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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 MOTION TO AMEND ITS**
AND NORTH SIDE CANAL COMPANY) **PETITION TO INTERVENE**

Intervenor the Idaho Water Resource Board (IWRB), by and through its counsel of record, Michael S. Gilmore, Deputy Attorney General, hereby moves to amend its Petition to Intervene in this proceeding. At its meeting of Thursday, September 24, 2009, IWRB instructed its counsel to move to amend its Petition to Intervene to state the additional ground for intervention that IWRB holds permits for ground water recharge to the Snake River aquifer and has applied for additional ground water recharge rights that have not yet been permitted. IWRB does not move to amend the Hearing Officer's March 27, 2009, Order Granting Petitions For Intervention that limited the grant of IWRB's Petition to Intervene in that Order. Neither does IWRB move to amend the Hearing Officer's August 28, 2009, Scheduling Order.

IWRB proposes to amended its Petition to Intervene by adding the following underlined words or sentences to existing paragraphs in its Petition to Intervene or the following underlined paragraphs as new paragraphs to its Petition to Intervene.

3. Idaho Code § 42-1734 provides that 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; [and] (6)

To file applications and obtain permits in the name of the board, to appropriate, store, or use the unappropriated waters of any body, stream, or other surface or underground source of water for specific water projects”

....

6.1 The IWRB holds permits for or has applied for water rights for the following aquifer recharge projects:

(a) Water Permit No. 1-7054 (which is in the licensing stage), with a priority date of August 25, 1980, for ground water recharge with a diversion rate of 1,200 cfs from January 1 through December 31. The point of diversion is from the Snake River in Jerome County in the SWNW quarter-quarter section of Sections 28 and 29, Township 10S, Range 21 E. This point of diversion is from the reservoir behind Milner Dam, i.e., it is upstream from Milner Dam. The map attached as Exhibit A, which was downloaded from IDWR’s mapping services, yellow-highlights this quarter-quarter section. Water License No. 1-7054 will be directly affected by the Department’s consideration of the “subordination” term at issue in this contested case.

(b) Water Permit No. 37-7842, with a priority date of August 25, 1980, for ground water recharge with a diversion rate of 800 cfs from January 1 through December 31. The point of diversion is from the Big Wood River and the Little Wood River in Lincoln County in the SWSE quarter-quarter section of Section 24, Township 4S, Range 19 E. The Big Wood and Little Wood Rivers are tributary to the Malad River, which is tributary to the Snake River downstream from Milner Dam. Water Permit No. 37-7842 would not be directly affected by the Department’s consideration of the “subordination” term at issue in this contested case, but this water permit is listed for completeness.

(c) In addition on March 20, 1998, the Board applied for the following year-around ground water recharge rights, all of which would divert from the Snake River or its tributaries upstream from Milner Dam:

<u>No.</u>	<u>River</u>	<u>County</u>	<u>Diversion Rate (cfs)</u>
<u>01-7131</u>	<u>Snake</u>	<u>Bonneville & Jefferson</u>	<u>230.01</u>
<u>01-7132</u>	<u>Snake</u>	<u>Jefferson</u>	<u>283</u>
<u>01-7133</u>	<u>Snake</u>	<u>Bingham</u>	<u>682</u>
<u>01-7134</u>	<u>Snake</u>	<u>Bingham</u>	<u>475</u>
<u>01-7135</u>	<u>Snake</u>	<u>Bonneville</u>	<u>949</u>

01-7136	Snake	Jefferson	537
01-7137	Snake	Jefferson	698
01-7139	Snake	Jefferson	110
01-7140	Snake	Jefferson	253
01-7141	Snake	Jefferson	1,095
01-7142	Snake	Jerome ¹	2,831
01-7143	Snake	Twin Falls ²	3,738
21-7574	Henry's Fork	Fremont	160
21-7575	Henry's Fork	Fremont	339
21-7576	Fall River	Fremont	294
21-7577	Henry's Fork	Fremont	399
21-7578	Henry's Fork	Fremont	568
21-7579	Henry's Fork	Fremont	337
21-7580	Henry's Fork	Fremont	94

None of these applications has yet received a permit.

7. The purposes 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, and to protect is water rights listed in Paragraph 6.1. 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.

....

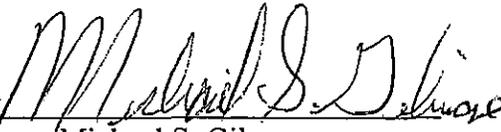
9. The IWRB has a direct and substantial interest in this contested case because it formulated the State Water Plan, which was adopted and amended by the Legislature, and is directed by Article XV, § 7, and by Idaho Code § 42-1734A(1) to implement the State Water Plan. The IWRB also has a direct and substantial interest in this contested case because this case's outcome may affect IWRB's ability to use whatever recharge rights it now has or may be granted in the future under the permits and applications listed in Paragraph 6.1. 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 and protect IWRB's permits and applications listed in Paragraph 6.1.

¹ This Jerome County diversion is from the NESE quarter-quarter section of Section 29, Township 10S, Range 21E, which Exhibit A shows is from the reservoir behind Milner Dam.

² This Twin Falls County diversion is also from the NESE quarter-quarter section of Section 29, Township 10S, Range 21E, which Exhibit A shows is from the reservoir behind Milner Dam.

Respectfully submitted this 30th day of September, 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 30th day of September, 2009, I caused to be served a true and correct copy of the foregoing by the following method to:

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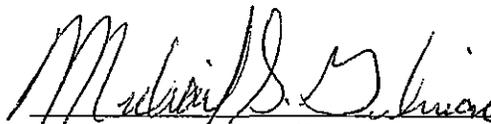
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Michael S. Gilmore
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Exhibit A

