



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN
ATTORNEY GENERAL OPINION 06-2

Hand Delivered

Honorable Bruce Newcomb
Speaker of the House
Idaho House of Representatives
STATEHOUSE

Per Request for Attorney General's Opinion
Regarding Swan Falls Agreement and Idaho Code §§ 42-234(2) and 42-4201A(2)

Dear Speaker Newcomb:

This opinion responds to the questions in your letter dated February 27, 2006, regarding the effect of Idaho Code §§ 42-234(2) and 42-4201A(2) on the use of natural flow to recharge the Eastern Snake Plain Aquifer. In order to respond to your questions, it is first necessary to review the Swan Falls Agreement and to then consider the effect, if any, of Idaho Code §§ 42-234(2) and 42-4201A(2) on the Swan Falls Agreement. The questions presented are set forth below.

QUESTIONS PRESENTED

1. Is aquifer recharge a use to which Idaho Power Company subordinated its hydropower water rights under the Swan Falls Agreement?
2. If Idaho Power Company subordinated its water rights to recharge under the Swan Falls Agreement, do the provisions in Idaho Code §§ 42-234(2) and 42-4201A(2) change the Swan Falls Agreement and create any vested rights or priorities in Idaho Power Company?

CONCLUSIONS

1. Under the Swan Falls Agreement, Idaho Power Company subordinated its hydropower water rights in excess of the agreed-upon minimum flows to all

“subsequent beneficial upstream uses upon approval of such uses by the State in accordance with State law,”¹ regardless of the type or kind of beneficial use. Thus, the hydropower rights referenced in the Swan Falls Agreement are subordinated to aquifer recharge in accordance with state law.

2. Idaho Code §§ 42-234(2) and 42-4201A(2) does not create any vested rights or priorities in Idaho Power Company because the State, as trustee, holds legal title to the water placed in trust and, in accordance with the Swan Falls Agreement, the State has the right to determine how the trust water will be used. Idaho Code §§ 42-234(2) and 42-4201A(2) create only an incidental statutory benefit in favor of Idaho Power that the State is free to modify or rescind at any time.

ANALYSIS

I.

THE SWAN FALLS AGREEMENT DOES NOT LIMIT THE TYPES OF BENEFICIAL USES FOR WHICH THE TRUST WATERS MAY BE ALLOCATED

You have asked whether aquifer recharge is a use to which Idaho Power Company (“Idaho Power”) subordinated its water rights under the Swan Falls Agreement. This question raises the issue of whether the Swan Falls Agreement limits the subordination of Idaho Power’s water rights to any particular types or kinds of beneficial uses, and therefore categorically excludes other uses for purposes of subordination. These issues present a question of the interpretation of the Swan Falls Agreement.

The objective in interpreting a contract such as the Swan Falls Agreement is to give effect to the parties’ intentions, which should be ascertained from the language of the contract, if possible. Tolley v. THI Co., 140 Idaho 253, 260, 92 P.3d 503, 510 (2004). The contract must be viewed as a whole and in its entirety. Clear Lakes Trout Co., Inc. v. Clear Springs Foods, Inc., 141 Idaho 117, 120, 106 P.3d 443, 446 (2005). If its terms are clear and unambiguous, their meaning and legal effect are questions of law controlled by the plain meaning of the words. *Id.* If the contractual language is ambiguous, the parties’ intent may be determined from the facts and circumstances surrounding the formation of the contract. *Id.* Contractual language is ambiguous if it is reasonably susceptible to conflicting interpretations. Maroun v. Wyreless Systems, Inc., 141 Idaho 604, 614, 114 P.3d 974, 984 (2005).

¹ “Agreement” executed by the Governor, the Attorney General and the Chief Executive Officer of Idaho Power Company on October 25, 1984, for purposes of resolving the litigation regarding Idaho Power Company’s water rights at Swan Falls dam (the “Swan Falls Agreement”) at 4, ¶ 7(B).

As discussed below, the plain terms of the Swan Falls Agreement compel the conclusion that Idaho Power subordinated its hydropower water rights to all future beneficial uses, including but not limited to aquifer recharge. Testimony given by Idaho Power's legal counsel in Idaho legislative hearings confirm the plain terms of the Swan Falls Agreement.

