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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION FOR ADMINISTRATION BY A&B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT #2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, and TWIN FALLS CANAL COMPANY	)	**IDAHO POWER COMPANY'S ANSWER TO IDAHO GROUND WATER APPROPRIATORS, INC.'S MOTION OPPOSING IDAHO POWER COMPANY'S PETITION TO INTERVENE**

Idaho Power Company ("Idaho Power"), by and through its counsel, respectively submits this Answer to Idaho Ground Water Appropriator Inc.'s ("IGWA") Motion Opposing Idaho Power Company's Petition to Intervene ("Motion") as a party in the above-captioned matter.

I. INTRODUCTION

In its Motion Opposing Idaho Power's Petition to Intervene, IGWA first argues that Idaho Power's interests are already adequately represented by the Surface Water Coalition. IGWA's Motion at 3. IGWA also claims that Idaho Power should be denied intervention because Idaho Power will unduly broaden the issues before the Department by "revisiting the intent and terms" of the Swan Falls Agreement. Id at 3. IGWA further claims Idaho Power should be denied intervention because Idaho Power's water rights were subordinated by the Swan Falls Agreement to junior priority ground water rights in the Eastern Snake Plain Aquifer ("ESPA"), and Idaho Power's remedy is not to seek intervention in this matter, but to renegotiate the Swan Falls Agreement with the State. Id at 3 - 4.

IGWA's Motion ignores that fact that while Idaho Power is similarly situated to the Surface Water Coalition, Idaho Power's water rights are unique. Idaho Power must be allowed to intervene to ensure that any agreements, settlements, and findings of the Department or the Director are protective of Idaho Power's rights and not detrimental to Idaho Power's business operations. Moreover, while this is not the appropriate forum to argue interpretations of the Swan Falls Agreement, Idaho Power entered into that Agreement with the State with the express understanding that the terms of that Agreement would be implemented in a manner consistent with the doctrine of prior appropriation. Finally, Idaho Power is a senior water rights holder in the State of Idaho, and has a legitimate general interest in the proper and lawful administration of the Snake River under the prior appropriation doctrine.

II. ARGUMENT

A. Existing Parties Do Not Adequately Represent Idaho Power.

Idaho Power owns separate and distinct water rights from those of the Petitioners and other parties to this matter. Even though similarly situated in certain respects, Idaho Power seeks to protect these distinct water rights by ensuring that long-term solutions reached in this matter are not injurious to Idaho Power's senior rights. Idaho Power's rights include rights to store water in and release and use water from American Falls Reservoir. Idaho Power's rights in American Falls are separate and distinct from the rights of the Petitioners.

In that regard, any settlements or agreements reached by the Coalition, IGWA and Department without the input of Idaho Power could have a disproportionate impact on Idaho Power's water rights. Alternatively, adverse rulings by the Director could uniquely impact Idaho Power's senior rights. Since the timing of any potential settlement, agreement or rulings would likely preclude later intervention, Idaho Power must intervene at this time to protect its senior water rights. For these reasons, Idaho Power must be allowed to intervene to protect its distinct interests in this matter.

B. Idaho Power's Participation in this Matter Will Not Unduly Broaden the Issues Before the IDWR.

The disposition of this action will directly affect the administration of water rights, both within the ESPA and statewide. Idaho Power is seeking intervention to ensure that the long-term solutions to this matter do not cause injury to Idaho Power's senior water rights. Idaho Power's participation in this matter will therefore not unduly broaden the issues before the IDWR.

The failure of the Department to administer junior ground water diversions from the ESPA pursuant to Idaho's doctrine of prior appropriation has resulted in a reduction in the flow of the Snake River. Even though Idaho Power has not to date exercised a call for the delivery of

water to its senior rights, and expressly reserves its right to do so in the future, it has a direct interest in Surface Water Coalition's call because the outcome of this matter will impact the exercise of Idaho Power's rights. The outcome of this matter may become the bar by which future calls against junior appropriators in the ESPA are measured. This is the forum in which the Surface Water Coalition and Idaho Power will seek to ensure that the Department administers the ESPA in priority to prevent further injury to senior water rights. Accordingly, Idaho Power does not seek to expand the issues before the Director. Rather, Idaho Power's interest is to ensure full administration under the prior appropriation doctrine so that injury to its water rights may be avoided, and so that the framework for the administration of future calls is appropriately established.

