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DEPARTMENT OF  
WATER RESOURCES

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Attorneys for Idaho Power Company

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

IN THE MATTER OF DISTRIBUTION )  
OF WATER TO WATER RIGHTS NOS. )  
36-15501, 36-02551, AND 36-07694 )  
\_\_\_\_\_ )

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

Idaho Power Company ("Idaho Power"), by and through its counsel, respectively submits this Petition for a Hearing on the Second Amended Order issued by the Director of the Idaho Department of Water Resources, Karl Dreher, on May 19, 2005 (the "Rangen Order"), in accordance with Idaho Code § 42-1701A(3), and Idaho Department of Water Resources ("IDWR"), Procedure Rule 740.02.b. IDAPA 37.01.01.740.02.b. Idaho Power also hereby requests appointment of an independent hearing office in accordance with Idaho Code § 42-1701A(2).

## I. INTRODUCTION

Idaho Power holds water rights in Basin 36, water rights at Swan Falls, and minimum flow rights under the Swan Falls Agreement, which are threatened by the Director's findings in the Rangen Order. In the Rangen Order, the Director effectively reopens consideration of Rangen's decreed rights and determines that they were improperly or excessively decreed by the SRBA Court, despite the fact that the decrees from the SRBA Court are based on IDWR's own findings and recommendations. The Director then finds that these rights can be filled when water is available, but that Rangen may not enforce the full extent of its decreed water right through a call. Senior decreed water rights, such as Idaho Power's rights, are threatened by this finding which refuses to honor and administer water rights as decreed by the SRBA Court.

The Rangen Order also improperly finds that Rangen's call is futile. This futile call finding puts all senior water rights in jeopardy by failing to recognize the senior's right to full delivery and failing to administer water rights to satisfy the senior calling right. Further, the Director improperly relies upon the model, which contrary to the Director's findings is not a sufficient and accurate tool to conjunctively administer surface and groundwater rights in the Snake River and Eastern Snake Plains Aquifer ("ESPA"). Accordingly, the Director erroneously finds that curtailment would result in an insignificant quantity of water accruing to the Thousand Springs to Malad Gorge spring reach and the Snake River as reach gains.

## II. ARGUMENT

### A. Idaho Power Has Standing and is an Aggrieved Party

In order to initiate a contested hearing on an order issued by the Director, an aggrieved party must file a written petition stating the grounds for contesting the action by the Director and requesting a hearing. Idaho Code § 42-1701A(3); IDAPA 37.01.01.740. The form and content

of the petition is provided by Idaho Department of Water Resources, Procedure Rule 230.

IDAPA 37 01 01.230.

Idaho Power is an aggrieved party in this action because it holds senior decreed water rights in Basin 36, water rights at Swan Falls, and contract rights for minimum flows under the Swan Falls Agreement. These rights are threatened by the Rangen Order which unilaterally amends and selectively enforces Rangen's senior decreed water rights. As such, should Idaho Power be forced to initiate a call to protect its senior decreed water rights in the future, the Rangen Order sets a dangerous precedent by refusing to recognize and enforce the terms of the SRBA decrees and finding that such calls are futile. Accordingly, Idaho Power is an aggrieved party and seeks a hearing to challenge the Rangen Order.

**1. Idaho Power's Water Rights in Basin 36**

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

<u>Water Right #/Basis</u>	<u>Source</u>	<u>Priority</u>	<u>Amount</u>	<u>Use</u>
36-2704	Niagara Springs	01/31/1966	120.0 cfs	Irrigation Domestic, Fire Protection, Fish Propagation
36-2082	Billingsley Creek	12/10/1948	5.0 cfs	Irrigation, Cooling, Fire Protection
36-2710	Clear Lake Springs	07/24/1940	0.1 cfs	Irrigation, Cooling, Domestic
36-2037	Spring	10/29/1921	0.3 cfs	Irrigation, Cooling Commercial, Domestic 3 Homes
36-15221	Niagara Springs	03/03/1982	0.04 cfs	Domestic
36-15357	Snow Bank Springs Thousand Springs	09/30/1936	0.11 cfs	Irrigation, Domestic 3 Homes

36-15358	Snow Bank Springs Thousand Springs	06/20/1924	0.03 cfs	Irrigation
36-7104	Springs	12/10/1969	0.3 cfs	Domestic, Irrigation
36-2478	Upper Tucker Springs	10/21/1939	3.21 cfs	Irrigation, Stockwater, Cooling, Domestic, Fire Protection
36-15388	Spring	12/10/1949	0.15 cfs	Commercial, Domestic

See EXHIBIT A.