A. The Terms of the Swan Falls Agreement

1. Overview of the Swan Falls Agreement

The Swan Falls Agreement had its origin in litigation over whether Idaho Power's water rights for its hydropower generation facilities on the Snake River had been subordinated to beneficial upstream uses. The Idaho Supreme Court held that Idaho Power had expressly subordinated its water rights at its Hells Canyon dams but not at the Swan Falls dam. Idaho Power Co. v. Dept. of Water Resources, 104 Idaho 575, 586, 661 P.2d 741, 752 (1983). The court also held, however, that the mere lack of an express subordination provision in the Swan Falls water rights licenses did not mean that the water rights were unsubordinated, and remanded the case for consideration of the extent to which Idaho Power may have subordinated or otherwise lost its Swan Falls water rights under a variety of theories advanced by the State and other parties to the case. *Id.* at 583, 590, 661 P.2d at 749, 756.²

The parties resolved this litigation by agreeing that a portion of Idaho Power's hydropower water rights would be held in trust by the State of Idaho and that hydropower use of the trust water would be subordinated to subsequent beneficial upstream uses approved by the State in accordance with state law. This solution was a compromise between the State's desire to have immediate and complete subordination of Idaho Power's hydropower water rights and Idaho Power's desire to retain full ownership and use of its hydropower water rights until a new beneficial upstream use of the water was approved by the Idaho Department of Water Resources. It is against this backdrop that the subordination provision of the Swan Falls Agreement must be construed.

2. The Subordination Provision

The parties to the Swan Falls Agreement viewed it as providing "a plan best adapted to develop, conserve, and utilize the water resources of the region in the public interest." Agreement at 5, ¶ 11. This was to be achieved largely through the subordination provision of the Agreement. Miles v. Idaho Power Co., 116 Idaho 635,

² These theories included abandonment, forfeiture, adverse possession, equitable estoppel, and customary preference. *Id.*

637, 778 P.2d 757, 759 (1989) (“[t]he purpose of the [Swan Falls] agreement concerning subordination was to make more water available for future appropriators and to assist in the expansion of other beneficial uses of the water in the Snake River”).

The subordination provision established certain minimum flows³ and provided that water accruing to Idaho Power’s hydropower water rights above these minimum flows would be held in trust by the State of Idaho for “subsequent beneficial upstream uses”:

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 [recitation of the applicable water right license numbers], but such rights in excess of the [minimum flow] amounts stated in 7(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 7(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. . . . This paragraph shall constitute a subordination condition.

Agreement at 3, ¶ 7(B) (emphasis added).

The subordination language is straightforward. The Agreement expressly provides for subordination to “subsequent” beneficial upstream uses “upon approval of such uses by the State.” These terms explicitly require subordination to beneficial uses approved after the execution of the Agreement. In the absence of any textual limitation to the contrary, the most natural reading of this language is that it includes not only new diversions for established types of beneficial uses, but also diversions for new types of beneficial uses recognized and approved in accordance with State law. It is a given that State law is not static and changes over time, and this is particularly true with respect to what uses of water constitute “beneficial uses.” See Dept. of Parks v. Idaho Dept. of Water Administration, 96 Idaho 440, 447-48, 530 P.2d 924, 931-32 (1974) (“With the exception of the uses implicitly declared to be beneficial by Article 15, § 3, there is

³ The agreed-upon minimums are average daily flows of 3,900 c.f.s. from April 1 to October 31, and 5,900 c.f.s. from November 1 to March 31, as measured at the U.S.G.S. Gauging Station below Swan Falls Dam and above Murphy, Idaho (the “Murphy Gauge”). Swan Falls Agreement at 3, ¶7(A).

The Swan Falls Agreement contains three express subordination provisions. Agreement at 3-4, ¶¶ 7(B)-(D). Two of these subordinated Idaho Power’s water rights to certain junior uses that actually existed or were in the process of being perfected as of the date of the Agreement and are not directly relevant to the question presented. *Id.* at 4, ¶¶ 7(C)-(D).

always a possibility that other uses beneficial in one era will not be in another and vice versa”) (Bakes, J., concurring specially).

Thus, under the plain terms of the Swan Falls Agreement, if a proposal to appropriate water for aquifer recharge is approved by the State as a beneficial use in accordance with state law, the hydropower water rights held in trust are subordinated to such use.

