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DEPARTMENT OF WATER RESOURCES

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

IN THE MATTER OF THE REQUEST FOR)	
ADMINISTRATION IN WATER DISTRICT 120)	
AND THE REQUEST FOR DELIVERY OF WATER)	
TO SENIOR SURFACE WATER RIGHTS BY)	
A&B IRRIGATION DISTRICT,)	
AMERICAN FALLS RESERVOIR DISTRICT #2,)	CITY OF POCATELLO'S
BURLEY IRRIGATION DISTRICT,)	RESPONSE TO IDAHO
MILNER IRRIGATION DISTRICT,)	POWER COMPANY'S
MINIDOKA IRRIGATION DISTRICT,)	DISQUALIFICATION OF
NORTH SIDE CANAL COMPANY, AND)	THE DIRECTOR AS THE
TWIN FALLS CANAL COMPANY)	HEARING OFFICER AS A
_____)	MATTER OF RIGHT

Idaho Power joins the SWC in requesting that the Director of IDWR be replaced as the presiding officer for the hearing in this matter. Its request should be denied.

Contemporaneously with this brief, Pocatello filed "Pocatello's Brief in Response to 1) The Surface Water Coalition's Petition for Review of Directors June 3, 2005 Order Denying Requests to Appoint an Independent Hearing Officer and 2) The Surface Water Coalition's Disqualification of the Director as the Hearing Officer as a Matter of Right" (Pocatello's

Response Brief). Rather than belabor the matter, Pocatello incorporates herein by reference Pocatello's Response Brief. For the reasons outlined therein, Pocatello believes all petitions or requests to replace the Director—however captioned and under whatever legal theories—must be denied.

However, the threshold problem for Idaho Power is that it is not a party to this matter. Party status is the condition precedent to whatever statutory rights accrue under Idaho Code § 67-5252. That statute provides in relevant part:

Except as provided in subsection (4) of this section, any party shall have the right to one (1) disqualification without cause of any person serving or designated to serve as presiding officer, and any party shall have a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or any other cause provided in this chapter or any cause for which a judge is or may be disqualified.

(2) Any party may petition for the disqualification of a person serving or designated to serve as presiding officer:

(a) within fourteen (14) days after receipt of notice indicating that the person will preside at the contested case; or

(b) promptly upon discovering facts establishing grounds for disqualification, whichever is later.

....

(4) Where disqualification of the agency head or a member of the agency head would result in an inability to decide a contested case, the actions of the agency head shall be treated as a conflict of interest under the provisions of section 59-704, Idaho Code.

(emphasis added).

Idaho Power, in its Petition for Disqualification as a Matter of Right states:

Even assuming the January 20, 2005 letter [by the Coalition] sought disqualification of the Director, which Idaho Power does not concede, Idaho Power was not subject to the *Jan. Order* [Jan. 25th Order] because Idaho Power was not a party to this proceeding at that time. Further, the Director initially denied Idaho Power intervention in this matter, and Idaho Power therefore **could not**


exercise its right to disqualification without cause under I.C. § 67-5252(1).

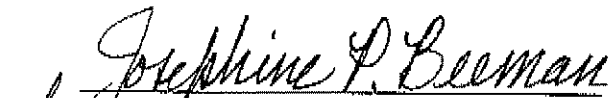
Idaho Powers filing for Disqualification as a Matter of Right at 4.

Idaho Power admits that without party standing it could not seek to disqualify the Director. Since Idaho Power is not yet a party to this proceeding, it has no standing to seek to disqualify the Director. This has not changed since January 2005.

Should the Director allow Idaho Power to participate in the hearing in this matter, Idaho Power's Petition should still be denied for the reasons described in Pocatello's Response Brief.

Respectfully submitted this 29th day of June 2005.


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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June 2005, I caused to be served a true and correct copy of the foregoing document by regular U.S. Mail, postage prepaid, to:

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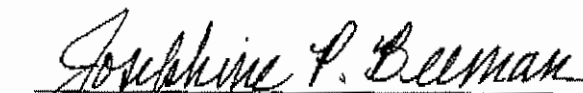
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