## **2. Idaho Power's Rights at Swan Falls**

Idaho Power holds four water rights at Swan Falls: three licensed rights for 4000 cfs, 1,840 cfs and 1,460 cfs, – and a decreed water right with a 1900 priority for 4,000 cfs. (Water right Nos. 02-2032, 02-4000, 02-4001, and 02-0100 respectively). These water rights are subject to the Swan Falls Agreement (October 25, 1984) and the minimum flow, and other, provisions contained therein, and were decreed by the Ada County District Court in Case Nos 81375 and 62237. See EXHIBIT B.

### **B. Grounds for Contesting the Action**

In the Rangen Order, the Director looks behind Rangen's decree for water right No. 36-07694 to determine that the water right should never have been decreed for the amount claimed. See Rangen Order, Paragraphs 62 and 63, pages 14-15. In doing so, the Director disregards that this decree was based on the IDWR's findings and recommendations and dismisses the claimed and decreed amounts as "estimates" rather than an "actual measurement." Id. On that basis, the Director determines that while Rangen may divert water under water right No. 36-07694 when it is available, Rangen may not successfully prosecute a call for water under this water right.

The Director's attempts to amend or selectively enforce water rights decreed by the SRBA is plainly erroneous. Nothing in Idaho law gives the Director the authority to unilaterally

amend decreed water rights; nothing in Idaho law gives the Director the authority to ignore the terms of a decreed water right; and nothing in Idaho law gives the Director the authority to selectively enforce and administer decreed rights. Not only has the Director acted in direct contravention of Idaho law, the Rangen Order exceeds and abuses the limited authority granted by the SRBA Court allowing the Director to conjunctively administer decree water rights on an interim basis

Further, the Rangen Order improperly concludes that the Rangen call is futile. The futile call finding in the Rangen Order puts senior water rights in jeopardy by placing all of the risk of water shortage on seniors instead of allocating responsibility to junior water rights. Rather than order mitigation to satisfy the senior calling right, or devise a limited curtailment call, the Director essentially ignores the claims of the senior water rights holder and refuses to make the senior water right whole. This adverse precedent could potentially impede the ability of other senior water rights holders, including Idaho Power, to place a call against junior groundwater pumpers to protect senior water rights.

The Director also erroneously concludes that curtailing junior priority groundwater rights will result in insignificant reach gains in the Thousand Springs to Malad Gorge reach. The model is not sufficiently accurate to support this conclusion, as is evidenced by the Director's reliance on a 10% error in the Conclusions of Law to support a futile call finding. See Rangen Order, Paragraph 25, page 28. The model was not properly calibrated to determine the effect of curtailing junior groundwater pumping on reach gains throughout the Snake River and the ESPA, and therefore cannot accurately predict the effect of groundwater pumping on reach gains. As such, the Director improperly relied on the model in determining that Rangen's call is futile.

In addition, Idaho Power intends to challenge the Rangen Order on questions of law and

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

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

**C. Request for Independent Hearing Officer**

In addition to the above, Idaho Power respectfully requests that the Director appoint an independent hearing officer in this matter. Idaho Code § 42-1701A(2) allows the Director, in his discretion, to appoint a hearing officer. Rule 410 of the IDWR Rules of Procedure also call for an independent hearing officer, other than the agency head, to hear contested cases. IDAPA 37.01.01 410.

In this matter, an independent hearing officer should be appointed to hear the contested case and review the Rangen Order because it would be inappropriate for the Director to preside

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

**D. Standard of Review at Requested Hearing**

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

**E. Burden of Proof**

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

Order, and other orders, the Director improperly shifted the burden of proof to the senior water rights holders to demonstrate that injury to their water rights is material, that their claims should not be reduced, that they have made full beneficial use of their claimed diversions, and that they should receive their full amount of permitted, decreed and adjudicated claims.