B. The Legislative History of the Statutes Implementing the Agreement

While the Agreement is unambiguous, it is worth noting that the history of the legislation the parties proposed to implement the Swan Falls Agreement also shows that subordination was not intended to be limited to any particular type or category of beneficial use.⁴ The testimony of Idaho Power’s legal counsel in committee hearings on Senate Bill 1008, the centerpiece of the proposed Swan Falls legislation, demonstrates particularly well that Idaho Power understood the Agreement included all types of beneficial uses subsequently recognized by state law. He testified before the Senate Resources & Environment Committee that “[t]he Company feels it is critical hydropower be recognized as an element in consideration of new water uses that affect the river above Murphy. It is important that the statute and the contract do not prohibit development.” Minutes of the Idaho Senate Resources and Environment Comm., Jan. 18, 1985, 48th Sess. (Idaho 1985) (“Minutes of Jan. 18, 1985”) at 2 (testimony of Tom Nelson) (emphasis added).

Similarly, at a subsequent hearing, Idaho Power’s counsel stated that “[a]nything above the minimum flow the state is free to do as it likes,” and that “[o]f course one of the big questions is what will future uses be of the remaining water.” Minutes of the Idaho Senate Resources and Environment Comm., Feb. 1, 1985, 48th Sess. (Idaho 1985) (“Minutes of Feb. 1, 1985”) at 7, 9 (Nelson testimony). These statements reveal that the parties intended to provide for subordination of the trust water to all future beneficial uses approved in accordance with state law.

The statements of Idaho Power’s counsel take on even more significance in light of the fact that the future use of trust water for aquifer recharge was an obvious possibility at the time of the Agreement. Statutes authorizing aquifer recharge, albeit on a limited basis, were first enacted in 1978, some six years prior to the Swan Falls

⁴ See Agreement at 2-3, ¶ 6; *id.* at 8, ¶ 13(A)(vii) (agreeing to propose and support a legislative program implementing the Agreement and conditioning effectiveness of the subordination provision on the enactment of corresponding subordination legislation); *id.* at Exhibits 1-8 (the proposed legislation). The proposed subordination legislation was enacted substantially as proposed and is codified at Idaho Code §§ 42-203B and 42-203C.

Agreement. See Idaho Code §§ 42-4201 *et seq.* Indeed, the 1978 aquifer recharge statutes invoked the same “multiple use water policy of this state” that the parties explicitly recognized in 1984. 1978 Idaho Session Laws, ch. 293, § 1; Idaho Code § 42-4201(1) (emphasis added); see also Agreement at Exhibit 1, pp. 3-4 (“the promotion of full economic and multiple use development of the water resources of the State of Idaho”) (emphasis added).⁵ Further, aquifer recharge had been recognized as a “beneficial use” in other states for several years. See *McTaggart v. Montana Power Co.*, 602 P.2d 992, 996 (Mont. 1979); *Oahe Conservancy Subdistrict v. Janklow*, 308 N.W.2d 559, 564 (S.D. 1981). In this context, the absence of any evidence that the parties intended to exclude subordination to aquifer recharge must be understood as meaning that the parties were aware that aquifer recharge would potentially trigger subordination under the Agreement in the future.

II.

IDAHO CODE §§ 42-234(2) AND 42-4201A(2) DO NOT CREATE ANY VESTED RIGHTS OR PRIORITIES IN IDAHO POWER COMPANY

Idaho Code § 42-234 declares that the appropriation and underground storage of unappropriated water for purposes of ground water recharge is a beneficial use, and authorizes the Department of Water Resources to issue permits to appropriate for such uses. The statute also provides that such rights are secondary to prior perfected rights, including those that might otherwise be subordinated by the Swan Falls Agreement:

The rights acquired pursuant to any permit and license obtained as herein authorized shall be secondary to all prior perfected water rights, including those water rights for power purposes that may otherwise be subordinated by contract entered into by the governor and Idaho power company on October 25, 1984, and ratified by the legislature pursuant to section 42-203B, Idaho Code.

Idaho Code § 42-234(2).⁶

Idaho Code § 42-4201A(2) is identical in relevant part. By their terms, these statutes make a licensed right to beneficially use water for underground storage or aquifer recharge secondary to the hydropower water rights held in trust by the State of Idaho under the Swan Falls Agreement. Thus, the question is whether the statutes give rise to

⁵ Presently codified at Idaho Code § 42-203C.

