of the heart
21 of debate on recharge over the last few years is
22 everybody is looking at it from the worst case
23 scenario. I think the reality, and what the
24 future will show us is that recharge is a tool,
25 not the only tool, but a tool that can be used in

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1 conjunction with other tools to try to bring the
2 aquifer back into balance.
3 And I think that's reflected in your CAMP
4 proposal. And I think as we go forward and
5 implement it, it's going to be incumbent upon us
6 to document what are the consequences of the
7 decision we make. And it may be that we find more
8 benefits than we do negatives. But from a company
9 standpoint, they're concerned about the negatives
10 because that impacts their ability to generate.
11 From a positive standpoint, having enhanced
12 spring flows is going to enhance their ability to
13 generate with a more reliable flow, below Thousand
14 Springs. And I think it's that realization -- and
15 I'll allow Mr. Tucker to speak to that -- but I
16 think it's that realization that recharge isn't
17 something you can view as either a positive or a
18 negative. It's got a balance. And we need to
19 consider that as we implement it and do it in a
20 way that's most effective to optimizing the
21 resources.
22 THE CHAIRMAN: Thank you.
23 Anything else Mr. Beck?
24 Anyone else? Questions of Mr. Strong?
25 What?

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1 (Unintelligible).
2 MR. RIGBY: Mr. Chairman and Mr. Strong, I
3 don't want to get out of order here. Just that,
4 as I indicated before, for me to proceed, the only
5 condition that I really have is the confirmation
6 by Idaho Power of documents that they haven't
7 heretofore already executed, one of which is the
8 April 13, 2009 letter. Obviously, not having
9 executed, my understanding is Idaho Power is
10 prepared to confirm your response in that letter.
11 And I guess that's what I'm saying. I don't
12 want to push this out of order. I know that Idaho
13 Power will be before the pulpit -- or the stand --
14 you tell us -- go back to my church days here --
15 and address this. But I just want to make sure
16 that's still on the Board.
17 MR. STRONG: Mr. Chairman, members of the
18 Board, it would be my recommendation to you that
19 not only do we hear from Idaho Power Company, but
20 we hear from other water users. Though, I have
21 presented to you here what I believe to be the
22 benefits of moving forward with this, not everyone.
23 shares those views. And I think it's important in
24 making public policy decisions that everyone has
25 an opportunity so that you have the information

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1 necessary to make an informed decision.
2 And so from that perspective, I would
3 encourage you to invite, not only Idaho Power
4 Company, but other participants here in the group
5 that may have other concerns or issues they'd like
6 to have addressed.
7 THE CHAIRMAN: Thank you, Mr. Strong.
8 Any other questions of Mr. Strong?
9 Clive, thank you.
10 Mr. Tucker, I see you just itching to get to
11 the pulpit.
12 MR. TUCKER: Mr. Chairman, thank you. No, I
13 wasn't really itching to get up here, but I
14 suspect that I perhaps should.
15 THE CHAIRMAN: We appreciate it.
16 MR. TUCKER: I do not have any prepared
17 remarks today. I suspect that I might be on the
18 agenda, so I do have a few things to say.
19 First of all, let me confirm what Mr. Strong
20 said. Mr. Strong and I have appeared in various
21 forums over the last month or so, including the
22 legislature on several occasions before various
23 committees. And the representations from
24 Mr. Strong on the general outline of the
25 agreement, the framework, the MOA is correct. We

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1 certainly generally confirm and participated in
2 the summary that was done. And I confirmed the
3 letter that he sent. The letter that he sent, the
4 September 13th letter or the April 13th letter,
5 generally concur with that letter. No problems
6 with the letter.
7 What I want to do this morning is talk a
8 little bit broader than perhaps what this MOA
9 talks about. It's focused obviously on recharge.
10 But one of the first things that, when we sat down
11 with the State to talk about trying to resolve the
12 Swan Falls litigation, we agreed upon was a
13 litigation was not an appropriate forum to really
14 resolve complex public policy issues. We've been
15 in litigation with the State for several years on
16 issues that really we're not going to get to the
17 bottom line. And the bottom line being how do we
18 take care of the Snake River Plain Aquifer? How
19 do we implement CAMP? And how do we go forward to
20 see if we can't resolve some of the issues that
21 have been plaguing the State of Idaho over the
22 last several decades? Litigation wasn't going to
23 solve that. So we agreed upon that, and we agreed
24 to move forward.
25 Now recharge, in that litigation, was a hot

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1 button issue. It was a hot button issue because
2 of what occurred two or three or four, five years
3 ago, 2006. We all remember House Bill 800? The
4 acrimony that came out of that debate, that fight,
5 if you will, which really blossomed into this
6 litigation. But as we went through that
7 litigation, we found that the end result was not
8 really going to even resolve that issue, because
9 we knew -- Idaho Power knew, and I think the State
10 knew that, in the context of the CAMP process, we
11 were going to proceed with some recharge.
12 As Clive, recharge is a fundamental tool of
13 water management. It was recognized as a
14 fundamental tool back in 1984, when the original
15 framework was signed for Idaho Power and the
16 State. The problem was no one knew how it was
17 going to be implemented or what it was going to
18 do. So as a consequence -- Clive is right -- it
19 became somewhat of a boogy man, if you will, in
20 the context of -- at least in the company's
21 perspective early on, how big was this going to
22 be? What impact it was going to have.
23 Mr. Beck makes a very good point, though.
24 As you start to look at recharge, you can see
25 pluses and minuses on both sides. So in that

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1 context, we felt we've got to more forward in a
2 cooperative manner under the CAMP and look at
3 recharge in the same context as all the other
4 water management tools we have. What benefits
5 will it bring. What attributes does it have that
6 might foster some public policy debates about how
7 much we should use recharge and where we should
8 use it. That's what this agreement really does
9 and sets the stage for. Sets the stage for Idaho
10 Power Company to be a partner with the State in
11 the context of the CAMP and water management
12 processes.
13 Now, there's various other partners in that
14 process. Some of them are in the room. There are
15 other potential partners that we haven't even
16 talked to yet in the context of CAMP. But we
17 think it's recognized under CAMP that there has to
18 be a leadership role from the State of Idaho. And
19 frankly, this Board is going to have to take the
20 leadership role in that context. To really direct
21 CAMP, and direct these measures forward, and make
22 sound public policy choices as to what measures
23 are in the best interests of the State of Idaho,
24 the Snake River, and the Eastern Snake Plain
25 Aquifer.

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1 What this framework does, and these
2 documents do is put Idaho Power in a position
3 where we can come before this Board, and we can
4 present our information, our data, our science,
5 and be involved in this process so that this Board
6 can make those sound public policy choices that
7 need to be made. This is going to be a long
8 process. This first phase is expected to take ten
9 years. I may not be around for the end of that.
10 Though, it's got to start in a rational,
11 reasonable way with leadership from the State, and
12 leadership from this Board. And we, through this
13 agreement, are taking the position we want to be
14 part of that. We want to be an active member, an
15 active participant in that. And that's what the
16 agreement kind of clears the way for. It gets rid
17 of the litigation, and hopefully puts us in a
18 place where we'll be an active partner with the
19 State in moving forward on these issues.
20 So, again, I don't -- I think all too often
21 in this context of this settlement agreement, we
22 look at recharge as being kind of the -- everybody
23 talks about recharge, recharge, recharge.
24 Recharge is an important management tool.
25 Mr. Hazen makes the point that recharge, we need