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JUN 03 2005

DEPARTMENT OF
WATER RESOURCES

James S. Lochhead
Adam T. DeVoe
BROWNSTEIN HYATT & FARBER, P.C.
410 17th Street
Twenty-Second Floor
Denver, Colorado 80202
jlochhead@bhf-law.com
adevoe@bhf-law.com
Telephone: (303) 223-1100
Facsimile: (303) 223-1111

James Tucker, #2038
Senior Attorney,
Idaho Power Company
Legal Dept
1221 West Idaho Street
Boise, Idaho 83702
Telephone: (208) 388-2112
Facsimile: (208) 388-6935

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 RIGHT NOS.)
36-02356A, 36-07210 AND 36-07427)
_____)

**IDAHO POWER COMPANY'S
PROTEST TO GROUND
WATER DISTRICTS' PLAN
FOR PROVIDING
REPLACEMENT WATER
(BLUE LAKES DELIVERY
CALL)**

Idaho Power Company ("Idaho Power"), by and through its counsel, Brownstein Hyatt & Farber, P.C., and James C. Tucker, Senior Attorney for Idaho Power Company, respectfully submits to the Idaho Department of Water Resources ("IDWR") its Protest to the Idaho Ground Water Appropriators, Inc. ("IGWA") Plan for Providing Replacement Water in this matter. In support of its Protest, Idaho Power states as follows:

I. NAME, ADDRESS AND TELEPHONE NUMBER OF PROTESTANT:

The name of the Protestant is the Idaho Power Company. The names of the representatives of the Idaho Power Company in this proceeding and the persons to be utilized for purposes of service and receipt of all official documents are:

Idaho Power Company
c/o James C. Tucker
Legal Department
P.O. Box 70
1221 W. Idaho St.
Boise, ID 83702
Tel: (208) 388-2112
e-mail: jamestucker@idahopower.com

James S. Lochhead
Adam T. DeVoe
Brownstein Hyatt & Farber, P.C.
410 17th Street
Twenty-Second Floor
Denver, CO 80202
Tel: (303) 223-1100
e-mail: jlochhead@bhf-law.com
adevoe@bhf-law.com

II. INTRODUCTION

On May 19, 2005, the Director issued an Order (the "Blue Lakes Order") in this matter requiring junior groundwater pumpers and other entities seeking to provide replacement water or other mitigation in lieu of curtailment, to file a plan for providing such replacement water with the Director on or before May 30, 2005. In response, IGWA filed an "Initial Plan for Providing Replacement Water" (the "Replacement Plan") with the Director on May 27, 2005.

The Mitigation Plan, on its face, is deficient, and the Director must dismiss the Petition as inadequate, incomplete, and not in conformance with the Conjunctive Management Rules. In addition, the Director has provided inadequate opportunity for parties to analyze the proposed Replacement Plan and submit responses. No time has been allocated for discovery and the Director is apparently planning to approve or deny the Replacement Plan without a hearing by June 6, 2005. The procedure – or, more appropriately, the complete lack thereof – for submitting, reviewing, and approving or denying the Replacement Plan denies due process to all parties involved. Accordingly, the Director should vacate that portion of the Blue Lakes Order

expediting submittal and consideration of replacement plans, require IGWA to submit mitigation plans under the Conjunctive Management Rules, if at all, and provide procedural due process to all parties as called for in Idaho Code and the Department's Rules of Procedure. Until such mitigation plans are filed and approved under IDWR's Conjunctive Management Rules and the Rules of Procedure, the Director and IDWR must curtail junior ground water rights as set forth in the Blue Lakes Order to prevent harm to seniors.

III. GROUNDS FOR PROTEST

A. Idaho Power Has Standing to File this Protest

Idaho Power has standing to file this Protest because it holds water rights in Basin 36, water rights at Swan Falls, and contract rights for minimum flows at Swan Falls. These rights and entitlements confer standing on Idaho Power. Accordingly, Idaho Power is an aggrieved party and seeks to protest and dismiss IGWA's Replacement Plan.

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	3.21cfs	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. The IDWR Rules and Idaho Statutory Authority Do Not Recognize "Replacement Plans" and IGWA's Plan Should be Considered Under the Rules for Mitigation Plans

IDWR's rules do not recognize or provide for "replacement plans," and nowhere in IDWR's rules is the term replacement plan defined. Instead, the Conjunctive Management Rules recognize Mitigation Plans. Mitigation Plans are defined as:

A document submitted by the holder(s) of a junior-priority ground water right and approved by the Director as provided in Rule 043 that identifies actions and measures to prevent, or compensate, holders of senior-priority water rights for, material injury caused by the diversion and use of water by the holders of junior-priority ground water rights within an area having a common ground water supply.

