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Attorney for Idaho Power Company

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

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 1-7128 IN THE NAME
OF IDAHO POWER COMPANY

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

Idaho Power Company ("IPC" or "Company"), by and through its counsel of record, hereby timely responds to the May 22, 2020 *Petition to Intervene* ("Petition") filed by the State of Idaho ("State") in the above-captioned proceeding.

The Company does not object to the State's Petition as explained below.

1. Department Rule of Procedure 350 provides that "[p]ersons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a parity, if a formal hearing is required by statute to be held in the proceeding." IDAPA 37.01.01.350.

2. Department Rule of Procedure 353 provides that a petition to intervene may be granted where the petitioner has demonstrated a direct and substantial interest and intervention will not unduly broaden the issues, unless the petitioner's interest is adequately represented by

existing parties. IDAPA 37.01.01.353.

3. Department Rule of Procedure 354 provides parties seven days to respond to a petition to intervene. IDAPA 37.01.01.354. Idaho Power received the State's Petition via email on May 22, 2020.

4. The State asserts a direct and substantial interest in this proceeding because it is a party to the 2004 Nez Perce Agreement. Petition at 5. Further, the State asserts that if issued and not subordinated to the Palisades Powerhead Permit, water right 1-7128 has the "potential to impair . . . with efforts to meet flow augmentation objective of the Nez Perce Agreement." *Id.* The State then theorizes that it is possible for the parties to resolve their disagreements that could somehow affect the Nez Perce Agreement. *Id.* at 6.

5. The State seeks the "affirmative relief" that any permit issued by the Department of Water Resources ("Department") effectively or expressly subordinates to the Palisades Powerhead Permit, and that the language used does not influence the Nez Perce Agreement. *Id.* at 7.

6. The Company has no interest in affecting the Nez Perce Agreement. The Company, while not a party to the Nez Perce Agreement acknowledges the many benefits the Agreement provides to the State and water users. While the Company doesn't believe that the exercise of right 01-7128 could impact fill of right 1-10401, over five months ago in response to the Bureau of Reclamation's concern now being expressed by the State as well, the Company proposed language to the Bureau of Reclamation that would expressly subordinate its water right (01-7128) to the continued exercise of the Palisades Powerhead Right. This proposed language has now been shared with all parties. Unfortunately, the Bureau of Reclamation, who asked the State to join this proceeding, has yet to provide the Company with an answer about the

sufficiency of the language proposed by IPC. However, the Company believes that it will find resolution to this issue with the parties.

7. If allowed to intervene, the Department should limit the State's participation to the "affirmative relief" sought as to the subordination of the Company's right to the Palisades Powerhead Permit 1-10401.

For these reasons, the Company does not object to the State's request for intervention. Again, if intervention is granted, IPC requests that the Department limit the State's participation.

Respectfully submitted this 29th day of May, 2020.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of May, 2020, I caused a true and correct copy of the foregoing **IDAHO POWER COMPANY'S RESPONSE TO PETITION TO INTERVENE** to be served on the following parties by the following methods:

Original to:

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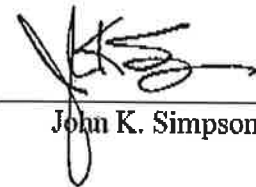
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