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

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

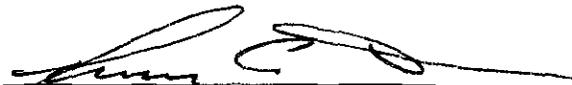
### **III. CONCLUSION**

Idaho Power is an aggrieved party with standing to contest the Rangen Order. Accordingly, Idaho Power respectfully requests a hearing to contest the actions of the Director before an independent hearing officer as provided by Idaho Code § 42-1701A.

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

DATED this 3<sup>rd</sup> day of June 2005.

IDAHO POWER COMPANY

By:   
James Tucker, Senior Attorney  
IDAHO POWER COMPANY

and

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

**CERTIFICATE OF MAILING**

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

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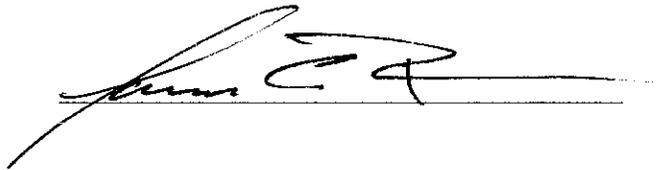
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A handwritten signature in black ink, appearing to be "Fritz Haemmerle", written over a horizontal line.

# EXHIBIT A

**WATER RIGHT  
NO. 36-2704**

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

2002 OCT 18 AM 10 48

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

In Re SRBA )  
Case No. 39576 ) **ORDER OF PARTIAL DECREE**  
\_\_\_\_\_ ) **For Water Right 36-02704**  
\_\_\_\_\_ )

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

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

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

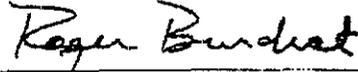
DATED October 18, 2002

  
\_\_\_\_\_  
ROGER S. BURDICK  
Presiding Judge  
Snake River Basin Adjudication



RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



\_\_\_\_\_  
Roger Burdick  
Presiding Judge of the  
Snake River Basin Adjudication

**WATER RIGHT**  
**NO. 36-2082**

1997 NOV 25 AM 10:59

DISTRICT COURT  
TWIN FALLS COUNTY, IDAHO  
FILED \_\_\_\_\_

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

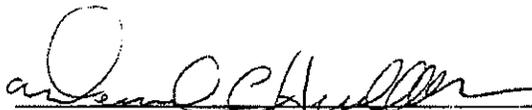
In Re SRBA	)	<b>ORDER OF PARTIAL DECREE</b>
	)	
Case No. 39576	)	<b>For Water Right 36-02082</b>
_____	)	

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

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

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

DATED November 25, 1997.



DANIEL C. HURLBUTT, JR.  
Presiding Judge  
Snake River Basin Adjudication

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

In Re SRBA )  
 )  
Case No. 39576 )  
\_\_\_\_\_ )

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 36-02082

1997 NOV 25 AM 10:58  
DISTRICT COURT OF THE  
TWIN FALLS CONSOLIDATED  
FILED \_\_\_\_\_

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

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 5.00 CFS

PRIORITY DATE: 12/10/1948

POINT OF DIVERSION: T07S R13E S11 NWSWNE Within GOODING County

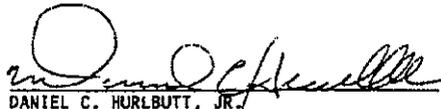
PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	0.12 CFS
	COOLING	01-01 12-31	5.00 CFS
	FIRE PROTECTION	01-01 12-31	5.00 CFS

COOLING AT LOWER SALMON FALLS POWER PLANT..

PLACE OF USE: IRRIGATION Within GOODING County  
T07S R13E S02 Lot 7 (SESW) 2  
S11 Lot 2 (NENW) 3 Lot 2 (NWNW) 1  
6 ACRES TOTAL.

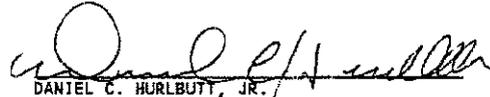
COOLING Within GOODING County  
T07S R13E S02 Lot 7 (SESW)

FIRE PROTECTION Within GOODING County  
T07S R13E S02 Lot 7 (SESW)  
S11 Lot 2 (NENW)

  
DANIEL C. HURLBUTT, JR.  
PRESIDING JUDGE  
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

  
DANIEL C. HURLBUTT, JR.  
PRESIDING JUDGE  
Snake River Basin Adjudication

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

In Re SRBA )  
                  )  
Case No. 39576 )  
                  )

Water Right 36-02082

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

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

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

PERIOD OF USE: 02-15 11-30

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

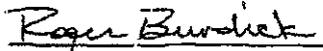
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree I.C section 42-1412(6).

