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the document on file at the department of  
Water Resources

Witness my hand and seal of the State of Idaho  
this 4th day of January, 2007.

Barry Packman

**SCANNED**

JAN 29 2007

FRAMEWORK FOR FINAL RESOLUTION  
OF SNAKE RIVER WATER RIGHTS CONTROVERSY

INTRODUCTION

The litigation concerning water rights on the Snake River and its tributaries has focused public attention on the relationship between hydro-power generation at facilities such as Swan Falls dam, and upstream water use and development which impacts the availability of water for power generation. While the litigation has been costly to the Idaho Power Company, other water users, and the State of Idaho and has resulted in uncertainty over future availability of water, it has served to stimulate much-needed dialogue and study concerning prudent management of this vital natural resource.

However, Governor John Evans, Attorney General Jim Jones and Idaho Power Chief Executive Officer James Bruce believe we have reached the point of diminishing returns in pursuing further judicial resolution of this water rights controversy. Achieving a proper balance among competing demands for a limited resource such as water in the Snake River system is a fundamental public policy question. Litigation is not the most efficient method to resolve complex public policy questions. Moreover, adversary proceedings may not necessarily yield solutions which reflect the broad public interest as well as the

In order to resolve the controversy and settle the pending litigation, we have identified a series of judicial, legislative and administrative actions which we agree should be taken in the public interest, and which would resolve the outstanding legal issues to our mutual satisfaction.

1. THE MINIMUM STREAMFLOW IN THE STATE WATER PLAN SHOULD BE ADJUSTED TO 3,900 CUBIC FEET PER SECOND AT MURPHY GAGE DURING THE IRRIGATION SEASON AND TO 5,600 CUBIC FEET PER SECOND DURING THE NON-IRRIGATION SEASON.

The State Water Plan currently provides for a minimum streamflow of 3,300 c.f.s. on an average daily basis at Murphy Gage (below Swan Falls Dam). The Plan itself acknowledges that 3,300 c.f.s. is "less than the amount identified as needed for fish, wildlife and recreational purposes at Swan Falls or downstream." The best available hydrologic data indicate that existing uses result in a potential irrigation season low flow of approximately 4,500 c.f.s. at Murphy Gage on an average daily basis. By raising the irrigation season minimum streamflow, the state will be able to assure an adequate hydropower resource base and better protect other values recognized by the State Water Plan such as fish propagation, recreational and aesthetic interests, all of which would be adversely impacted by an inadequate streamflow. Conversely, by setting the irrigation season minimum flow at 600 c.f.s. below the current actual minimum, the state can allow a significant amount of further development of water uses without violating the minimum

Non-irrigation season flows are of critical importance to the preservation of a low-cost hydro base, and to the ability of the Idaho Power Company to meet the needs of its customers. Therefore, the State Water Plan should be amended to recognize a seasonal differential in flows.

Implementation of an irrigation season (April through October) minimum flow of 3,900 cfs at the Murphy gage would result, under similar assumptions, in a low flow of 5,600 cfs in the non-irrigation season (November through March). The non-irrigation season minimum flow should be set at that level. While new storage projects which use non-irrigation season flows may serve to make more water available during the summer irrigation season, they may adversely impact generation capacity during winter months. Therefore, the state water plan should be amended to require that before new storage projects are approved by the state, we should require that existing storage facilities be fully utilized. After such time, new non-irrigation season storage in the reach below Milner dam and above Murphy Gage should only be authorized if it can be coupled with provisions which mitigate depletions such storage would cause in hydro-power generation.

The actual amount of development that can take place without violation of these minimum streamflows will depend on the nature and location of each new development, as well as the implementation of new practices to augment the streamflow.

Development of new domestic, commercial, municipal and industrial (DCMI) uses should proceed without further impediment because of their minimal effect on total water supply. Availability of an assured water supply for those purposes is essential for the orderly development of all the State's resources. Therefore, the State Water Plan should be amended to reserve a block of water for future consumptive DCMI development. This will both assure its availability and avoid the necessity of numerous eminent domain cases to acquire water for such uses.