⁶ The language of Idaho Code §§ 42-234(2) and 42-4201A(2) is an express acknowledgement that the subordination provision would apply to aquifer recharge in the absence of the 1994 change to the statutes making recharge use secondary to hydropower use under the Swan Falls Agreement.

any vested rights in Idaho Power Company that permanently trump the subordination provision of the Swan Falls Agreement. Under the plain language of the Agreement and the relevant legislative history, the answer to this question is clearly "No," for two reasons: (1) the State holds legal title to the subordinated portion of the hydropower water rights in trust for the people of the State of Idaho and Idaho Power, and (2) as part of the Swan Falls Agreement, Idaho Power bargained away any right to assert a vested right in the trust water.

The Agreement and the implementing legislation resolved the Swan Falls litigation principally by transferring legal title to a portion of Idaho Power's hydropower water rights to the State, which holds the rights in trust for the benefit of the people of the State of Idaho and Idaho Power. Agreement at 8, ¶ 13(A)(vii); *id.* at Exhibit 7B; Idaho Code § 42-203B. Hydropower use of the trust water is subordinated to subsequent beneficial upstream uses approved by the State in accordance with state law. *Id.*

A Statement of Legislative Intent for Senate Bill 1008, the centerpiece of the legislation proposed and enacted to implement the Swan Falls Agreement, was prepared and read into the Senate Journal and describes the trust as follows:

[T]his trust arrangement results in the State of Idaho possessing legal title to all water rights previously claimed by Idaho Power Company above the agreed minimum stream flows and Idaho Power Company holds equitable title to those water rights subject to the trust. The Idaho Department of Water Resources is the entity which makes the determination of whether water is to be reallocated from the trust under the criteria of Section 42-203C and in compliance with the State Water Plan. The Company's rights may be asserted by the state, as trustee, and by Idaho Power Company, as beneficiary of the trust, and as the user of the water right. Idaho Power Company is not the sole beneficiary of the trust, however. Future appropriators, as persons on whose behalf the trust waters are held, may seek to appropriate the trust waters in conformance with State law. The State acts as trustee in their behalf as well. At such time as a future appropriator is granted a water right in the trust waters, Idaho Power Company's rights in such appropriated water become subordinated.

Statement of Legislative Intent S 1008 ("Statement of Legislative Intent"), JOURNAL OF THE STATE SENATE, 48th Sess. (Idaho 1985) at 58-61, 60; *see also* Minutes of Jan. 18, 1985 and Minutes of Feb. 1, 1985 (testimony by Idaho Power's legal counsel describing the trust arrangement).

Thus, the State, as trustee, holds legal title to the hydropower water rights referenced in the Swan Falls Agreement to the extent they exceed the agreed-upon

minimum flows, and has the authority to manage the trust water for the benefit of the people of the State of Idaho and Idaho Power. Under the Agreement and the implementing legislation, Idaho Power surrendered its legal title and control of the water rights above the minimum flows. Idaho Power retained only an equitable interest in the use of the trust water until such time as the State approved a subsequent beneficial upstream use in accordance with state law. Thus, as trustee, the State has exclusive authority to determine how the trust water will be allocated.

This understanding is supported by the express language of the Swan Falls Agreement, which provides that other than the legislative program that implemented the Agreement, legislation enacted after the effective date of the Agreement has no effect on it:

This Agreement is contingent upon certain enactments of law by the State and action by the Idaho Water Resource Board. Thus, within this Agreement, reference is made to state law in defining respective rights and obligations of the parties. Therefore, upon implementation of the conditions contained in paragraph 13, any subsequent final order by a court of competent jurisdiction, legislative enactment or administrative ruling shall not affect the validity of this Agreement.

Agreement at 8, ¶ 17 (“Subsequent Changes in Law”) (emphases added). In other words, the parties expressly agreed that legislation passed after the Agreement became effective would not void the Agreement or change the parties’ rights and obligations as established by the Agreement. Part of the contractual agreement was Idaho Power’s acceptance of beneficial upstream uses upon approval of such uses by the State in accordance with state law.

