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11 Portland, Oregon 97214
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14 *Attorneys for Plaintiff Snake River Waterkeeper*

15 UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF IDAHO

17 SNAKE RIVER WATERKEEPER,
18 Plaintiff,

Case No. 1:21-cv-00269-BLW
CONSENT DECREE

19 v.

20 IDAHO POWER COMPANY,
21 Defendants.

22 **I. STIPULATIONS.**

23 Idaho Power Company (“Idaho Power”) owns and operates the Brownlee Dam and
24 Hydroelectric Project (“Dam”) located on the Snake River in the State of Idaho.

25 Snake River Waterkeeper issued notice of intent to sue letters dated January 11, 2021 and
26 February 26, 2021 and filed the Complaint in the above-captioned matter on June 24, 2021,
27 under section 505 of the Clean Water Act (“CWA”), 33 U.S.C. § 1365, alleging that Idaho
28 Power in violation section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging pollutants
29

1 from Unit 5 and Powerhouse 2 (collectively, “Powerhouse 2”) at the Dam without a National
2 Pollutant Discharge Elimination System (“NPDES”) permit issued under section 402 of the
3 CWA, 33 U.S.C. § 1342.

4 Waterkeeper’s Complaint seeks declaratory and injunctive relief, the imposition of civil
5 penalties, and an award of litigation expenses, including attorney and expert fees.

6
7 Idaho Power applied to the United States Environmental Protection Agency (“EPA”) for
8 an NPDES permit for discharges from Powerhouse 2 on several occasions beginning in 1975, but
9 EPA never issued an NPDES permit for those discharges.

10
11 In 2018, EPA approved an application from the State of Idaho Department of
12 Environmental Quality (“IDEQ”) to implement NPDES permitting program in Idaho.

13 Idaho Power submitted a new application for an NPDES permit for discharges from the
14 Dam, including discharges from Powerhouse 2, to IDEQ in April 2021.

15
16 Solely for the purposes of this Consent Decree, Idaho Power and Waterkeeper
17 (collectively, the “Parties”) stipulate that the Court has jurisdiction over the Parties and the
18 subject matter of this action under section 505(a) of the CWA, 33 U.S.C. § 1365(a).

19
20 The Parties agree that settlement of this matter is in the best interest of the Parties and the
21 public and that entry of this Consent Decree without additional litigation is the most appropriate
22 means of resolving this action.

23
24 The Parties stipulate to the entry of this Consent Decree without trial, adjudication, or
25 admission of any issues of fact or law regarding the claims and allegations set forth in
26 Waterkeeper’s notice letters and Complaint.

27
28 The signatories for the Parties certify that they are authorized by the party they represent
29 to enter into these Stipulations and Consent Decree.

1 SNAKE RIVER WATERKEEPER

IDAHO POWER COMPANY

2 By: s/ F.S. Buck Ryan
3 F.S. Buck Ryan, Executive Director

By: s/ Ryan Adelman
Ryan Adelman, Vice President, Power Supply

4 KAMPMEIER & KNUTSEN, PLLC

GIVENS PURSLEY, LLP

5
6 By: s/ Brian A. Knutsen
7 Brian A. Knutsen, *admitted pro hac vice*
8 Attorneys for Snake River Waterkeeper

By: s/ Preston N. Carter
Preston N. Carter, ISB No. 8462
Attorneys for Idaho Power Company

9
10 **II. ORDER AND DECREE.**

11 THIS MATTER came before the Court upon the foregoing Stipulations of the Parties and
12 joint motion for entry of Consent Decree. Having considered the Stipulations and the terms and
13 conditions set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

14 1. This Court has jurisdiction over the Parties and the subject matter of this action
15 pursuant to section 505(a) of the CWA, 33 U.S.C. § 1365(a).

16
17 2. This Consent Decree shall inure to the benefit of, and be binding upon, the Parties
18 and their successors, assigns, officials, agents, representatives, officers, directors, and employees.
19 Changes in the organizational form or status of a party shall have no effect on the binding nature
20 of this Consent Decree or its applicability.

21
22 3. This Consent Decree and any injunctive relief ordered within applies solely to
23 Idaho Power's operation and oversight of Powerhouse 2 at the Dam.