Conjunctive Management Rule 10 15; IDAPA 37.03 11.010.15.

This definition matches precisely that which the Director has ordered IGWA and others to file, though the Director has improperly labeled the required filing under the Blue Lakes Order a "replacement plan" instead of a "mitigation plan" and failed to provide the substantive and procedural protections required under Conjunctive Management Rule 43 for mitigation plans. It is not clear why the Director would not simply direct the junior-priority rights holders to file a mitigation plan if they so desire, though it is clear from IDWR's rules that a mitigation plan meeting the standards set forth in Conjunctive Management Rule 43 is the only proper avenue for relief from the Blue Lakes Order requiring curtailment.

The Replacement Plan submitted by IGWA does not meet the substantive standards and criteria set forth in Conjunctive Management Rule 43, and the Replacement Plan should be therefore be dismissed.

C. If the Director Decides Not to Dismiss the Replacement Plan as Deficient, Idaho Power Moves in the Alternative for the Director to Vacate the Proposed Schedule of Approval, and Require Adherence to the Rules of Procedure.

With less than two weeks notice, the Director required IGWA and others to file a "plan for replacement " The Director then stated that he would rule on these plans within 5 working days, without providing any opportunity for objections or protests, and with no intent to hold a hearing on the matter. This expedited procedure has foreclosed any reasonable possibility for Idaho Power and others to review the plan, gather and assess data and evidence relative to the plan, assess the potential impacts of the Replacement Plan on Idaho Power and others, and prepare written comments and requests for hearings to the Director. There is no apparent basis in the IDWR Rules of Procedure for the contemplated action. Accordingly, this expedited schedule will not afford Idaho Power or other senior water users potentially impacted by the

Replacement Plan a meaningful opportunity to protect their interests. Idaho Power, therefore, respectfully requests that if the Director denies this Protest and does not dismiss the Replacement Plan, that the Director alternatively vacate the expedited schedule and require that IGWA and others seeking to file plans comply with the substantive and procedural rules governing mitigation plans under Conjunctive Management Rule 43 and IDWR Rules of Procedure.

The process in the Blue Lakes Order is not authorized by any Idaho law or procedure. To the extent that mitigation plans under the Conjunctive Management Rules constitute an authorized process under Idaho law (which Idaho Power does not concede), that process is grounded in, and must be consistent with, the statutory authorization for changes of water rights contained in I.C. § 42-222, which sets forth standards for approval and a process for protests to the proposed change. The "process" set forth in the Blue Lakes Order for the filing and approval of a "replacement plan" does not meet these standards, and has no legal statutory basis or authority. The Director, in the Blue Lakes Order, created an *ultra vires* process, which on its face denies any other water right holder of due process, and fails to comply with the substance and procedure set forth in Rule 43 and I.C. § 42-222.

An administrative agency, such as IDWR, is bound not only by its own rules and regulations governing administrative actions, but also is bound to ensure that its proceedings meet federal and state due process requirements. See Withrow v. Larkin, 42 U.S. 35, 45 (1975); McClelland v. Andrus, 606 F.2d 1278, 1286 (D.C. Cir. 1979). The Fourteenth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution prohibit the deprivation of life, liberty or property without due process of law. It is undisputed that individual water rights, such as those at issue here, are protected property rights under the laws of the State of Idaho and, as such, must be afforded the protection of due process before they may

be taken or impaired by government action. Nettleton v. Higginson, 558 P.2d 1048 (Idaho 1977).

“Procedural due process is the aspect of due process relating to the minimal requirements of notice and hearing if the deprivation of a life, liberty or property interest may occur.”

Bradberry v. Idaho Judicial Council, 28 P.3d 1006, 1015 (Idaho 2001). Procedural due process requires that the government provide a party with “an opportunity to be heard at a *meaningful time and in a meaningful manner*.” Id. (Emphasis added). See also Paul v. Board of Professional Discipline of the Idaho State Board of Medicine, 11 P.3d 34, 39 (Idaho 2000).

What constitutes a “meaningful time” and a “meaningful manner” depends on the specific circumstances presented in each case. “Due process, . . . , is not a concept to be applied rigidly in every matter. It is a flexible concept calling for procedural protections as are warranted by the particular situation.” Bradbury, 28 P.3d at 1015.