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

**RULE 54(b) CERTIFICATE**

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated August 27, 2001

  
\_\_\_\_\_  
ROGER BURDICK  
Presiding Judge  
Snake River Basin Adjudication

**WATER RIGHT**  
**NO. 36-2710**



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

In Re SRBA )  
 )  
Case No. 39576 )  
\_\_\_\_\_ )

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 36-02710

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

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

SOURCE: SPRINGS CLEAR LAKE TRIBUTARY: CLEAR LAKE  
SNAKE RIVER

QUANTITY: 0.1 CFS

PRIORITY DATE: 07/24/1940

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

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

DOMESTIC USE FOR 1 HOME AND PARK RESTROOMS.

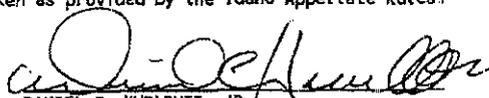
PLACE OF USE: IRRIGATION Within GOODING County  
T09S R14E S02 Lot 7 (SWSE) 1  
S11 Lot 6 (NWNE) 0.5  
1.5 ACRES TOTAL

COOLING Within GOODING County  
T09S R14E S02 Lot 7 (SWSE)

DOMESTIC Within GOODING County  
T09S R14E S02 Lot 7 (SWSE)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

  
DANIEL C. HURLBUTT, JR.  
PRESIDING JUDGE  
Snake River Basin Adjudication

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

In Re SRBA )  
                  )  
Case No. 39576 )  
\_\_\_\_\_ )

Water Right 36-02710

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

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

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

PERIOD OF USE: 03-15 11-15

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

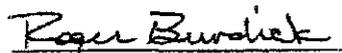
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I.C. section 42-1412(6).

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

**RULE 54(b) CERTIFICATE**

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated August 27, 2001

  
\_\_\_\_\_  
ROGER BURDICK  
Presiding Judge  
Snake River Basin Adjudication

**WATER RIGHT**  
**NO. 36-2037**



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

In Re SRBA )  
 )  
Case No. 39576 )  
\_\_\_\_\_ )

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 36-02037

1997 NOV 25 AM 10:53  
DISTRICT COURT-5  
TWIN FALLS CO, IDAHO  
FILED \_\_\_\_\_

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

SOURCE: SPRING TRIBUTARY: SNAKE RIVER

QUANTITY: 0.3 CFS

PRIORITY DATE: 10/29/1921

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

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

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

PLACE OF USE:

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

  
DANIEL C. HURLBUTT, JR.  
PRESIDING JUDGE  
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



DANIEL C. HURLBUTT, JR.  
PRESIDING JUDGE  
Snake River Basin Adjudication

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

In Re SRBA                    )  
                                      )  
Case No. 39576                )  
\_\_\_\_\_                          )

Water Right 36-02037

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

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

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

PERIOD OF USE:       03-15   11-15

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

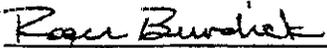
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I.C. section 42-1412(6).

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

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated August 27, 2001

  
\_\_\_\_\_  
ROGER BURDICK  
Presiding Judge  
Snake River Basin Adjudication

**WATER RIGHT**  
**NO. 36-15221**

2002 OCT 18 AM 10 47

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

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

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

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

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

DAIED October 18, 2002

  
\_\_\_\_\_  
ROGER S. BURDICK  
Presiding Judge  
Snake River Basin Adjudication



SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

  
\_\_\_\_\_  
Roger Bydick  
Presiding Judge of the  
Snake River Basin Adjudication

**WATER RIGHT**  
**NO. 36-15357**



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

In Re SRBA )  
                  )  
Case No. 39576 )

Water Right 36-15357

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

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

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

PERIOD OF USE: 02-15 11-30

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

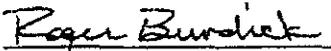
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I.C. section 42-1412(6).