The language in Idaho Code §§ 42-234(2) and 42-4201A(2) regarding the Swan Falls Agreement was enacted some ten years after the Agreement was signed. *See* Idaho Session Laws 1994, ch. 274, § 1, p. 851; *id.* ch. 433, § 1, p. 1397. These statutes reflect a policy decision at the time to treat aquifer recharge as a secondary use. But, as noted above, the state as trustee is free to change the policies regarding the use of the water held in trust.⁷

This interpretation accords with the parties’ intent as revealed by the legislative history of SB 1008. In testimony before the Senate Resource and Environment Committee, Idaho Power’s attorney left no doubt that the Agreement ultimately controls

⁷ Once a subsequent beneficial upstream use becomes a vested right, the water subject to that right is no longer part of the trust water.

subordination, and that statutorily increasing the amount of water actually available to Idaho Power merely creates an incidental benefit that the State is free to modify or rescind at any time:

Senator Crapo: With regard to the portion of the contract that says that subsequent legislative changes don't impinge on the contract. Would you clarify, what subsequent legislative changes would do to the status of [the] Idaho Power water right with regard to changes in minimum flow?

Tom Nelson: As the contract and the statute work together, the state could obviously increase the minimum flow at Murphy anytime they wanted. The Company would have no rights involved in that decision. If the state wanted to reduce that minimum flow below the seasonal 3900 and 5600 it certainly is at liberty to do that. However, the contractual recognition of the Company's water rights at that level would remain at those levels and therefore the Company's rights would not follow the minimum flow down in that instance. The contract would still define it as the seasonal 3900 and 5600.

...

Senator Peavey: What would be the flip side of Senator Tominaga's scenario in case the state wanted to raise the minimum flow? How would that work and would there be any problems?

Tom Nelson: In a situation where the state raised the minimum flow, the Company's subordinated rights would remain at 3900 and 5600. However, that increase would then make the company the beneficiary of that increase [sic] flow and I as read both what we have as those minimum flows operate, the company would be a beneficiary of the higher flow and entitled to protect it or to try and make the state enforce it if it raised the flow but at the same time didn't put mechanisms in place to really make it work.

Senator Peavey: When you say "to protect the new higher minimum flow," you aren't saying then that the state couldn't after it had done that, relower that to 3900, that would be at the state's option, would it not?

Tom Nelson: You are right. Anything above the minimum flow the state is free to do as it likes.

Minutes of Feb. 1, 1985, at 3, 7.⁸

In the February 11, 1985, hearing, Senator Little asked Idaho Power's legal counsel that if "two years from now we don't like [all these bills fulfilling the Agreement] and parts are repealed, will that affect the agreement made between the power company and the state." Minutes of the Idaho Senate Resources and Environment Comm., Feb. 11, 1985, 48th Sess. (Idaho 1985) at 1. Idaho Power's counsel replied:

[T]here is a provision in the agreement that says the agreement remains binding even in the face of changes in the law. If the legislature wants to undo this whole thing next year, that is its prerogative. The only thing the legislature does not have power to do, would be to change the contractual recognition of the company's water rights at Murphy gage [*sic*].

Id. (Nelson testimony).

Legal counsel for the Office of the Attorney General testified during the same hearing in regard to the general trust concept that "the ultimate control over those trusts does rest with the Legislature. They created those trusts and of course they can alter them or take whatever steps are necessary." *Id.* at 12 (testimony of Pat Kole). Idaho Power's attorney then testified with regard to hydropower water rights placed in trust under Idaho Code § 42-203B that "[i]f you were subordinated you would have no right to compensation and it is solely the Director's discretion as this is written to implement the constitutional provision." *Id.* at 13 (Nelson testimony).

These exchanges demonstrate that the parties intended the Agreement to control the parties' rights and obligations with respect to subordination of the trust water, regardless of subsequent changes in State law. *See also* Statement of Legislative Intent at 59 ("While the State may later change the minimum flows, the recognition of the nature of the company's rights will not change"); Minutes of Jan. 18, 1985 at 18-19 (written testimony of Attorney General Jim Jones at 5-6) ("If the public interest criteria is not, after trial and error, precisely what the legislature desires, the standards can be changed

⁸ Likewise, when discussing the reservation of 150 cubic feet per second of the trust water for domestic, commercial and industrial uses before the Senate Resources and Environment Committee, Idaho Power's attorney testified, "it is essentially a reservation of that much water for those purposes and subject always to change by the Water Board as it finds out if it is too high or too low." Minutes of Jan. 18, 1985, at 5 (Nelson testimony).

without affecting this agreement, state legal ownership of the water rights involved and the trust arrangement established”).