24 4. This Consent Decree is a full and complete settlement and release of all claims
25 alleged in Waterkeeper's notice of intent to sue letters and Complaint and all other claims known
26 or unknown existing as of the date of entry of this Consent Decree related to alleged discharges
27 of pollutants from Powerhouse 2 at the Dam made without an NPDES permit in violation of
28

1 section 301(a) of the CWA, 33 U.S.C. § 1311(a), that could be asserted under the CWA against
2 Idaho Power, its officers, directors, employees, shareholder, consultants, contractors, or agents.

3 These claims are released and dismissed with prejudice. In addition, Waterkeeper hereby
4 releases, discharges and covenants not to assert any claims, causes of action, suits or demands of
5 any kind in law or in equity regarding alleged discharges of pollutants from Powerhouse 2 at the
6 Dam made without an NPDES permit until either: (i) Idaho Power obtains NPDES permit
7 coverage that addresses discharges of pollutants associated with operations of Powerhouse 2 at
8 the Dam; or (ii) one year after the Court's entry of this Consent Decree, whichever occurs first.
9

10 5. This Consent Decree is a settlement of disputed facts and law. It is not an
11 admission or adjudication regarding any allegations by Waterkeeper in this case or of any fact or
12 conclusion of law related to those allegations.
13

14 6. Idaho Power shall comply with the following requirements until the effective date
15 of an NPDES permit that addresses discharges from Powerhouse 2 at the Dam or until one year
16 after the Court's entry of this Consent Decree, whichever occurs first:
17

18 A. Idaho Power will continue to diligently pursue its NPDES permit
19 application with IDEQ, including the payment(s) to IDEQ under the agreement signed on
20 November 29, 2021 between Idaho Power and IDEQ to expedite the permitting process.
21

22 B. Idaho Power shall maintain pH between 6.5 and 9.0 standard units, as
23 measured by monthly grab sampling at all sump discharges at Powerhouse 2.

24 C. Any discharges of oil and grease from Powerhouse 2 will not exceed 5
25 mg/L as measured by "grab" sampling for all sump discharges at Powerhouse 2 and will be
26 reported to IDEQ at a frequency of once per quarter. Consistent with Idaho Power's Spill
27
28
29

1 Prevention Control and Countermeasure Plan required by 40 C.F.R. § 12, Idaho Power will
2 immediately report any visible oils sheens to IDEQ.

3 D. Idaho Power will monitor for temperature (Celsius) of cooling water
4 outflows and sumps associated with Powerhouse 2 on a monthly basis using a “grab” sampling
5 technique. Idaho Power will use a NIST-certified infrared thermometer and submit the sampling
6 results to IDEQ on a quarterly basis.
7

8 E. Idaho Power will continue to monitor discharges from Powerhouse 2 and
9 submit monitoring reports to IDEQ consistent with the requirements of NPDES ID-002090-7
10 that is applicable to other areas of the Dam.
11

12 7. In lieu of a penalty, Idaho Power shall make a payment in the amount of
13 \$545,000.00 to the Nez Perce Tribe for one or more projects to reduce water pollution and/or to
14 enhance local water quality conditions in the Snake River basin as described in Exhibit 1 to this
15 Consent Decree. Such payment shall be made within thirty (30) days of the entry of this Consent
16 Decree via electronic funds transfer or wire transfer to the Oregon IOLTA account maintained by
17 Kampmeier & Knutsen, PLLC, which funds will then be transferred to the Nez Perce Tribe.
18 Counsel for Waterkeeper shall provide counsel for Idaho Power the account information
19 necessary for this payment within fourteen (14) days of the Parties’ execution of this Consent
20 Decree.
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22

23 8. Within thirty (30) days of entry of this Consent Decree, Idaho Power shall pay
24 Waterkeeper’s attorney fees and costs in the amount of \$215,000.00 in full and complete
25 satisfaction of any claims Waterkeeper may have under the Clean Water Act for attorney fees
26 and litigation costs and expenses. Such payment shall be made via electronic funds transfer or
27 wire transfer to the Oregon IOLTA account maintained by Kampmeier & Knutsen, PLLC.
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29

1 Waterkeeper's above-signed counsel hereby certifies that the actual costs and fees incurred in
2 this matter equal or exceed \$215,000.00. Counsel for Waterkeeper shall provide counsel for
3 Idaho Power the account information necessary for this payment within fourteen (14) days of the
4 Parties' execution of this Consent Decree.