C. Idaho Power has a general interest in assuring that the Defendants undertake proper and lawful water administration under Idaho's prior appropriation doctrine.

The Director, the Department, and IGWA admit that ground water pumping from the ESPA is hydraulically connected to and reduces the flow of water in the Snake River. IGWA's Motion at Page 2, Para. 3; See also Order of Director Karl Dreher, February 14, 2005; Snake River Aquifer Model Scenario: *Hydrologic Effects of Continued 1980-2002 Water Supply and Use Conditions*, "Curtailment Scenario," November 2004, Cosgrove, Contor, Wylie, Rinehart, and Johnson. Pumping by junior appropriators in the ESPA depletes the flow of the Snake River, directly injuring downstream senior water rights. Idaho Power owns a variety of water rights at various facilities on the Snake River and its tributaries, for both power and non-power purposes, which have been injured and in the future may be injured as a result of the Department's failure to administer junior water rights in the ESPA under Idaho's prior appropriation doctrine. These rights include, without limitation, rights to store water in and release and use water from American Falls Reservoir. Thus, Idaho Power has a direct interest in

this proceeding.

Moreover, as stated in Idaho Power's February 11, 2005 Letter supporting the Coalition call and seeking intervention, the Swan Falls Agreement embodies the expectation of comprehensive administration of Idaho water under the prior appropriation doctrine. Under the terms of the Swan Falls Agreement, Idaho Power subordinated certain hydropower rights with the expectation that its guaranteed flow rights would be protected, and that water rights in the Snake River Basin would be quantified and administered. Despite the fact that Idaho Power has strong disagreements with IGWA's characterization of the Swan Falls Agreement, Idaho Power's Petition to Intervene and this answer are not the proper context to argue the meaning of that Agreement. The Swan Falls Agreement was raised in this context only to illustrate that Idaho Power has a vested interest in the outcome of this matter and has a longstanding expectation that the Department and the State of Idaho will ensure full administration of the Snake River under the doctrine of prior appropriation.

As the owner of numerous senior water rights in the Snake River, and as the beneficiary of the Swan Falls Agreement, Idaho Power retains a direct interest in this matter, and in assuring that the Department undertakes its constitutional and statutory responsibility to administer water in this state under the doctrine of prior appropriation.

III. CONCLUSION

Idaho Power has a right to intervene in this matter to protect its unique water rights. Idaho Power does not seek to broaden the scope of this matter by intervening; instead Idaho Power seeks intervention to protect its interest in senior water rights and to assure proper administration of water rights under the doctrine of prior appropriation.

IGWA mischaracterizes Idaho Power's rights and responsibilities under the Swan Falls Agreement. For purposes of the pending Petition to Intervene, the Director need not resolve IGWA's misstatements; the Director need only confirm that Idaho Power has water rights that may be directly affected by the outcome of this matter. Irrespective of the minimum flow rights under the Swan Falls Agreement, Idaho Power has demonstrated a direct interest in this proceeding and is clearly entitled to intervene under rule IDWR Rules 37.01.01.350, 37.01.01.351 and 37.01.01.352 .

WHEREFORE, Idaho Power respectively requests that it be allowed to intervene in this matter.

DATED this 4th day of March, 2005.

IDAHO POWER COMPANY
By:

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and

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CERTIFICATE OF MAILING

I hereby certify that on this 4th day of March, 2005, I served a copy of Idaho Power Company's Answer to Idaho Ground Water Appropriator Inc.'s Motion Opposing Idaho Power Company's Petition to Intervene, via facsimile or E-mail & by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

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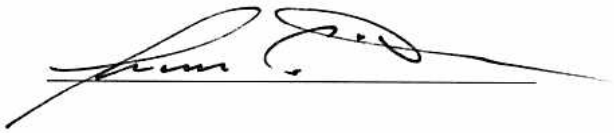
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