The Supreme Court has identified three factors for courts to consider in determining the “dictates of due process” in any given case: (1) the interests at stake, (2) the risk of erroneous deprivation of such interests through the procedures used, and the value of additional procedural safeguards, and (3) the fiscal and administrative burden that the additional procedural requirements would entail. See Mathews v. Eldridge, 424 U.S. 319, 335 (1976). In determining what procedural due process requires, Idaho courts have recognized that one fundamental element of procedural due process is the right to present and rebut evidence in defense of protected property interests. Idaho Historic Preservation Council, Inc. v. City Council of City of Boise, 8 P.3d 646, 649 (Idaho 2000); Chambers v. Kootenai County Board of Comm’rs, 867 P.2d 989, 992 (Idaho 1994); Gay v. County Comm’rs of Bonneville County, 651 P.2d 560, 562-63 (Idaho Ct. App. 1982). Other state and federal courts have further held that the right to

conduct discovery, although not constitutionally mandated in all administrative cases, is required if necessary to ensure that the party seeking discovery is afforded procedural due process. See Mister Discount Stockbrokers, Inc. v. Securities and Exchange Commission, 768 F.2d 875, 878 (7th Cir. 1985) (because the due process clause ensures that an administrative proceeding will be conducted fairly, discovery must be granted if in the particular situation a refusal to do so would so prejudice a party as to deny him due process); Mohilef v. Janovici, 58 Cal. Rptr.2d 721, 743 (Cal. Ct. App. 1997) (same).

Applying the three factors to the specific circumstances of this case, it is clear that the Director must comply with the procedural protections afforded by the IDWR Conjunctive Management Rules and the Rules of Procedure because a refusal to do so would so prejudice Idaho Power, and other similarly situated water right holders, as to deny them due process. First, the interests at stake in this action are substantial. The Replacement Plan, if accepted, could cause significant and irreversible injury to the surface water rights of not only Idaho Power, but also hundreds of other senior water users.

Second, given the complexity of the issues presented by the Replacement Plan, there is a high risk that a ruling by the Director without the benefit of proper procedural protections for Idaho Power and other senior water rights holders would erroneously deprive Idaho Power and other surface water users of their senior water rights. The Replacement Plan raises highly technical and complex water management issues. The Replacement Plan provides very little substantive detail to support its claims, making it impossible for anyone to analyze the validity of the Replacement Plan on its face. For these same reasons, the Director cannot fully and accurately evaluate the potential impacts of the Replacement Plan on senior water interests.

without first affording those interests an opportunity to gather evidence, review the plan, submit comments and potentially request a hearing on the matter

Finally, providing the parties these minimal procedural protections will not impose a fiscal or administrative burden on the Director. Although procedural due process will delay approval of the Replacement Plan, any fiscal burden will be borne by the parties, not the agency. In light of the interests at stake and the highly technical issues presented, due process mandates that the Director vacate the expedited process.

In summary, should the Director determine not to dismiss the Replacement Plan as deficient, the specific circumstances in this action require the Director to vacate the provisions of the Blue Lakes Order expediting filing and consideration of the Replacement Plan and provide the parties with the procedural protections of the IDWR Conjunctive Management Rules and the Rules of Procedure. A contrary decision by the Director would arbitrarily and capriciously violate the procedural due process requirements of the state and federal constitutions.

D. The Director Must Curtail Junior Ground Water Rights in Accordance with the Blue Lakes Order Pending Approval of any Mitigation Plan.

The Blue Lakes Order finds that specified junior ground water rights must be curtailed in order to avoid injury to senior water rights. While it is entirely proper for IGWA or any other ground water interest to file a mitigation plan for consideration pursuant to established rules of the IDWR, junior ground water rights must be curtailed pending the approval of such a plan. Failure to properly administer junior ground water rights that have already been found to have caused injury will deprive senior water rights holders, including Idaho Power, of the lawful exercise of their property rights. Therefore, failure of the Director to order the curtailment of junior water rights as set forth in the Blue Lakes Order will result in a violation of law and a

taking of the lawful property of others. Idaho Power reserves the right to assert further claims against the State of Idaho in the event the Director fails to carry out his duties under the law.

