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John K. Simpson, ISB No. 4242
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Ste. 102
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034
jks@idahowaters.com

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DEPARTMENT OF
WATER RESOURCES

Attorneys for Idaho Power Company

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

IN THE MATTER OF THE PETITION
REGARDING STORAGE RESET IN
WATER DISTRICT 01 FILED BY MILNER
IRRIGATION DISTRICT

**Docket No. P-WRA-2017-002
IDAHO POWER COMPANY'S
PETITION TO INTERVENE**

COME NOW, Idaho Power Company (hereafter referred to as "Company"), by and through their undersigned counsel of record, and, pursuant to the *Notice of Pre-Hearing Conference; Order Setting Deadlines for Petitions to Intervene* (the "Order") dated October 5, 2017, as well as the Department's Rules of Procedure 350 – 354 (IDAPA 37.01.01), hereby petitions to intervene in the above-captioned matter.

FACTS

In the late 1970s and early 1980s, the Idaho Department of Water Resources ("IDWR") developed a water rights accounting program to track and account for the distribution of water to water rights located in Water District 01. This program has been modified over the years with a major transition occurring in the 2008-2012 timeframe, as the software was updated. Following this update and beginning in 2013, the IDWR, with the assistance of Water District 1, initiated a series of meetings intended to educate water users on the present accounting concepts, practices and procedures comprising the program and articulate those concepts, practices and procedures

in a manual generated by the Water District and IDWR. These informational meetings were completed and a second phase, “phase 2” began where the Water District and IDWR addressed issues or questions raised in earlier discussions.

On January 13, 2017, IDWR and the Water District hosted a meeting to continue discussions regarding accounting concepts, practices and procedures currently embedded in the Water District 1 accounting program. Historically, as irrigation demand subsided in the fall, natural flow became available to junior water rights. Prior to the creation of a year round accounting program designed to track the accrual of water to rights in Water District 1, a portion of this water filled tributary storage as long as physical space was available and was in priority. The accounting program created concepts known as “paper fill” and “reset” which while intended to promote maximum use of the resource, also brought uncertainty as to how rights were administered in the fall. To add further confusion, a number of inputs to the accounting program relative to fall administration, have changed since the program was originally put into place.

Milner Irrigation District submitted a letter to the Department on August 18, 2017, claiming,

...the “fall storage ‘reset’ for purposes of water right administration” in Water District 01 “is not authorized in the current storage water right partial decrees, including the Lake Walcott storage right (1-219)” and “has in effect curtailed Milner’s natural flow water right 1-17 (November 14, 1916 priority date) in recent years.”

STANDARD OF REVIEW

The Department’s Rules of Procedure provide the following for persons seeking to intervene in a proceeding:

Petitions to intervene must comply with Rules 200, 300, and 301. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding.

If affirmative relief is sought, the petition must state the relief sought and the basis for granting it.

Rule 351.

ARGUMENT

I. The Company's Petition is Timely.

This Petition has been filed with the Department by November 12, 2017, the deadline specified in the *Order*. Accordingly, the Company's petition is timely.

II. The Company's Direct and Substantial Interest.

A. Name and Address

The name of the potential intervenor is Idaho Power Company ("the Company"). The address is:

Idaho Power Company
P.O. Box 70
Boise, Idaho 83707

B. Interest in Petition

The Company owns 17 hydroelectric projects on the Snake River and its tributaries, the upper most project located at American Falls Reservoir, within the administrative boundaries of Water District 1. The Company is also a spaceholder in Water District 1, having a spaceholder contract with the United States for approximately 44,275 acre feet of the Reservoir. While it is recognized that hydropower generation at American Falls and through the Company's downstream projects is subordinated to upstream consumptive beneficial uses, the Company does have a direct and continuing substantial interest in the proper accounting of water rights. Like other spaceholders who are water users in the Water District, how water accrues to the storage rights and when rights are reset could impact storage supplies and natural flow deliveries. Further, the Company has been an active participant in the above-described accounting review process, attending the meetings, and

providing input where necessary. The IDWR has strived for proper management of the water resource and the Company has supported that management consistent with protecting their water rights, the Swan Falls Settlement and water supply generally.

The Company believes that review and challenges to the Water District 1 accounting program, like the demand from Milner, have the potential to impact every water user on the mainstem Snake River.

III. The Company's Petition Does Not Unduly Broaden the Issues.

The Company seeks intervention to protect the interests described above. No substantive motions have been filed and no pre-hearing conferences have been held. As such, no issues have yet been defined. Accordingly, the Company's petition does not unduly broaden the issues.

IV. The Company is Not Adequately Represented by Existing Parties.

To date no other party has been identified as an intervenor. Further, no party has identified interests identical or similar to those identified above. As such, the Company has a right to intervene to ensure its interests are adequately protected and represented.

CONCLUSION

The Company has submitted this timely *Petition to Intervene* in the above-captioned matter so that it may protect its direct and substantial interest. Since the Petition will not unduly broaden the issues and there is no existing party that adequately represents the Company's interests, intervention should be granted.

DATED this 8th day of November, 2017.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Attorneys for Idaho Power Company

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2017, I served a true and correct copy of the foregoing **IDAHO POWER COMPANY'S PETITION TO INTERVENE** on the following by the method indicated:

Director Gary Spackman
c/o Kimi White
Idaho Dept. of Water Resources
322 E Front St
Boise, Idaho 83720-0098
gary.spackman@idwr.idaho.gov
kimi.white@idwr.idaho.gov
garrick.baxter@idwr.idaho.gov

*** service by hand-delivery and
electronic mail

Lyle Swank
Water District 01 Watermaster
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402-1718

*** service by U.S. mail only



John K. Simpson