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DEPARTMENT OF
WATER RESOURCES

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DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S
PETITION FOR DECLARATORY RULING
REGARDING NEED FOR A WATER
RIGHT TO DIVERT WATER UNDER
REUSE PERMIT NO. M-225-01

Docket No. P-DR-2020-001

**CITIES OF POCATELLO, IDAHO
FALLS, AND RUPERT'S
OPPOSITION TO IDAHO POWER'S
PETITION TO INTERVENE**

**Fee Category: Exempt
Idaho Code § 67-2301**

COMES NOW, the Cities of Pocatello, Idaho Falls, and Rupert (“the Cities”) to oppose Idaho Power’s Petition to Intervene (“Petition”). Contrary to the standards laid out in IDAPA 37.01.01.353 and 37-01.01.354, Idaho Power does not have a “direct and substantial interest” in

the captioned matter and its participation will unduly broaden the issues. As grounds therefor, the Cities would show the Director:

1. The Cities join in the “City of Nampa Opposition to Idaho Power Petition to Intervene,” filed April 29, 2020.
2. In addition to Nampa’s arguments, the Cities note that Idaho Power’s Petition alleges potential injury to Idaho Power’s operations via declines in reach gains (while its hydroelectric water rights are “subordinated, the Company does depend upon reach gains in the source identified in the water rights to generate power.” Petition at 3). Idaho Power does not describe how this is remediable injury, but in any event, this is outside of the scope of the proceeding.
3. Idaho Power acknowledges that the activities of Nampa under its reuse permit are downstream of the Swan Falls dam; however, it argues “similar discharges are present upstream of Swan Falls Dam and may trigger some analysis of the minimum flows pursuant to the Swan Falls Settlement depending upon the outcome of the issues raised in the present proceeding.” Petition at 3. Idaho Power does not identify the “similar discharges” upstream of Swan Falls, nor does it connect the dots between this declaratory judgment regarding Pioneer’s ability to rely on effluent discharged under the Nampa Reuse permit and future “analysis of minimum flows” under the Swan Falls settlement. Nonetheless, allowing Idaho Power to introduce potential impacts of its operations under the Swan Falls Agreement into this matter would substantially broaden the issues.
4. Given these deficiencies, and as noted in the Director’s “Order Denying Idaho Power’s Petition for Hearing” entered in the Surface Water Coalition Delivery Call on July 25, 2005, it is not even clear that Idaho Power has standing to participate in this matter. Idaho

Idaho Power stated only generalized concerns regarding reach gains and evaluation of its Swan Falls Agreement, which arguably are shared by many other Idaho citizens and entities.

5. However, the Director need not reach the issue of Idaho Power's standing, because Idaho Power does not satisfy the basic showings required for intervention.

For these reasons, the Cities request that the Director reject Idaho Power's Petition to Intervene.

Respectfully submitted this 14th day of May, 2020.

SOMACH SIMMONS & DUNN

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By 
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By 
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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2020, I caused to be served a true and correct copy of the foregoing **THE CITIES' OPPOSITION TO IDAHO POWER'S PETITION TO INTERVENE** by the method indicated below and addressed to the following:

<p>Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 Hand delivery or overnight mail: 322 East Front Street Boise, ID 83702 Gary.Spackman@idwr.idaho.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Garrick L. Baxter, Esq. Deputy Attorney General Idaho Department of Water Resources P. O. Box 83720 Boise, ID 83720-0098 Hand delivery or overnight mail: 322 E. Front Street Boise, ID 83702 Garrick.baxter@idwr.idaho.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile (208) 287-6700 <input checked="" type="checkbox"/> Email</p>
<p>Idaho Department of Water Resources Northern Regional Office 7600 N Mineral Dr, Ste 100 Coeur d'Alene, ID 83815-7763</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile (208) 287-6700 <input type="checkbox"/> Email</p>
<p>Albert P. Barker BARKER, ROSHOLT & SIMPSON LLP 1010 W. Jefferson, Suite 102 PO Box 2139 Boise, ID 83701-2139 apb@idahowaters.com <i>(For Petitioner Riverside Irrigation District Ltd.)</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile (208) 344-6034 <input checked="" type="checkbox"/> Email</p>

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