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

IN THE MATTER OF APPLICATION
FOR TRANSFER NOS. 84488 AND
84490 IN THE NAME OF LCSC
ENTERPRISES LLC

**APPLICANT'S PROPOSED
LEGAL QUESTIONS**

LCSC Enterprises LLC (the "Applicant"), by and through its counsel of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby submits *Applicant's Proposed Legal Questions*. This pleading is submitted at the request of the Hearing Officer to assist him in framing several threshold legal questions to be briefed and ruled upon prior to the hearing scheduled in this matter in an effort to expedite resolution of this contested case. The Applicant reserves the right to raise other legal issues and address them by motion or otherwise as such issues may arise during this proceeding.

The Applicant proposes the following questions to be briefed by the parties and ruled upon by the Hearing Officer:

1. Did Idaho Power Company's full subordination of its hydropower rights to WR 35-14041 (which has a priority date of October 16, 1974) in the Swan Falls Agreement include all aspects of WR 35-14041, including its pumping impacts, such that Idaho Power Company

waived any claim of injury to its hydropower rights from the exercise and/or transfer of WR 35-14041?

2. Are redistributed impacts from ground water pumping due to the exercise of a water right subject to a transfer (with decreased impacts in some reaches of the Snake River and increases in others) considered in any way to be an appropriation of trust water that generates review of the transfer under the trust water criteria of Idaho Code § 42-203C and other applicable Idaho law?
3. Is the Department's *Administrator's Memorandum, Transfer Processing No. 24*, dated December 21, 2009 (the "*Transfer Memo*") an agency interpretation of Idaho Code § 42-222, and if so, is the *Transfer Memo* entitled to deference from the Hearing Officer under Idaho's four-prong test articulated by the Idaho Supreme Court?¹

Dated this 29th day of September, 2021.



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

¹ The four-prong test is whether: "(1) the agency is responsible for administration of the rule in issue; (2) the agency's construction is reasonable; (3) the language of the rule does not expressly treat the matter at issue; and (4) any of the rationales underlying the rule of agency deference are present." *Duncan v. State Bd. of Acct.*, 149 Idaho 1, 3, 232 P.3d 322, 324 (2010) (citing *Preston v. Idaho State Tax Comm'n*, 131 Idaho 502, 504, 960 P.2d 185, 187 (1998)). As to the final prong, "there are five rationales underlying the rule of deference: (1) that a practical interpretation of the rule exists; (2) the presumption of legislative acquiescence; (3) reliance on the agency's expertise in interpretation of the rule; (4) the rationale of repose; and (5) the requirement of contemporaneous agency interpretation." *Duncan*, 149 Idaho at 3, 232 P.3d at 324.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2021, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed below by the method(s) indicated.

DOCUMENT SERVED: APPLICANT'S PROPOSED LEGAL QUESTIONS

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