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Attorneys for Idaho Power Company

**BEFORE THE 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

**IDAHO POWER COMPANY'S
PROPOSED PROCEDURE AND LEGAL
ISSUES**

COMES NOW, Protestant Idaho Power Company, pursuant to the hearing officer's request, files this pleading in response.

LCSC Enterprises filed transfer nos. 84488 and 84490, for which numerous pre-hearing conferences have been held. Additionally, extensive discovery has been completed with a tentative hearing date and discovery cutoff. The hearing officer has suggested that there may be legal issues which if framed and briefed may expedite the hearing. Submittal of the parties' proposed issues was requested by September 29, 2021, for consideration by the hearing officer pursuant to Administrative Rule 564. Protestant, Idaho Power Company, submits the enclosed

**IDAHO POWER COMPANY'S PROPOSED PROCEDURE AND LEGAL
ISSUES**

legal questions for consideration by the hearing officer. Idaho Power Company understands that the Hearing Officer is seeking proposed legal issues that might be resolved without consideration of the specific facts related to the pending transfer and that submission of this list will not limit either party with regard to the resolution of factual or legal issues specifically related to the pending transfer. Idaho Power further understands that there may be certain procedural issues relating to such matters as discovery, standing, etc. as the proceeding progresses that are more appropriately addressed through motion and hearing practice under the IDWR Rules of Procedure.

Idaho Power Company would identify the following legal issues for consideration by the hearing officer:

- Question: Do the provisions of the IDWR Transfer Processing Policies & Procedures internal memorandum, dated December 21, 2009, specifically those relating to injury and mitigation, have the force and effect of law so as to be binding on IDWR and transfer applicants and protestants or do such provisions violate the Idaho Administrative Procedure Act?
- Question: Does a transfer within the Eastern Snake Plain Aquifer (ESPA) violate the Eastern Snake Plain Moratorium dated April 30, 1993 if it enlarges depletions within the moratorium area or individual, connected reaches of the Snake River hydraulically connected to the moratorium area?
- Question: Are administrative transfers otherwise in compliance with I.C. § 42-222, which result in the additional depletion of trust water, considered an "appropriation of water which is held in trust" as identified in I.C. § 42-203C(1)? If so, are additional administrative considerations required under the IDWR Appropriation Rules?

DATED this 29th day of September, 2021.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson

Attorneys for Idaho Power Company

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2021, I served the original of the foregoing **IDAHO POWER COMPANY'S PROPOSED PROCEDURE AND LEGAL ISSUES**, by hand-delivering or depositing same in the U.S. Mail, postage prepaid, as indicated, addressed to the following:

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