

ORIGINAL

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Attorneys for Idaho Power Company

RECEIVED

MAY 11 2020

DEPT OF WATER RESOURCES
SOUTHERN REGION

RECEIVED

MAY 04 2020

WATER RESOURCES
WESTERN REGION

Receipt #: W048240
Receipted by: KT
Date: 05/04/2020

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 37-23224

In the name of John N. Infanger and Debra A.
Infanger

**IDAHO POWER COMPANY'S NOTICE
OF PROTEST**

IDAHO POWER COMPANY (the "Protestant"), by and through its attorneys of record,
files this *Notice of Protest* to the approval of the above-numbered *Amended Application for
Permit* filed by John N. Infanger and Debra A. Infanger (the "Applicant").

The initial bases for the protest are as follows:

1. The Protestant has subordinated and unsubordinated water rights for hydropower purposes on the Snake River. These water rights are hydraulically connected to the Eastern Snake Plain Aquifer (ESPA) and tributary surface water sources, including the water sources that are the source of the referenced Application. The source of water for

the referenced application is groundwater in Gooding County; this groundwater is “trust water” as defined by IDAPA 37.03.08.030.1(a).


2. The Protestant is participating in these proceedings to protect its hydropower rights and ensure that the Idaho Department of Water Resources properly administers the water, including trust water, that supports those rights and the Swan Falls (Murphy Gage) minimum flows. (*See Exhibit A*).
3. That any permit granted should include the trustwater conditions as identified in IDWR processing memo dated July 18, 2019.
4. That the source of water, ESPA groundwater, is subject to an amended moratorium order dated April 30, 1993. The Order states “[t]he moratorium does not apply to any application for domestic purposes as such term is defined in Section 42-111, Idaho Code. For purposes of this exception, applications for ground water permits seeking water for multiple ownership subdivisions or mobile home parks will be considered provided each unit satisfies the definition for the exception of requirement to file an application for permit as described in subsection.” *See Idaho Code § 42-111*.
5. Protestant seeks assurances that the subject application complies with the moratorium order.
6. That said application references mitigation being provided by North Snake Groundwater District pursuant to the SWC-IGWA Agreement. Protestant seeks clarification that said mitigation isn’t applicable to this application given that it is a new application and would constitute a new depletion not covered by said Agreement.
7. That said application references a prior water right issued, water right no. 37-20800, which specifically excluded irrigation and contained incomplete trustwater conditions.

Further, it appears from the elements of the water right and conditions, that the water right holder agreed that trustwater would not be the source of irrigation for lands within the mobile home park. It now appears that the Applicant is attempting to move or has moved surface water off portions of the lands which are the subject of this application. Such actions would violate Idaho Code §§ 42-203(a) (4) and (5), regarding the local public interest and conservation of the resource criteria as it would expand consumptive use of trust water within the moratorium area. Additionally, such action violates the intent of I.C. § 67-6537.

8. For such other and further reasons as may be discovered or set forth at the hearing on this matter.

DATED this 4th day of May, 2020.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Attorneys for Idaho Power Company

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 2020, I served the original of the foregoing **NOTICE OF PROTEST**, by hand-delivering or depositing same in the U.S. Mail, postage prepaid, as indicated, addressed to the following:

Idaho Department of Water Resources
IDWR Western Region
2735 Airport Way
Boise, Idaho 83705

☐ U.S. Mail, postage prepaid
☒ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email

John N. Infanger and Debra A. Infanger
1241 Main Street
Gooding, Idaho 83330-1813

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email

Charles G. Brockway
Brockway Engineering
2016 Washington St. N, Ste. 4
Twin Falls, Idaho 83301

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email



John K. Simpson



James C. Tucker
jtucker@idahopower.com
208-388-2112

April 20, 2012

Gary Spackman
Director
Idaho Department of Water Resources
P.O. Box 83270
Boise, Idaho 83702-0098

Re: Snake River Water Management and the Murphy Gage Minimum Stream Flows

Dear Director Spackman:

As you know, the Idaho Power Company is participating in the administrative proceeding before the Department involving certain water right applications in the Mountain Home area (*In the Matter of Application for Transfer No. 73811, et al*). The Company's interest in these applications stems from uncertainty as to whether ground water flows in the areas where the water is to be diverted influence the minimum flows in the Snake River at the Murphy Gage.

The State of Idaho, the Company, and interested stakeholders continue to work collaboratively on various issues related to the 2009 Framework Reaffirming the Swan Falls Settlement, including the development of appropriate measurement/monitoring protocols and management measures to ensure that the average daily minimum flows at the Murphy Gage, established under the State Water Plan and the Swan Falls Settlement, are maintained. To date, these efforts have centered on the assembly and consideration of relevant data and information associated with spring discharges, surface water and river flows and Company operations. This collaborative effort is an extension of the explicit recognition in the State Water Plan and the Swan Falls Settlement that the effective management of the ESPA and the Snake River is the principle means for ensuring that the Murphy minimum flows are maintained.

The effective management of the ESPA and the Snake River also involves considerations relative to the management and administration of "trust water"¹. The current draft of the revised State Water Plan (2012) provides that the opportunity for further development of trust water is currently limited by three factors – (1) uncertainty over the relative rights of senior water right holders for uses other than hydropower to the spring flows in the Thousand Springs Reach; (2)

¹ The Department's rules define trust water as: Trust water flows under the Snake River water rights agreement are located in the Snake river between Swan Falls Dam located in Section 18, Township 2 South, Range 1 East, Boise Meridian (B.M.) and Milner Dam located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian (B.M.) and all surface and groundwater sources tributary to the Snake River in that Reach. (IDAPA 37.03.08.031(a))

term limited trust water rights that are to be subject to a public interest review by the Department in the near future; and (3) a moratorium on the issuance of new water rights within the trust water area. Consideration of these and other relevant factors affecting the allocation of trust water and the management of the ESPA and Snake River below Milner Dam are also instructed by the ongoing refinement of the ESPA model.

In the 2009 Framework Reaffirming the Swan Falls Settlement, the State and the Company also recognized that it was in their mutual long-term interest to cooperate regarding management of the water resources of the Snake River Basin, including water management issues associated with the "trust" and "non-trust" water areas. It is in this context that the Company is participating in the above referenced proceeding involving water right applications in the Mountain Home area and the Company anticipates that it may also participate in other proceedings before the Department involving water right applications that seek to appropriate water that may relate to the allocation of trust water or otherwise affect the minimum stream flows at the Murphy Gage.

The Company looks forward to working with you and your staff on these important issues. Please let me know if you would like to meet and discuss these matters further.

Sincerely,

A handwritten signature in black ink, appearing to read 'James C. Tucker', with a long horizontal flourish extending to the right.

James C. Tucker

JCT:sh

cc: Garrick Baxter/Idaho AG-IDWR
Clive Strong/Idaho AG