5 9. This Court retains jurisdiction over this matter and, while this Consent Decree
6 remains in force, this case may be reopened without filing fee so that the Parties may apply to the
7 Court for any further order or relief that may be necessary regarding compliance with this
8 Consent Decree or to resolve any dispute regarding the terms or conditions of this Consent
9 Decree until it is terminated. A precondition to any application to the Court under this paragraph
10 is that the Parties must first seek to resolve the dispute themselves as follows: 1) the party
11 identifying or wishing to raise an issue or dispute must provide the other party a written notice
12 detailing the nature of the issue or dispute; and 2) within thirty (30) days of receipt of such
13 notice, the Parties shall meet and confer regarding the issue or dispute. If no resolution is reached
14 at that meeting or within thirty (30) days of the written notice, whichever occurs first, either
15 party may file a motion with this Court to resolve the dispute.

16 10. This agreement shall take effect upon entry of the Consent Decree by the Court.

17 11. The provisions of this Consent Decree shall terminate upon the earlier of i)
18 issuance of an NPDES permit that addresses discharges of pollutants associated with operations
19 of Powerhouse 2 at the Dam and compliance with the requirements in paragraphs II.7 and II.8 or
20 ii) one year after the Court's entry of this Consent decree provided that Idaho Power has
21 complied with the requirements in paragraphs II.7 and II.8.

22 12. All notices and other communications regarding this Consent Decree shall be in
23 writing and shall be fully given by mailing via first-class mail, postage pre-paid; by delivering
24

1 the same by hand; or by sending the same via e-mail to the following addresses, or to such other
2 addresses as the Parties may designate by written notice, provided that communications that are
3 mailed shall not be deemed to have been given until three business days after mailing:

4 For Waterkeeper:

5 Snake River Waterkeeper
6 c/o F.S. Buck Ryan
7 2123 N. 16th Street,
8 Boise, Idaho 83702
9 buck@snakeriverwaterkeeper.org

10 Kampmeier & Knutsen, PLLC
11 c/o Brian A. Knutsen
12 1300 S.E. Stark Street, Suite 202
13 Portland, Oregon 97214
14 brian@kampmeierknutsen.com

5 For Idaho Power:

6 Idaho Power Company
7 c/o Scott Pugrud
8 P.O. Box 70
9 Boise, Idaho 83702
10 Spugrud2@idahopower.com

11 Stoel Rives, LLP
12 c/o Beth S. Ginsberg
13 600 University Street, Suite 3600
14 Seattle, Washington 98101
15 beth.ginsberg@stoel.com

16 Givens Pursley, LLP
17 c/o Preston N. Carter
18 601 West Bannock Street
19 Boise, Idaho 83701
20 prestoncarter@givenspursley.com

21 13. This Consent Decree constitutes the entire agreement between the Parties. There
22 are no other or further agreements, either written or verbal. This agreement may not be modified
23 or amended except by a writing signed by both Parties and entered by the Court.

24 14. Each party acknowledges that it has sought and obtained the advice of its own
25 independent legal counsel before executing this Consent Decree. The Parties acknowledge that
26 they have had the opportunity to freely negotiate the terms of this Consent Decree.

27 15. If for any reason the Court should decline to approve this Consent Decree in the
28 form presented, this Consent Decree is voidable at the discretion of either party. The Parties
29 agree to continue negotiations in good faith in an attempt to cure any objection raised by the
Court to entry of this Consent Decree.

1 16. Each party shall, at the request of the other, execute, acknowledge, and deliver
2 whatever additional documents, and do such other acts, as may be reasonably required in order to
3 accomplish and/or carry out the intent, spirit, and purposes of this Consent Decree.

4 17. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent
5 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior
6 to 45 days following the receipt of a copy of the consent judgment by the U.S. Attorney General
7 and the Administrator of the EPA. Therefore, upon the filing of this Consent Decree by the
8 Parties, Waterkeeper will serve copies of it upon the Administrator of the EPA and the U.S.
9 Attorney General.
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DATED: September 7, 2022

B. Lynn Winmill
U.S. District Court Judge