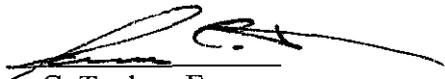
IV. REQUEST FOR RELIEF

Based on the foregoing, Idaho Power Company respectfully requests that the Director take the following action with respect to the District's proposed mitigation plan:

1. Dismiss the Replacement Plan as incomplete under Conjunctive Management Rule 43;
2. In the alternative, vacate the expedited process for consideration of the Replacement Plan.
3. Curtail junior ground water pumpers until mitigation plans meeting all aspects and requirements of Conjunctive Management Rule 43 have been approved

Dated this 3rd day of June, 2005.

IDAHO POWER COMPANY

By: 

James C. Tucker, Esq.

Senior Attorney, Idaho Power Company

and

James S. Lochhead, Esq.

Adam I. DeVoe, Esq.

Brownstein Hyatt & Farber, P.C

410 17th Street

Twenty-Second Floor

Denver, CO 80202

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2005 a true and correct copy of the foregoing **IDAHO POWER COMPANY'S PROTEST TO GROUND WATER DISTRICTS' PLAN FOR PROVIDING REPLACEMENT WATER (BLUE LAKES DELIVERY CALL)** was deposited in the United States Mail, postage prepaid addressed to:

Jeffrey C. Fereday
Michael C. Creamer
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720
cf@givenspursley.com
mcc@givenspursley.com

Allen Merritt
Cindy Yenter
IDWR
Southern Regional Office
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3033
allen.merritt@idwr.idaho.gov
cindy.yenter@idwr.idaho.gov

Director Karl Dreher
Idaho Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098
karl.dreher@idwr.idaho.gov

Greg Kaslo
Blue Lakes Trout Farm
P. O. Box 1237
Twin Falls, Idaho 83303-1237

Daniel V Steenson
Ringer Clark, Chartered
P. O. Box 2773
Boise, Idaho 83701-2773

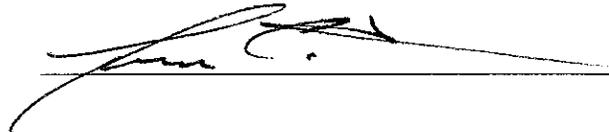
A handwritten signature in black ink, appearing to be "Karl Dreher", written over a horizontal line.

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

ORDER OF PARTIAL DECREE

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

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

2002 OCT 18 AM 10 49

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 36-02704

NAME AND ADDRESS: IDAHO POWER COMPANY
P.O. BOX 70
BOISE, ID 83707-0070

SOURCE: NIAGARA SPRINGS TRIBUTARY: SNAKE RIVER

QUANTITY: 120.00 CFS
48180 00 AFY

USE OF THIS RIGHT WITH RIGHT NO. 36-15221 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 120 CFS AND A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 48,180 AF.

PRIORITY DATE: 01/31/1966

POINT OF DIVERSION: T09S R15E S10 LOT 1 (NENENE) Within Gooding County
LOT 1 (SENESE)

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0 04 CFS 8 00 AFY
	Domestic	01-01 TO 12-31	0 04 CFS 1.80 AFY
	Fire Protection	01-01 TO 12-31	120.00 CFS 48180.00 AFY
	Fish Propagation	01-01 TO 12-31	120.00 CFS 48180 00 AFY

PLACE OF USE: Irrigation Within Gooding County
T09S R15E S10 LOT 9 (SENE) 2 0
2.0 Acres Total

Fish Propagation Within Gooding County
T09S R15E S10 LOT 1 (NENE) LOT 9 (SENE)

Domestic Within Gooding County
T09S R15E S10 LOT 1 (NENE) LOT 9 (SENE)

Fire Protection Within Gooding County
T09S R15E S10 LOT 1 (NENE) LOT 9 (SENE)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

USE OF THIS WATER RIGHT SHALL BE SUBJECT TO THE TERMS AND
CONDITIONS OF THE "NIAGARA SPRINGS AGREEMENT," DATED SEPTEMBER
30, 1993, AND THE "AMENDMENT TO NIAGARA SPRINGS AGREEMENT,"
DATED JULY 24, 2002.

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)

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)	ORDER OF PARTIAL DECREE
)	
Case No. 39576)	For Water Right 36-02082
_____)	

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 COUNTY, IDAHO
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

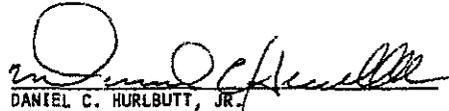
COOLING AT LOWER SALMON FALLS POWER PLANT..

