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Attorney for Idaho Power Company

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

IN THE MATTER OF RIVERSIDE'S
PETITION FOR DECLARATORY
RULING REGARDING NEED FOR A
WATER RIGHT UNDER REUSE PERMIT
NO. M-255-01

Docket No. P-DR-2020-001

**IDAHO POWER COMPANY'S
RESPONSE TO OPPOSITION TO
IDAHO POWER COMPANY'S
PETITION TO INTERVENE**

COMES NOW, Idaho Power Company, by and through its attorneys of record, and pursuant to the Director's *Order Setting Deadlines for Responses; Notice of Continued Prehearing Conference* dated May 7, 2020, hereby responds to the oppositions filed by Riverside Irrigation District ("Riverside") and the City of Nampa ("City") to interventions filed by a number of cities and Idaho Power Company.

INTRODUCTION

At the prehearing conference held in the above captioned matter on April 30, 2020, the hearing officer identified that potential intervenors may file a response to the oppositions to intervention pleadings filed by Riverside and the City of Nampa just prior to the prehearing. Specifically, the scheduling order dated May 7, 2020 stated "that written responses to the filings submitted by Riverside and Nampa be filed with the Department no later than May 14, 2020. The

Director verbally ordered that no replies be submitted.” *Order Setting Deadline for Responses*, p. 1. In accordance with the above cited order, Idaho Power Company (“Company”) files this response to said pleadings filed by Riverside and the City of Nampa.

ARGUMENT

As to the opposition to intervention filed by Riverside, Idaho Power Company recognizes Riverside’s concern over the number of city intervenors and the Company is willing to coordinate and if possible, not duplicate the efforts by other intervenors in this proceeding. Further, the Company recognizes Riverside’s acknowledgment that the Company’s interests are distinct from those of other potential intervenors. Moreover, the Company is in receipt of a stipulation signed and filed by Riverside and the city intervenors executed recently. *See* Stipulation regarding Intervention between Riverside and Intervenors, dated May 12, 2020. Upon review of the stipulation for intervention, the Company has reviewed paragraph 4 of said stipulation and agrees in principal with the conditions set forth in said paragraph.

Essentially, the Company agrees that the facts of the City of Nampa’s water rights and the reuse permit are the factual issues that frame the legal issues in this proceeding. In its petition to intervene, the Company identifies the fact that a number of its hydroelectric facilities are downstream of discharges from a number of water rights and uses, and those discharges potentially become the source of water for the exercise of the Company’s water rights. This description was for illustrative purposes and as examples of how and why the Company has a substantial interest in the outcome of this proceeding. Therefore, consistent with the stipulation entered into between Riverside and the city intervenors, the Company would agree with the conditions of paragraph 4 and further confirm that facts related to the

Company's water rights and operations "will not be included in the record as essential facts."

Given the above explanation and the Company's willingness to recognize the conditions of paragraph 4 of the stipulation identified above, the Company believes the City's opposition to the Company's intervention are without merit. The Company has no intentions of injecting factual circumstances surrounding the Swan Falls Agreement into the proceedings of this matter. As recognized in the above-referenced May 12, 2020 stipulation, external facts identified by intervenors would only be used for purposes of describing the potential impacts from an outcome of the legal issues. The City's cites to the Company's references to Swan Falls were misplaced given the review of the pleading and the arguments herein. Further, the Company's intervention and position in this proceeding is no different than the city intervenors, given all intervenors' concessions.

In summary, it is important to recognize that Riverside filed this petition seeking a legal determination that it framed through the petition. The City is a respondent. All other entities that filed pleadings have yet to attain formal party status. In response to the Company's petition to intervene, Riverside did not oppose said intervention. In fact, Riverside recognized the Company's unique interests in this proceeding. It appears from the stipulation entered into between the city intervenors and Riverside, that Riverside's concerns over additional intervenors have been resolved. The Company acknowledges the terms of said stipulation as it would apply to the facts of this case. Given the Company's willingness to abide by the factual circumstances of the City's water rights and reuse permit the sole basis for the City's concerns apparently surround the Company's water rights and subordination provisions. While water rights are subordinated, they still are recognized as a property interest and the Company still has a right to protect those interests through participation in

these proceedings. Although some entities may not believe those interests satisfy the criteria enumerated in the Rules of Procedure, the Company does and certainly the ratepayers within its service territory do as well. Finally, as recognized in this pleading the Company does not intend to and will not expand the factual issues beyond those presented in the water rights of the City, the facts surrounding the reuse permit and the facts surrounding Riverside's use of water discharged from the City.

CONCLUSION

For the above referenced reasons, the Hearing Officer should enter an order granting the Company's intervention.

DATED this 14th day of May, 2020.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May, 2020, I caused a true and correct copy of the foregoing **IDAHO POWER COMPANY’S RESPONSE TO OPPOSITION TO PETITION TO INTERVENE** to be served on the following parties by the following methods:

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