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

In Re SRBA

Case No. 39576

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Basin-Wide Issue No. 13

MOTION FOR STAY OF BASIN-  
WIDE ISSUE NO. 13 AND REQUEST  
FOR EXPEDITED HEARING

The Idaho Power Company ("Idaho Power") hereby moves for a stay of proceedings concerning Basin-Wide Issue No. 13. The grounds for this motion are as follows:

1. The SRBA Court has already determined that issues concerning the Swan Falls

Agreement and its relation to the SRBA should be addressed in the SRBA. On August 23, 2004, the SRBA Court issued its Order Designating Basin-Wide Issue 91-13 (“Order re Basin-Wide Issue 13”), which the Court described as “To What Extent, If Any, Should the *Swan Falls Agreement* Be Addressed in the SRBA or Memorialized in a Decree?” In that Order, the Court found that “[t]he *Swan Falls Agreement* needs to be addressed in the context of the SRBA to avoid future ambiguity regarding the subsequent effect of the SRBA.” Order re Basin-Wide Issue 13 at 5.

2. It appears from the Court's Order re Basin-Wide Issue 13 that while the Court believes substantive issues concerning the meaning and effect of the *Swan Falls Agreement* should be addressed in the course of the SRBA, the Court intends to address in Basin-Wide Issue No. 13 only the narrower issue of how SRBA decrees should reference the Agreement as a procedural matter. The Court indicated in designating Basin-Wide Issue 13 that it "is only making a preliminary determination as to whether a remark should be include in individual decrees for purposes of this motion." Order re Basin-Wide Issue 13 at 6. The Court further stated regarding this Basin-Wide Issue that “[i]t is not the intent of the Court to extend the scope of the proceedings beyond the issues raised in the objections and in effect open the terms of the *Swan Falls Agreement* to litigation.” Id.

3. On or about May 10, 2007, Idaho Power filed a Complaint and Petition for Declaratory and Injunctive Relief (“Complaint and Petition”) with the SRBA Court. That Complaint and Petition seeks relief with respect to a number of issues concerning the meaning and effect of the *Swan Falls Agreement* (“Agreement”), including but not limited to: (a) a declaration that there was no “trust water” available when the Agreement was executed in 1984, and therefore no trust *res* and no valid trust established under the *Swan Falls Settlement*; (b) a

reformation of the Swan Falls Settlement based on mutual mistake of fact regarding the existence of trust water, eliminating any asserted trust while retaining provisions unrelated to the purported trust; (c) a declaration that to the extent there is a valid trust, the trust *res* is water and not water rights, the State of Idaho does not hold legal title to Idaho Power's water rights, and title to the water rights referenced in the Swan Falls Agreement is quieted in Idaho Power; (d) a declaration that Idaho Power's water rights for hydropower generation are not, through the Swan Falls Settlement or otherwise, subordinate to the use of water for ground water recharge. The Complaint and Petition seeks other declaratory and injunctive relief with respect to issues related to the Swan Falls Agreement.

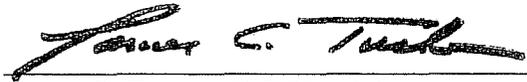
4. Idaho Power maintains that substantive issues concerning the meaning and effect of the Swan Falls Agreement should be resolved in the SRBA proceeding initiated by Idaho Power's Complaint and Petition, rather than as part of Basin-Wide Issue No. 13 which appears to be limited to narrower procedural issues. Idaho Power further maintains that the substantive issues concerning the meaning and effect of the Agreement raised in its Complaint and Petition should be resolved before the Court addresses in Basin-Wide Issue No. 13 procedural issues such as how SRBA decrees should reference the Agreement, whether remarks regarding Agreement should be include in individual decrees, and what those remarks should be.

## CONCLUSION

Accordingly, Idaho Power respectfully requests that the SRBA Court stay proceedings concerning Basin-Wide Issue No. 13 pending resolution in the SRBA of substantive issues regarding the meaning and effect of the Swan Falls Agreement. Idaho Power respectfully requests an expedited hearing on this motion.

Dated this 10th day of May, 2007.

Respectfully submitted,



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## CERTIFICATE OF MAILING

I certify that on May 10<sup>th</sup>, 2007, I mailed copies of the **Motion for Stay of Basin Wide Issue No. 13, Motion for Stay of Proceedings on Idaho Power Company Water Rights in Basins 2, 36 and 37 or Alternatively to Consolidate Proceedings, and Complaint and Petition for Declaratory and Injunctive Relief**, to the following persons:

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