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

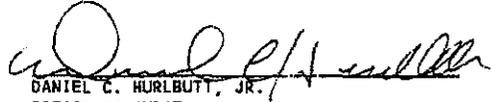
COOLING Within GOODING County
T07S R13E S02 Lot 7 (SESW)

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

1998 MAR -2 PM 2: 45

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILE # _____

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

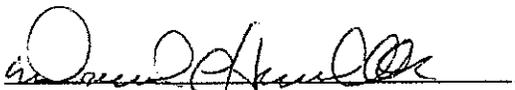
In Re SRBA)	ORDER OF PARTIAL DECREE
)	
Case No. 39576)	For Water Right 36-02710
_____)	

On January 13, 1998, 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 36-02710 is hereby decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*

DATED March 2, 1998.



 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 36-02710

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 SWSWNE 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

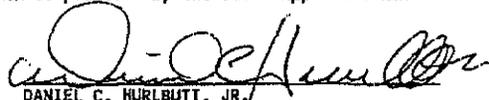
DOMESTIC USE FOR 1 HOME AND PARK RESTROOMS.

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:

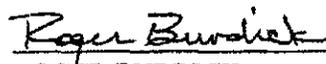
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I.C. section 42-1412(6).

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

1997 NOV 25 AM 10:58

DISTRICT COURT
TWIN FALLS COUNTY
FILED

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

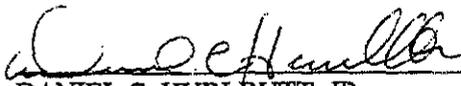
In Re SRBA)	ORDER OF PARTIAL DECREE
)	
Case No. 39576)	For Water Right 36-02037
_____)	

On August 27, 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 36-02037 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 36-02037

1997 NOV 25 AM 10:53

DISTRICT COURT-S
TWIN FALLS COUNTY
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..

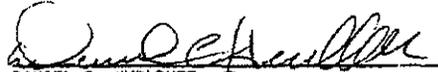
PLACE OF USE:

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
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

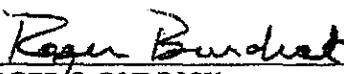
In Re SRBA)
Case No. 39576) **ORDER OF PARTIAL DECREE**
_____) **For Water Right 36-15221**
)

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

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 Byrdick
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:

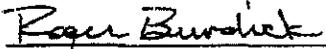
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I.C. section 42-1412(6).

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)
) PARTIAL DECREE PURSUANT TO
Case No. 39576) I.R.C.P. 54(b) FOR
) Water Right 36-15358

1997 NOV 26 PM 2:42

DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED

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

SOURCE: THOUSAND SPRINGS
SNOW BANK SPRINGS

TRIBUTARY: SNAKE RIVER
SNAKE RIVER

QUANTITY: 0.03 CFS

PRIORITY DATE: 06/20/1924

POINT OF DIVERSION: T08S R14E S08

SNNWSE
NESWSE
NWSWSE
SESWSE

Within GOODING County

PURPOSE AND PERIOD OF USE: PURPOSE OF USE
IRRIGATION

PERIOD OF USE
Irrigation Season

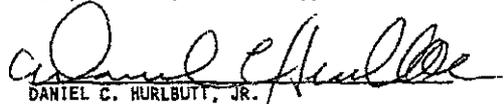
QUANTITY
0.03 CFS

PLACE OF USE: IRRIGATION Within GOODING County
T08S R14E S08 Lot 4 (SESW) 1
1 ACRES TOTAL


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 36-15358

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

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

2001 DEC 19 PM 4:18

In Re SRBA)
PARTIAL DECREE PURSUANT TO
I R C P 54(b) FOR)
Case No. 39576)
Water Right 36-07104

TWIN FALLS DISTRICT COURT
SRBA
TWIN FALLS CO, IDAHO
FILED

NAME AND ADDRESS: IDAHO POWER COMPANY
PO BOX 70
BOISE, ID 83707

SOURCE: SPRINGS TRIBUTARY: SNAKE RIVER

QUANTITY: 0.30 CFS
81.20 AFY

THE QUANTITY OF WATER UNDER THIS RIGHT FOR DOMESTIC USE SHALL
NOT EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 12/10/1969

POINT OF DIVERSION: T08S R14E S33 LOT 01 (SEWNWE) Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic	01-01 TO 12-31	0.04 CFS 1.20 AFY
	Irrigation	02-01 TO 10-31	0.30 CFS 80.00 AFY

DOMESTIC USE IS FOR A YEAR ROUND SCOUT CAMP FACILITY
THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY CONTINUE
TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT
ARE NOT EXCEEDED. THE USE OF WATER AFTER OCTOBER 31 UNDER THIS
REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED
LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A
PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE: Irrigation Within Gooding County
T08S R14E S33 LOT 01 (NWNE) 20.0
20.0 Acres Total
Domestic Within Gooding County
Same as Irrigation

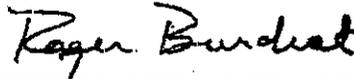
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
DOMESTIC USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

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).