2. BECAUSE ADDITIONAL WATER USE DEVELOPMENT POTENTIAL IS LIMITED, EACH NEW DEVELOPMENT SHOULD BE CAREFULLY SCRUTINIZED AGAINST EXPRESS PUBLIC INTEREST CRITERIA.

The right to develop the remaining water resources on the Snake River system should be allocated in a manner which will maximize long-term economic benefit to all sectors of society. Priority should be given to projects which promote Idaho's family farming tradition and which will create jobs. Because maintenance of inexpensive hydropower resources contributes to a positive economic climate for the creation of new jobs for Idahoans, future water rights allocation decisions should weigh the benefits to be obtained from each development against the probable impact it will have on the Company's hydropower resources.

To this end, the settlement of the pending Swan Falls litigation should be structured in a way which will allow the State to utilize Idaho Power Company's asserted water right to augment the State's existing and proposed legal authority to promote beneficial development and to reject proposed development which it deems to be detrimental to the public interest. This authority should extend to pending undeveloped permits as well as new applications.

In addition, legislation should be adopted which will enunciate state policy regarding the types of water resource development which are deemed to be beneficial, and which expressly recognizes hydropower generation benefits as an element of such public interest determination. The public interest criteria should also address the timing of new development.

The legislation should also clarify the authority of the Department of Water Resources to impose and lift moratoriums on the granting of new water rights permits. The parties envision that the Department can resume processing of pending water rights filings upon adoption of regulations implementing such legislation.

3. THE STATE SHOULD COMMENCE A GENERAL ADJUDICATION OF THE ENTIRE SNAKE RIVER BASIN IN IDAHO.

The key to effective management of the Snake River lies in a comprehensive determination of the nature, extent and priority of all of the outstanding claims to water rights.

Only through a general adjudication will the state be in a position to effectively enforce its minimum streamflow rights, protect other valid water rights, and determine how much water is available for further appropriation. A general adjudication will also result in quantification of federal and Indian water rights which until now have been unresolved. A further benefit of adjudication is that it will enable the establishment of an efficient water market system, which will encourage the highest and best use of our water resources.

Because a general adjudication will take many years to complete, it is essential to initiate the process as soon as possible so that it will be completed before an even more severe water rights crisis is upon us. The costs of the adjudication will be substantial, and legislation should be passed which equitably distributes those costs among water users, ratepayers and other taxpayers. The parties consulted with representatives of affected interests, and will recommend an equitable cost-sharing formula as part of a joint legislative package.

**4. THE STATE SHOULD ENCOURAGE THE ESTABLISHMENT OF AN EFFECTIVE WATER MARKETING SYSTEM.**

If the actions outlined in this document are taken there should be a significant amount of water available for appropriation in the Snake River Basin. However, such appropriations should be on the terms and conditions referred to in #2 above. The day is also approaching when there will be no further water

available for traditional appropriation. Therefore some provision must be made to enable people to acquire water rights outside of the appropriation process, over and above the amount reserved for DCMI. Private condemnation proceedings generally involve transaction costs which make it an unattractive alternative. The State should make it easier to get willing sellers together with willing buyers, and to facilitate approval of changes in the place of use. Conjunctive use and management of ground and surface water should also be explored.

5. THE STATE SHOULD FUND HYDROLOGIC AND ECONOMIC STUDIES TO DETERMINE THE MOST COST-EFFECTIVE AND ENVIRONMENTALLY SOUND MEANS TO IMPLEMENT THE STATE WATER PLAN AND TO AUGMENT FLOWS IN THE SNAKE RIVER.

The State Water Plan is the cornerstone of the effective management of the Snake River and its vigorous enforcement is contemplated as a part of the settlement. Much additional information is needed to permit informed management and planning decisions.

A number of methods have been suggested to enhance streamflows in the Snake River, which would benefit both agricultural development and hydro-power generation. Among them are new in-stream storage and aquifer recharge projects. These and other methods deserve study to determine their economic potential, their impact on the environment, and their impact on hydro-power generation.