It was understood that subsequent changes in state law would not reduce or enhance the State’s authority over the trust water or the rights established by the Agreement. Just as the State cannot reduce Idaho Power’s rights under the Agreement with regard to the unsubordinated portion of the hydropower water rights, Idaho Power is simply an incidental beneficiary of any State law governing the trust water. This aspect of the Agreement is crucial, because the overarching intent was to put control of the reallocation of the trust water in the State’s hands, and to provide the State with the flexibility necessary to promote full economic and multiple use development of the water resources of the Snake River system. *See also* Minutes of Jan. 18, 1985, at 18-19 (Jones testimony at 5-6); Agreement at Exhibit 1.

It is thus evident that any subsequent changes in statutory language such as the relevant portions of Idaho Code §§ 42-234(2) and 42-4201A(2) do not trump the Swan Falls Agreement for purposes of subordination or give rise to a right of compensation regarding use of the trust water. These statutes may have worked to Idaho Power’s benefit but the legislature has the authority to change this policy at any time.

Nothing in the legislative history of Idaho Code §§ 42-234(2) and 42-4201A(2) can be viewed as requiring a different conclusion. The only reference to the Swan Falls hydropower rights in the legislative history of the recharge statutes is a single statement by a representative of the Idaho Water Users Association that the language regarding privately owned electrical generating companies was “to protect and verify the agreement on Swan Falls.” Minutes of the Senate Resources & Environment Comm., March 9, 1994, at 1 (testimony of Sherl Chapman). This statement is essentially meaningless for purposes of interpreting the Swan Falls Agreement, because, as the statement recognizes, the Agreement speaks for itself, and by its terms is fully integrated and sets forth all of the parties’ understandings. Agreement at 9, ¶ 19. Further, the statement was made by a non-party ten years after the Agreement was executed, and cannot be viewed as probative or reliable for purposes of determining the intent of the parties at the time they executed the Agreement. *See Pinehaven Planning Bd. v. Brooks*, 138 Idaho 826, 829, 70 P.3d 664, 667 (2003) (“the Court must determine the intent of the parties at the time the instrument was drafted”).

III.

CONCLUSION

The plain terms of the Swan Falls Agreement, as well as the facts and circumstances surrounding the Agreement, conclusively demonstrate the parties’ intent

that the hydropower water rights held in trust by the State would be subordinated to all beneficial upstream uses approved in accordance with State law, including aquifer recharge. The Agreement and implementing legislation also demonstrate that the provisions in Idaho Code §§ 42-234(2) and 42-4201A(2) regarding the Swan Falls Agreement only created an incidental benefit in favor of Idaho Power, and did not give rise to any vested rights or priorities.

AUTHORITIES CONSIDERED

1. Idaho Code:

§ 42-203B.
§ 42-203C.
§ 42-234.
§ 42-4201.
§ 42-4201A.

2. Idaho Session Laws:

1994, chapter 274, § 1.
1994, chapter 433, § 1.
1978, chapter 293, § 1.

3. Idaho Cases:

Clear Lakes Trout Co., Inc. v. Clear Springs Foods, Inc., 141 Idaho 117, 106 P.3d 443 (2005).

Dept. of Parks v. Idaho Dept. of Water Administration, 96 Idaho 440, 530 P.2d 924 (1974).

Idaho Power Co. v. Dept. of Water Resources, 104 Idaho 575, 661 P.2d 741 (1983).

Maroun v. Wyreless Systems, Inc., 141 Idaho 604, 114 P.3d 974 (2005).

Miles v. Idaho Power Co., 116 Idaho 635, 778 P.2d 757 (1989).

Pinehaven Planning Bd. v. Brooks, 138 Idaho 826, 70 P.3d 664 (2003).

Tolley v. THI Co., 140 Idaho 253, 92 P.3d 503 (2004).

4. Other Cases:

McTaggart v. Montana Power Co., 602 P.2d 992 (Mont. 1979).

Oahe Conservancy Subdistrict v. Janklow, 308 N.W.2d 559 (S.D. 1981).

5. Other Authorities:

“Agreement” (Oct. 25, 1984) (the “Swan Falls Agreement”).

JOURNAL OF THE STATE SENATE, 48th Session (Idaho 1985).

Minutes of the Idaho Senate Resources and Environment Committee, 52nd Session (1994).

Minutes of the Idaho Senate Resources and Environment Committee, 48th Session (1985).

DATED this 9th day of March, 2006.



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Analysis by:

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