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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER RIGHTS NOS. 36-15501, 36-02551, AND 36-07694	)	**IDAHO POWER COMPANY'S PETITION TO INTERVENE**
IN THE MATTER OF THE APPLICATION OF THE NORTH SNAKE GROUND WATER DISTRICT AND MAGIC VALLEY GROUND WATER DISTRICT FOR APPROVAL OF A PRELIMINARY MITIGATION PLAN	)	

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") and the IDWR Director's *Notice of Contested Case and Notice of Status Conference*, dated March 11, 2004, Idaho Power Company

("Idaho Power"), by and through its attorneys, respectfully submits this Petition to Intervene as a party in the above-captioned matter.[1]

I. BACKGROUND

In this matter, Rangen, Inc. seeks administration of "all water right diversions junior to [Rangen's] that are interfering with and impacting [Rangen's] water rights " which are used at hatchery facilities owned and operated by Rangen near Hagerman, Idaho. See IDWR Director's March 10, 2004 *Amended Order*. In short, Rangen is requesting that the Idaho Department of Water Resources and its Director, Karl J. Dreher (Director), respond to its calls for the delivery of water pursuant to Idaho's doctrine of prior appropriation.

Rangen holds water rights supplied by springs within Water District No. 130 which are hydraulically connected to and supplied by water within the Eastern Snake Plain Aquifer ("ESPA"). See *Amended Order*. Rangen asserts that spring flows supplying these water rights have been unlawfully depleted by the diversion and use of water from the ESPA under water rights junior in priority to Rangen's water rights.

The Director issued an *Amended Order* on March 10, 2004, requiring all holders of consumptive ground water rights in District No. 130 that are junior in priority to July 13, 1962, to cease diversions of ground water pursuant to their rights beginning April 1, 2004, unless sufficient replacement water is provided to Rangen. Under the Director's order, the holders of junior ground water rights could continue to divert groundwater from April 1, 2004, through March 31, 2005 provided that the junior water rights holder is a member of the North Snake or Magic Valley Ground Water District and that District submits a plan to the Director providing

[1] Idaho Power is already a protestant in one of the consolidated matters, an application for approval of a mitigation plan filed by two groundwater districts located in Water District 130. In the Matter of the Application of the North Snake Ground Water District and Magic Valley Ground Water District for Approval of a Preliminary Mitigation Plan.

for 16,000 acre feet of replacement water for use by Rangen, or submits an alternative plan for replacement water to the Director, which plan the Director approves before April 1, 2004.

Subsequently, the Director issued an order dated March 24, 2004 approving an interim mitigation plan set forth in *The Eastern Snake Plain Aquifer Mitigation, Recovery and Restoration Agreement for 2004* ("ESPA Mitigation Agreement"). The ESPA Mitigation Agreement contains provisions intended to mitigate or compensate for the effects of ground water depletions upon spring flows in the Thousand Springs area of the Snake River for a period of one year. The Director's order of March 24, 2004 approving the ESPA Mitigation Agreement supercedes the March 10, 2004 *Amended Order* by directing the Watermaster for Water District No. 130 to administer the rights to the use of water within the water district in accordance with the terms of the approved ESPA Mitigation Agreement and the governing provisions of Chapter 6, Article 42 of the Idaho Code.

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

Intervention as a party is authorized in a contested case 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 it meets the March 25, 2004 deadline for intervention set forth in the Director's March 11, 2004 *Notice of Contested Case and Notice of Status Conference.*

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

To demonstrate under Idaho law that resolution of a case may impair or impede the intervenor's rights, a petitioner for intervention need only show that its rights "may" be affected by a decision in the case . See Duff v. Draper, 565 P.2d 572 (Idaho 1977). This action involves a call for administration of junior water rights diverting groundwater from the ESPA. The ESPA and the Snake River are over appropriated, and depletions by groundwater uses in the ESPA have caused declines in spring flows in the Thousand Springs area, as well as in other reaches of the Snake River, upstream and downstream therefrom which are hydraulically connected to the ESPA. As such, resolution of issues in this contested case may, as a practical and legal matter, impair or impede water rights held by Idaho Power, and others, that depend upon the spring flows and the ESPA.

Similar to Rangen, Idaho Power holds senior water rights that depend upon spring flows in the Thousand Springs area, in particular, water rights for the Idaho Power fish hatchery at Niagara Springs which is operated by the State of Idaho. Like Rangen's water rights, these water rights have been deprived of the full water supply to which they are lawfully entitled as a result of ground water depletions from the ESPA, and the failure of the IDWR to appropriately administer junior groundwater rights in the ESPA under Idaho's prior appropriation doctrine. Moreover, Idaho Power's water rights at Niagara Springs may in the future continue to be deprived of their full lawful water supply, and be injured as a result, if the Rangen call is not resolved so as to further the lawful administration of water in District No. 130, and in the state of Idaho, under the doctrine of prior appropriation. Accordingly, Idaho Power seeks to intervene in this action 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 Rangen and are subject to similar injury as that asserted by Rangen.

Idaho Power acknowledges that the ESPA Mitigation Agreement is intended to resolve, at least for the term of one-year, the issues raised by this contested case and as a result of that Agreement the Director may enter an order staying this contested case proceeding for the term of the ESPA Mitigation Agreement. Based upon the information currently available, however, Idaho Power believes there is uncertainty as to whether the ESPA Mitigation Agreement provides sufficient replacement water, will adequately protect senior water rights, or otherwise comports with the prior appropriation doctrine. Notwithstanding that uncertainty, Idaho Power has a direct and substantial interest in the long-term resolution of these issues, beyond the scope of the one-year ESPA Mitigation Agreement, and believes that any long-term solution will affect the administration of water rights generally in Water District 130, the Snake River and the state of Idaho. Idaho Power is filing this Petition to Intervene in an effort to document and preserve its interest in this contested case proceeding and, in the event this case is stayed, intends to participate in the Mitigation Agreement process.

3. Idaho Power 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 Water District 130 and statewide. Idaho Power is not seeking intervention to expand upon the issues already raised by the Rangen call, but rather 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 Rangen and other parties to this matter. Even though they may be similarly situated in certain respects, Idaho Power is not defending the same rights as those owned by the Rangen. Idaho Power seeks to ensure the protection of these distinct and separate water rights by ensuring that long term solutions protect Idaho Power's senior rights. Therefore, Rangen and the other parties to this matter are not in a position to adequately represent Idaho Power.

WHEREFORE, Idaho Power respectively requests that the Director of IDWR grant this Petition to Intervene.

DATED this 25th day of March, 2004.

IDAHO POWER COMPANY

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CERTIFICATE OF MAILING

I hereby certify that on this 25th day of March, 2004, 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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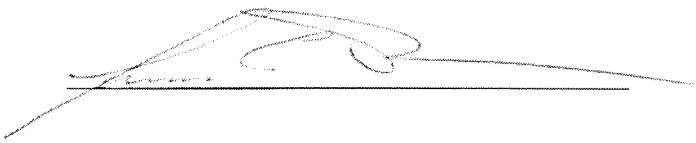
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