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DEPARTMENT OF
WATER RESOURCES

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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 PETITION TO INTERVENE (GWMA ADMINISTRATION)**

Pursuant to Rules 37.01.01.350, 37.01.01.351 and 37.01.01.352 of the Rules of Procedure of the Idaho Department of Water Resources ("IDWR"), Idaho Power Company ("Idaho Power"), by and through its attorneys, respectfully submits this Petition to Intervene as a party in the above-captioned matter.

I. BACKGROUND

By the *Petition for Water Right Administration and Designation of the Eastern Snake Plain Aquifer as a Ground Water Management Area* ("Coalition Petition") filed on January 14, 2005, the Coalition Petitioners seek curtailment of diversions by junior ground water pumpers in the Eastern Snake Plain Aquifer ("ESPA"), which have caused a material depletion to spring flows and reach gains tributary to the Snake River to the injury of the Coalition Petitioners' natural flow water rights, storage rights and carry-over supplies. Coalition Petitioners also request the Director to designate the ESPA as a ground water management area pursuant to I.C. § 42-233b, and supervise the use of water from the ESPA to insure full utilization and supply of the water rights held by Coalition Petitioners.

As set forth in herein, Idaho Power has direct and substantial interests in the use and administration of water in the Snake River Basin and the ESPA. Through this *Petition to Intervene* ("Petition"), Idaho Power seeks to intervene as a party in this matter to protect those interests and support the relief sought by the Coalition Petitioners.

II. STATEMENT OF IDAHO POWER'S INTEREST AND GROUNDS FOR INTERVENTION

Intervention as a party is authorized in a proceeding before the IDWR if the petition is timely, the petitioner can demonstrate a direct and substantial interest in the proceeding, the participation of the petitioner will not unduly broaden the issues before the IDWR, and the petitioner's interests are not adequately represented by another party to the proceeding. IDWR Rules of Procedure 37.01.01.350, 37.01.01.351, and 37.01.01.352. Idaho Power meets all of the criteria to intervene as a party in the above captioned matter.

1. Idaho Power's Petition to Intervene is timely.

Idaho Power's Petition is timely because the Director has not yet established a deadline for intervention, the Petition is filed more than 3 months before the Director has publicly stated that he will make a ruling on the matter and one month after the filing of the Coalition Petition, and no party will be prejudiced by the timing of Idaho Power's Petition.

2. Idaho Power has a direct and substantial interest in this proceeding.

This action involves a call by the Coalition Petitioners for administration of junior water rights diverting groundwater from the ESPA. The ESPA and the Snake River are over appropriated and depletions by groundwater users in the ESPA have caused declines in spring flows and reach gains tributary to the Snake River.[1] On February 3, 2005, the Idaho Ground Water Appropriators, Inc. (IGWA) petitioned for leave to intervene in this matter and raised numerous legal and factual issues that IGWA maintains must be addressed in any decision on the merits of the Coalition Petition. Resolution of the issues raised by the Coalition Petition, as well as the issues raised by IGWA, may as a practical and legal matter impair or impede the lawful exercise of Idaho Power's water rights that depend on flows of the Snake River by limiting Idaho Power's ability to enforce its rights in priority as against upstream and upgradient water rights.

Similar to the Coalition Petitioners, Idaho Power owns water rights that depend upon Snake River flows, and sources tributary thereto. These rights include storage rights in, and

[1]The State has recently completed several modeling scenarios of the effects of ground water pumping in the ESPA on Snake River surface and springs flows. Although Idaho Power does not concede the accuracy of the modeling results or of the models themselves, and reserves the right to fully litigate these models and present new modeling evidence should the need arise, these modeling exercises confirm what the IDWR has already stated publicly and determined in numerous other contexts: the Snake River and the hydraulically connected ESPA are over appropriated. *See, e.g.,* 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.

hydropower water rights below, American Falls Reservoir.[2] Like the Coalition Petitioners' water rights, these and other Idaho Power water rights have been deprived of the full water supply to which they are lawfully entitled as a result of junior ground water depletions from the ESPA and the failure of the IDWR to administer junior groundwater rights in the ESPA consistent with Idaho's prior appropriation doctrine. Idaho Power's water rights may in the future to be deprived of their full lawful water supply, and be injured as a result, if the issues raised by the Coalition Petition and IGWA are not resolved in a manner that will further the lawful administration of water in the ESPA, and in the State of Idaho, under the doctrine of prior appropriation.

Accordingly, Idaho Power seeks to intervene in this action in support of the Coalition Petition and to protect its vested water rights. Because, as set forth above, Idaho Power's water rights are in certain respects similarly situated to those of the Coalition Petitioners, Idaho Power's water rights are subject to similar injury as that asserted by the Coalition Petitioners. As such, Idaho Power has an interest in the above captioned matter.

3. 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.

4. Existing parties do not adequately represent Idaho Power's interests.

Idaho Power owns separate and distinct water rights from those of the Coalition Petitioners and other parties to this matter. Even though they may be similarly situated in certain respects, Idaho Power does not seek to protect the same rights as those owned by the Coalition

[2] Idaho Power also holds water rights downstream of Milner Dam that rely upon Snake River flows and tributary spring flows in the Thousand Springs area.

Petitioners. Idaho Power seeks to ensure the protection of its distinct and separate water rights by ensuring that long-term solutions relative to the administration of water in Idaho protect Idaho Power's senior rights. Therefore, the Coalition Petitioners and the other parties to this matter are not in a position to adequately represent Idaho Power.

WHEREFORE, Idaho Power requests that Idaho Power's *Petition to Intervene* in this matter be granted.

Idaho Power reserves the right upon the granting of its Petition, to file an answer to the Coalition Petition and the pleadings filed by IGWA, conduct discovery, call and examine witnesses, assert additional claims and defenses and otherwise participate in this proceeding as necessary to protect its interests and water rights.

DATED this 14th day of February 2005.

IDAHO POWER COMPANY

By: _____
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and

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CERTIFICATE OF MAILING

I hereby certify that on this 14th day of February, 2005, I served a copy of Idaho Power Company's Petition to Intervene, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

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