6. LEGISLATION SHOULD BE ENACTED TO CLARIFY THAT PROCEEDS FROM UTILITY SALES OF HYDROPOWER WATER RIGHTS WILL BENEFIT RATE-PAYERS.

Concern has been expressed that current law could permit a utility to sell its water rights to others. An additional concern is that the proceeds of such a sale would go to stockholders. The parties will propose legislation to address these concerns. Legislation in a draft form has already been discussed at a staff level and should be ready for inclusion in the joint legislative package.

#### CONCLUSION

The focus of discussion of settlement of the "Swan Falls Controversy" has necessarily been on the claims of right and authority at that site. However, the settlement of those issues necessarily involve putting in place legislation and policies which will govern the rest of the Snake River and other watersheds also.

The ultimate-benefit will be to allow informed state policy decisions on future growth and protection of hydropower generation. The definition and implementation of a known and enforceable state policy will make the Swan Falls controversy an asset in the history of the state.



### IMPLEMENTATION TIMETABLE

The nature of the controversy surrounding this issue is of such dimensions and affects the actions of so many citizens that the parties have agreed to an implementation timetable to assist the public in understanding when actions may be expected. However, it must be emphasized that the nature of the issues raised in this matter are complex and changes should be expected. Every effort will be made to keep the public informed concerning actions of the parties that could affect their interests.

October 1...Release Framework and Public Interest Criterion.

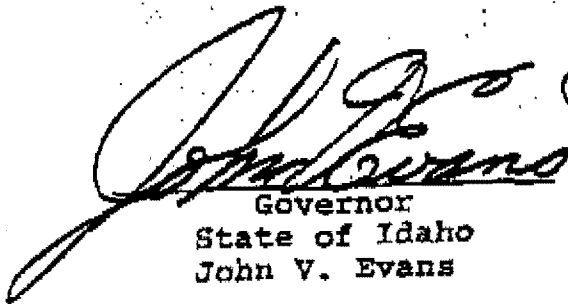
October 15...Execute Settlement Agreement, S.B. 1180 Contract and Stipulation.

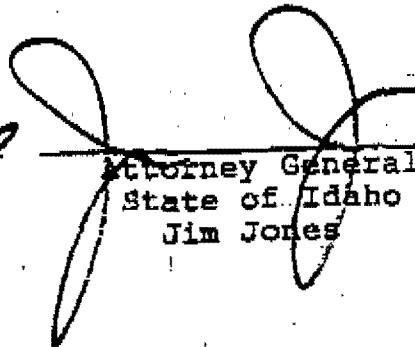
November 1...Proposed amendments to the State Water Plan, and proposed legislation providing public interest criteria, authority of the Department of Water Resources to impose moratoriums on new permits, funding for adjudication of the Snake River, establishment of an effective water market system, funding for hydrologic and economic studies to augment Snake River flows and clarifying allocation of proceeds on sales for hydropower water rights released for comment.

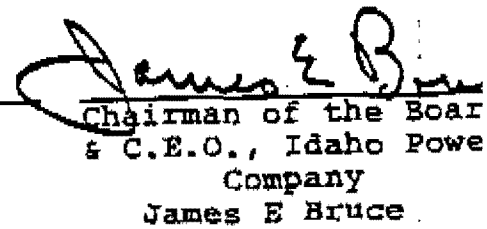
November-December...Meetings with legislative committees for briefing and comments on proposed legislation.

January 15, 1985...Presentation of legislative package to State Legislature.

DATED this 1<sup>st</sup> day of October, 1984.

  
Governor  
State of Idaho  
John V. Evans

  
Attorney General  
State of Idaho  
Jim Jones

  
Chairman of the Board  
& C.E.O., Idaho Power  
Company  
James E. Bruce

The foregoing is a true and certified copy of  
the document on file at the department of  
Water Resources.  
Signed this 4<sup>th</sup> day of JANUARY 20 08  