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. 36-2478

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
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 NWSE 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

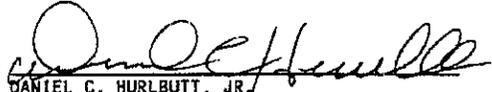
COOLING IS FOR 2 POWER PLANTS.

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

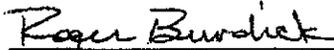
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I.C. section 42-1412(6).

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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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,) Case No. 81375
a corporation,)

Plaintiff,)

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

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

14 B. The Company is also entitled to use the
15 flow of the Snake River at its facilities to
16 the extent of its actual beneficial use, but
17 not to exceed those amounts stated in State
18 Water License Numbers 36-2013 (Thousand
19 Springs), 37-2128 & 37-2472 (Lower Malad),
20 37-2471 (Upper Malad), 36-2018 (Clear Lake),
21 36-2026 (Sand Springs), 02-2057 (Upper
22 Salmon), 02-2001A, 02-2001B, 02-2059,
23 02-2060 (Lower Salmon), 02-2064, 02-2065
24 (Bliss), 02-2056 (Twin Falls), 02-2036
25 (Shoshone Falls), 02-2032, 02-4000, 02-4001,
26 and Decree Number 02-0100 (Swan Falls), but
27 such rights in excess of the amounts stated
28 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.

29 C. The Company's rights listed in
30 paragraph 1(A) and 1(B) are also subordinate
31 to the uses of those persons dismissed from
32 this case pursuant to the contract executed
33 between the State and Company implementing
34 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.

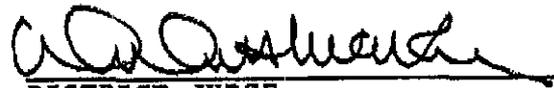
2. The above-captioned case is hereby dismissed without prejudice as to all remaining defendants other than the State defendants.

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 12th day of February, ¹⁹⁹⁰ 1989.


DISTRICT JUDGE

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JOHN EASTIDA - LEK
BY *John Eastida*
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,)	Case No. 62237
)	
Plaintiff,)	
)	
vs.)	<u>CONSENT JUDGMENT</u>
)	
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
9 station is located at latitude 43°17'31",
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11 of Section 35 in Township 1 South, Range 1
12 West, Boise Meridian, Ada County Hydrologic
13 Unit 17050103, on right bank 4.2 miles
14 downstream from Swan Falls Power Plant, 7.5
15 miles NE of Murphy, at river mile 453.5.

16 B. The Company is also entitled to use the
17 flow of the Snake River at its facilities to
18 the extent of its actual beneficial use, but
19 not to exceed those amounts stated in State
20 Water License Numbers 36-2013 (Thousand
21 Springs), 37-2128 & 37-2472 (Lower Malad),
22 37-2471 (Upper Malad), 36-2018 (Clear Lake),
23 36-2026 (Sand Springs), 02-2057 (Upper
24 Salmon), 02-2001A, 02-2001B, 02-2059,
25 02-2060 (Lower Salmon), 02-2064, 02-2065
26 (Bliss), 02-2056 (Twin Falls), 02-2036
27 (Shoshone Falls), 02-2032, 02-4000, 02-4001,
28 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
Ada County Case No. 81375 pursuant to the

1 contract executed between the State and
2 Company implementing the terms of Idaho Code
3 §§61-539 and 61-540.

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

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

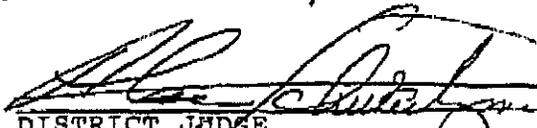
18 2. The above-captioned case is hereby dismissed
19 without prejudice as to all remaining defendants other than the
20 State Defendants.

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

27 4. The Swan Falls Agreement, dated October 25, 1984
28 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 7th day of March, 1990


DISTRICT JUDGE