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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'S 2005 SUBSTITUTE CURTAILMENTS** **(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 April 29, 2006 Order Approving IGWA's 2005 Substitute Curtailments (Blue Lakes Delivery Call)("April 29 Order"). The Director's April 29, 2006 Order improperly underestimates the credits the Ground Water Districts should receive for their substitute curtailments.

GROUNDS FOR RECONSIDERATION

The Ground Water Districts incorporate by reference as if specifically set forth herein, each ground for reconsideration set forth in IGWA's July 19, 2005 Petition for Reconsideration and its June 2, 2005 Petition for Reconsideration filed in the above-captioned matter.

1. The Director should reconsider his determinations concerning which acres within the Ground Water Districts with appurtenant ground water rights that are not irrigated with ground water in any given year, including 2005, may be credited as mitigation or as a "substitute curtailment." Acres that should be credited as mitigation include any acre with a valid, appurtenant ground water right, whether primary or supplemental, that is not irrigated with ground water during the relevant year. This should include pivot corners and ground not covered because of intentional removal of endguns, regardless of their size. This also should include acres that have been proposed as substitute curtailment for which results of field inspections of curtailment during the relevant year were "uncertain" or inconclusive. This is especially necessary in years such as 2005, where delivery calls such as the Blue Lakes call and the resulting orders requiring curtailment, did not occur until fields had been planted, and where the unusually wet springtime conditions allowed for development and maturing of planted crops without groundwater irrigation. This also should include any acres with appurtenant ground water rights that are irrigated with any source of surface water, whether it be surface water acquired as storage by the Ground Water Districts or surface water associated with North Side Canal Company shares. The "nature" of the surface water provided as a substitute supply to such acres is irrelevant. What is relevant is that ground water use has been curtailed on such acres.

2. The Director should reconsider his determination not to give credit for non-diversion of ground water to acres that were not irrigated with ground water in the previous year unless the acres were included in a previous year's mitigation. Again, if the acres have a valid, appurtenant ground water right and they are not irrigated with ground water, that non-use limits ground water withdrawals from the aquifer. To the extent the lands have not been irrigated for a series of years (regardless of the reason), the effects on reach gains are amplified.

3. The Director should reconsider his determination to give recharge credit only with respect to storage water "delivered" to a ground water user's headgate as a substitute supply but not for any portion of the storage water "diverted" from the Snake River for delivery that is lost in transit due to seepage from canals and into the aquifer. This quantity of water, for 2005 approximated 12,000 AF, for which there is *no* accounting made in the April 29 Order.

4. The Director should reconsider the determination not to give credit for excess deliveries (i.e., greater than 4AF/A) of surface water to converted acres, as such excess water, like other water delivered to such lands in excess of the consumptive irrigation requirement results in aquifer recharge benefits.

5. The Ground Water Districts' counsel received certain spreadsheets and other materials related to the Department's review and conclusions concerning the Ground Water Districts' 2005 substitute curtailment on May 9, 2006. The Ground Water Districts have not yet had a sufficient opportunity to review this information, and therefore reserve the right to state additional grounds for reconsideration after they have had a reasonable time to complete such review.

6. Because the Ground Water Districts have only just received the above information by which they might understand the Department's analysis of substitute

curtailments, and the Department's factual findings with respect to specific acres that might be included in a 2006 plan for substitute curtailments, it would be impossible for the Ground Water Districts to submit plans for substitute curtailment until they have had a reasonable opportunity to understand which specific acres the Department already has concluded may or may not receive credit. The Director, therefore, should reconsider his conclusions and order requiring the Ground Water Districts to submit plans for substitute curtailment to the Director by May 30, 2006. The Districts request that such plans be due no earlier than June 15, 2006.

REQUEST FOR HEARING AND FOR STAY

Pursuant to Idaho Code § 42-1701A(3), and having been aggrieved by the Director's April 29 Order, and prior orders in this matter for which reconsideration and hearing have been requested, IGWA renews its request that the Director convene a hearing regarding this matter.

Pursuant to Department Rule of Procedure 780, IDAPA 37.01.01.780, IGWA moves for a stay of the Director's April 29 Order until such time as the Director convenes a hearing and rules upon IGWA's Petitions for Reconsideration and on the merits of the Blue Lakes delivery call.

If the Ground Water Districts are made to comply with the Department's outstanding orders in this matter, including the April 29 Order, while their Petitions for Reconsideration and requests for a hearing are pending, the Ground Water Districts' members will suffer severe economic harm resulting from the unlawful curtailment of their ground water rights. Until the Director has fully considered the multitude of issues raised by the Ground Water Districts' Petitions for Reconsideration, and additional facts to be presented at hearing, any curtailment of the Ground Water Districts' water rights is premature, would proceed without due process of

law, and would cause irreparable harm to the Ground Water Districts' members. Without granting the requested stay, IGWA's right to be heard on this matter would be meaningless.

RESPECTFULLY SUBMITTED this 12th day of May 2006.

GIVENS PURSLEY LLP

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May 2006, 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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