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

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated August 27, 2001

  
\_\_\_\_\_  
ROGER BURDICK  
Presiding Judge  
Snake River Basin Adjudication

**WATER RIGHT**  
**NO. 36-15358**



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

In Re SRBA            )  
                          )  
                          )  
Case No. 39576        )

Water Right    36-15358

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

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

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

PERIOD OF USE:        02-15    11-30

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

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

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

**RULE 54(b) CERTIFICATE**

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated August 27, 2001

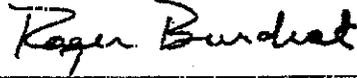
Roger Burdick  
ROGER BURDICK  
Presiding Judge  
Snake River Basin Adjudication

**WATER RIGHT**  
**NO. 36-7104**



RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



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Roger Burdick  
Presiding Judge of the  
Snake River Basin Adjudication

**WATER RIGHT**  
**NO. 36-2478**



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

In Re SRBA )  
PARTIAL DECREE PURSUANT TO )  
I.R.C.P. 54(b) FOR )  
Case No. 39576 )  
Water Right 36-02478 )

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

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

SOURCE: TUCKER SPRINGS, UPPER TRIBUTARY: RILEY CREEK

QUANTITY: 3.21 CFS

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

PRIORITY DATE: 10/21/1939

POINT OF DIVERSION: T07S R13E S36 NWSESE Within GOODING County

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

COOLING IS FOR 2 POWER PLANTS.

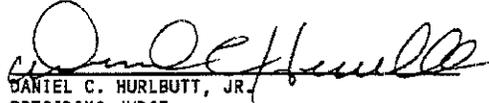
PLACE OF USE:

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

  
DANIEL C. HURLBUTT, JR.  
PRESIDING JUDGE  
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



DANIEL C. HURLBUTT, JR.  
PRESIDING JUDGE  
Snake River Basin Adjudication

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

In Re SRBA )  
                  )  
Case No. 39576 )  
\_\_\_\_\_ )

Water Right 36-02478

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

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

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

PERIOD OF USE: 02-15 11-30

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

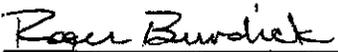
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I.C. section 42-1412(6).

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

**RULE 54(b) CERTIFICATE**

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated August 27, 2001

  
\_\_\_\_\_  
ROGER BURDICK  
Presiding Judge  
Snake River Basin Adjudication

**WATER RIGHT**  
**NO. 36-15388**



# EXHIBIT B

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NO. \_\_\_\_\_ FILED \_\_\_\_\_  
P.M. 2:05  
FEB 16 1997  
JOHN BASTIDA, CLERK  
BY *[Signature]*

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

\*\*\*\*\*

IDAHO POWER COMPANY,  
a corporation,  
  
Plaintiff,

Case No. 81375

vs.

CONSENT JUDGMENT

STATE OF IDAHO, IDAHO DEPARTMENT  
OF WATER RESOURCES, et al.  
  
Defendants.

\*\*\*\*\*

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

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

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

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

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

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

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

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

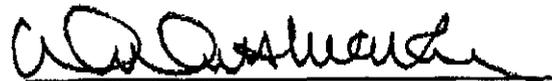
2. The above-captioned case is hereby dismissed without prejudice as to all remaining defendants other than the State defendants.

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

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

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

DATED this 12<sup>th</sup> day of February, 1990.

  
DISTRICT JUDGE

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FILED 4/15 P.M.

MAR 9 1990

JOHN EASTDA - LEK  
BY *John Eastda*  
DEPUTY

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

\*\*\*\*\*

IDAHO POWER COMPANY,  
a corporation,  
  
Plaintiff,

) Case No. 62237  
)  
)  
)

vs.

) CONSENT JUDGMENT  
)  
)  
)

STATE OF IDAHO, IDAHO DEPARTMENT  
OF WATER RESOURCES, et al.  
  
Defendants.

\*\*\*\*\*

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

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

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

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

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

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

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

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

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

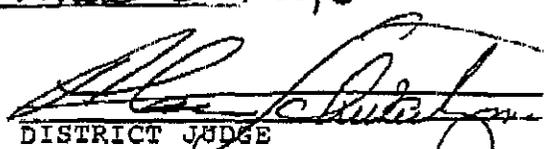
2. The above-captioned case is hereby dismissed without prejudice as to all remaining defendants other than the State Defendants.

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

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

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

DATED this 17<sup>th</sup> day of March, 1990

  
DISTRICT JUDGE