

RECEIVED

NOV 04 2008

**DEPARTMENT OF
WATER RESOURCES**

John K. Simpson, ISB No. 4242
Travis L. Thompson, ISB No. 6168
Paul L. Arrington, ISB No. 7198
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Ste. 102
P.O. Box 2139
Boise, Idaho 83701-2139
(208) 336-0700 – Telephone
(208) 344-6034 – Facsimile

Attorneys for North Side Canal Company and Twin Falls Canal Company

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF)
APPLICATION FOR PERMIT & LICENSE) **PROTEST AND PETITION FOR**
NO. 01-07011) **HEARING**
)
APPLICANT:)
Twin Falls Canal Company &)
North Side Canal Company)
_____)

COME NOW, the North Side Canal Company and Twin Falls Canal Company,
(hereinafter “Petitioners” or “Canal Companies”), by and through their undersigned attorneys,
and hereby files this Protest and Petition for Hearing regarding the Idaho Department of Water
Resources’ (“IDWR”) issuance of water right License No. 01-07011 on October 20, 2008. The
initial bases for Petitioners’ protest and petition are as follows:

1. The license includes the following condition, numbered 5 (five), which purports
to allow the Director to review the diversion and use of water for hydropower purposes under the
license after the date of expiration of the Federal Energy Regulatory Commission (“FERC”)

license for the Milner Project, to cancel all or any part of the authorized use, and to revise, delete or add conditions under which the right may be exercised:

The diversion and use of water for hydropower purposes under this license is subject to review by the Director after the date of expiration of Milner Project License No. 2899 (11/30/2038) issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

2. This condition was not included in the water right permit approved and issued by IDWR in 1977. After issuance of that water right permit, and in reliance thereon, Milner Dam was reconstructed with the generating facility (Milner Project), provided proof of beneficial use of the water right established by the permit, and has been operating said facility for approximately 15 years without the new condition.

3. The license includes the following provision, numbered 1 (one), which has been materially altered from the original condition agreed upon by the Petitioners and the Idaho Department of Water Resources.

The diversion and use of water for hydropower purposes under this water right shall be subordinate to all subsequent upstream beneficial depletionary uses, other than hydropower, within the Snake River Basin of the state Idaho that are initiated later in time than the priority of this water right and shall not give rise to any right or claim against any junior-priority rights for the depletionary or consumptive beneficial use of water, other than hydropower, within the Snake River Basin of the state of Idaho initiated later in time than the priority of water right no. 01-7011.

4. In the form agreed upon between the parties, permit no. 01-07011 was subordinated to all subsequent upstream beneficial depletionary uses, except hydropower and groundwater recharge. Upon issuance of the license, the reference to groundwater recharge was eliminated. This material change is in contravention of the parties' agreement as well as the law of the State of Idaho.

5. The license as issued contains a volumetric limitation listed at “Annual Diversion Volume” that had never before been referenced by IDWR in the proceedings leading up to the issuance of the license. IDWR requested information from the Petitioners by letter dated Wednesday October 1, 2008. IDWR requested the Petitioners provide any information on the volume issue by Monday October 6, 2008. Due to the time restraints of the request, the Petitioners responded on Thursday October 2, 2008 and requested a reasonable opportunity to consult the water rights examiner and Idaho Power Company to gather any pertinent information. IDWR disregarded the Petitioners’ request and issued the license without providing an opportunity to respond to the request for information. The Canal Companies object to the volumetric limitation set forth in the license under “Annual Diversion Volume”.

5. The Canal Companies hereby request a hearing before the Director to contest the foregoing objections to the license as issued pursuant to Idaho Code 42-1701A(3). The initial bases for the Canal Companies’ petition are stated above and include those stated in the *Petition for Peremptory Writ of Mandate* (and its attached exhibits) previously served upon IDWR. In requesting a hearing to preserve its rights in this matter, the Canal Companies expressly reserve the right to proceed in other forums as appropriate. Further, the Canal Companies request the appointment of an Independent Hearing Officer to preside over the hearing on this petition.

By: 

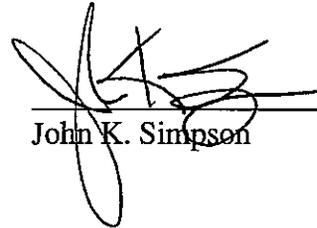
John K. Simpson, ISB No. 4242
Travis L. Thompson, ISB No.
BARKER ROSHOLT & SIMPSON LLP
205 North Tenth Street, Suite 520
P.O. Box 2139
Boise, ID 83701-2139

Attorneys for North Side Canal Company and Twin Falls Canal Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of November, 2008, I served a true and correct copy of the foregoing document, **PROTEST AND PETITION FOR HEARING**, by hand delivery:

Director David K. Tuthill, Jr.
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83720-0098



John K. Simpson