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DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02356A, 36-07210 AND 36-07427	**IGWA'S PETITION FOR RECONSIDERATION OF ORDER APPROVING IGWA SUBSTITUTE CURTAILMENT PLAN (BLUE LAKES DELIVERY CALL)**

Idaho Ground Water Appropriators, Inc. ("IGWA"), through its counsel Givens Pursley LLP and on behalf of its ground water district members, Magic Valley Ground Water District ("MVGWD") and North Snake Ground Water District ("NSGWD") (collectively the "Ground Water Districts"), hereby petitions for reconsideration of the Director's July 6, 2005 *Order Approving IGWA Substitute Curtailment Plan* ("July 6 Order"). The points on which the Ground Water Districts seek reconsideration, and the grounds therefore, are set forth below.

1. Quantification of Total Qualifying Conversion and Curtailment Acres.

The Ground Water Districts request that the Department reconsider its calculations of the total number of acres on which ground water use has been curtailed by voluntary curtailment and by conversions. As the Department knows, there is no prescribed

method for documenting or reviewing proposals for providing replacement water filed in response to the Director's delivery call orders. Nor are there any established procedures or standards for voluntary or substitute curtailment plans in response to such orders. There is no approved format for documentation, and no guideline informing Ground Water Districts about what information they should maintain and provide to the Department. Neither is there a basis for anticipating the range of issues that the Department staff may deem relevant in its review of Ground Water District submittals. And of course, in the context of this contested case, there has been little if any communication between the administrator and the regulated community concerning the gaps that inevitably exist between what has been provided as documentation and what might be expected.

The July 6 Order notes several instances in which Department staff made assumptions concerning actual, on-the-ground irrigation water use by Ground Water District members. These include assumptions as to whether and to what extent surface water already may be appurtenant to, and actually used on conversion acres, and the extent to which ground water use should be treated as supplemental on those acres.

The Order also imposes significant reductions in the number of submitted acres that are to receive credit for curtailment in 2005, but it does not identify the grounds for the reductions with respect to specific lands. As a result, Ground Water Districts cannot evaluate whether the Department's assumptions are correct; nor can they determine whether additional information could be provided that would result in the non-recognized acres being recognized.

The Ground Water Districts therefore respectfully request that the Department reconsider the July 6 Order's determinations of recognized acres and direct the Water District 130 Watermaster to consult with the Ground Water District staff concerning each of the non-

recognized acres. We ask that the Department refrain from finalizing the total number of recognized or qualifying acres until that consultation has been completed.

2. Non-recognition of credit for canal seepage.

The July 6th Order incorrectly fails to recognize credit for the incidental recharge benefits of seepage losses of water delivered to conversions (and to the Sandy Pipeline Ponds) through North Side Canal Company canals. The Ground Water Districts acknowledge that full credit for seepage cannot be confirmed until the total quantity of water actually delivered is known. The Ground Water Disticts disagree, however, that credit should be recognized only for "on-field seepage," or that 18% is necessarily the appropriate level of on-field seepage credit that should be recognized for surface water deliveries to converted acres.

In addition, if the law of conservation of mass has validity, then the difference between the total amount of water diverted into the Canal for the Ground Water Districts' benefit and the consumptive use of that water resulting from in-transit evaporation and on-field evapotranspiration must be credited to incidental recharge, unless the Department has reason to believe that the North Side Canal Company is not delivering Ground Water District water to the conversion acres or the Sandy Pipeline Ponds. The Ground Water Districts believe that North Side Canal Company has faithfully and competently made these deliveries.

3. Potential Curtailment Prior to Consultation with the Watermaster.

The July 6 Order determines that all wells serving conversion acres must be curtailed for the remainder of the season unless the Watermaster allows ground water irrigation of the conversion acres as set forth in section 2 at Page 9. Section 2 requires the ground water user and the North Snake Ground Water District to submit a joint request to the Department requesting the ability to continue irrigating with ground water and explaining in detail how water will be

measured using means of control approved by the Watermaster and the Department. These requests and supporting information are required to be submitted to the Department by July 15, 2005. On July 14th, the Ground Water Districts requested that the Department extend the July 15th deadline to July 29th because there was insufficient time to collect the necessary information and consultation with the Watermaster would be required to ensure that the desired documentation was obtained and provided. For the same reasons set out with respect to the Department's determinations of qualifying curtailment and conversion acres—that is, uncertainty about what information the Department requires and how the Department views the information that was provided—there should be no curtailment of ground water diversion for supplemental use on the conversion acres unless the NSGWD and its affected members can consult with the Watermaster to ensure that the full set of relevant facts are considered.

DATED this 19th day of July 2005.

GIVENS PURSLEY LLP

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July 2005, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

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