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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 LICENSING WATER)
RIGHT PERMIT NO. 01-7011 IN THE) **IDAHO WATER RESOURCE**
NAME OF TWIN FALLS CANAL COMPANY) **BOARD'S PETITION TO INTERVENE**
AND NORTH SIDE CANAL COMPANY)

Petitioner the Idaho Water Resource Board, by and through its counsel of record, hereby petitions to intervene in In the Matter of Licensing Water Right Permit No. 01-7011 in the Name of Twin Falls Canal Company and North Side Canal Company, which is an application to use water for hydroelectric generation at Milner Dam, for the reasons stated below:

IDENTITY AND AUTHORITY OF PETITIONER

1. Idaho Constitution Article XV, § 7, requires the Legislature to compose a "State Water Resource Agency" with power, among other things, "to formulate and implement a state water plan for optimum development of water resources in the public interest."
2. Idaho Code § 42-1732, pursuant to Article XV, § 7, "establishe[s] as the constitutional water agency within the department of water resources the Idaho water resource board" (IWRB). The IWRB is composed of eight members, who are listed below:

- (a) Terry T. Uhling, Chairman, Boise
- (b) Gary M. Chamberlain, Vice-Chairman, Challis
- (c) Bob Graham, Secretary, Bonners Ferry
- (d) Jerry R. Rigby, Chairman, Rexburg
- (e) Charles (Chuck) Cuddy, Orofino

- (f) L. Claude Storer, Idaho Falls
- (g) Leonard Beck, Burley
- (h) Vic Armacost, New Meadows

The IWRB's mailing address is:

Idaho Water Resource Board
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

3. Idaho Code § 42-1734 provides the IWRB has powers and duties that include: “(1) To have and exercise all of the rights, powers, duties and privileges vested by article XV, section 7, ... in the water resource agency;”

4. Idaho Code § 42-1734A(1) provides that the IWRB “shall subject to legislative approval, progressively formulate, adopt and implement a comprehensive state water plan for conservation, development, management and optimum use of all unappropriated water resources and waterways of this state.” Idaho Code § 42-1736, in turn, provides that the State Water Plan adopted by the IWRB “shall not become effective until it has been submitted to the legislature ... and has been affirmatively acted upon [by] concurrent resolution which may adopt, reject, amend or modify” the Plan.

THE STATE WATER PLAN

5. The current and previous State Water Plans are posted on the Idaho Department of Water Resources website at:

http://www.idwr.idaho.gov/waterboard/Planning/State_Planning/State_Planning.htm

6. Among other things, the 1996 State Water Plan, which is currently in effect, was submitted to the Legislature and, by 1997 Idaho Session, Chapter 38, Section 1, the 1996 State Water Plan was “ratified and approved with the following amendment to Policy 5B relating to Snake River Minimum Flows.” Part 5 of the State Water Plan, River Basins Group, Snake River Basin, was adopted and amended by Section 1 as follows:

5A-SWAN FALLS AGREEMENT

It is the policy of Idaho that the Swan Falls Agreement between the state and Idaho Power Company establishes the framework for water management in the Snake River Basin.

5B-SNAKE RIVER MINIMUM FLOWS

It is the policy of Idaho that minimum average daily flows at the Murphy gaging station shall meet or exceed 3,900 cfs from April 1 to October 31 and 5,600 cfs from November 1 to March 31. The average daily flow measured at the Weiser gage shall not be less than 4,750 cfs. A minimum average daily flow of 5,000 cfs at Johnson's Bar shall be maintained and an average daily flow of 13,000 cfs shall be maintained at Lime Point (river mile 172) a minimum of 95 percent of the time. The exercise of water rights above Milner Dam has and may reduce the flow at the dam to zero.

5C-SNAKE RIVER TRUST WATER

It is the policy of Idaho that water held in trust by the state pursuant to Idaho Code 42-203B be reallocated to new uses in accordance with the criteria established by Idaho Code 42-203A and 42-203C.

5D-SNAKE RIVER BASIN DCMI

It is the policy of Idaho that 150 cfs of the water held in trust by the state above Swan Falls Dam pursuant to Policy 5C be reallocated to meet future domestic, commercial, municipal, and industrial consumptive uses in accordance with state law.

5E-SNAKE RIVER BASIN AGRICULTURE

It is the policy of Idaho that appropriated water held in trust by the state pursuant to Policy 5C, less the amount of water necessary to provide for present and future DCMI uses as set forth in Policy 5D, shall be available for reallocation to meet new and supplemental irrigation requirements which conform to Idaho Code 42-203A, 203B, 203C and 203D.

5F-SNAKE RIVER BASIN HYDROPOWER

It is the policy of Idaho that hydropower use be recognized as beneficial use of water, and that depletion of flows below the minimum average daily flows set forth in Policy 5B is not in the public interest.

5G-SNAKE RIVER NAVIGATION

It is the policy of Idaho that water sufficient for commercial and recreational navigation is provided by the minimum flows established for the Snake River.

5H-SNAKE RIVER BASIN SPRINGS

It is the policy of Idaho to seek to maintain spring flows in the American Falls and Thousand springs reaches of the Snake River which will sustain beneficial uses of surface and ground water supplies in accordance with state law.

5I SNAKE RIVER BASIN NEW STORAGE

It is the policy of Idaho that applications for large surface storage projects upstream from the Murphy gage be approved subject to the requirement that the use is in the public interest.

5J-STORAGE ACQUISITION

It is the policy of Idaho that reservoir storage be acquired in the

name of the Idaho Water Resource Board to provide management flexibility in assuring the minimum flows designated for the Snake River.

THE IWRB'S PURPOSE OF, POWER TO, AND INTEREST IN INTERVENTION

7. The purpose of the IWRB's intervention would be to support the application of the policies of the State Water Plan, as adopted and amended by the Idaho Legislature, to the licensing of Water Right Permit No. 01-7011. In all likelihood, Water Right Permit No. 01-7011 will be the most important water right licensed by the Department in which the Department considers proper application of the elements of the State Water Plan quoted above.

8. The IWRB has the power to sue and be sued and to take all actions necessary to carry out its powers and duties. Idaho Code § 42-1734(14), -21).

9. The IWRB has a direct and substantial interest in this contested case because it formulated the State Water Plan, which was adopted and amended by the Legislature, and is directed by Article XV, § 7, and by Idaho Code § 42-1734A(1) to implement the State Water Plan. As a practical matter, implementation of the State Water Plan requires the Department of Water Resources to include conditions in the license for Water Right Permit No. 01-7011 for Milner Dam that reflect the requirements of the State Water Plan.

RELIEF REQUESTED

10. The IWRB seeks as relief that the license awarded to the applicants North Side Canal Company and Twin Falls Canal Company for Water Right No. 01-07011 contain all conditions necessary to comply with the State Water Plan.

Respectfully submitted this ¹⁶29 day of January, 2009.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By 
Michael S. Gilmore
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of January 2009, I caused to be served a true and correct copy of the foregoing by the following method to:

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