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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 THE REQUEST FOR ADMINISTRATION IN WATER DISTRICT 120 AND THE REQUEST FOR DELIVERY OF WATER TO SENIOR SURFACE WATER RIGHTS BY A & B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT #2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, and TWIN FALLS CANAL COMPANY and IN THE MATTER OF GROUND WATER DISTRICTS' APPLICATION FOR APPROVAL OF MITIGATION PLAN FOR THE AMERICAN FALLS REACH OF THE SNAKE RIVER	**IGWA'S REPLY BRIEF ON THE MITIGATION PLAN-DELIVERY CALL CONSOLIDATION ISSUE**

Idaho Ground Water Appropriators, Inc. ("IGWA"), through its counsel, Givens Pursley LLP, and on behalf of its ground water district members, Aberdeen-American Falls Ground Water District, Magic Valley Ground Water District, Bingham Ground Water District, North

Snake Ground Water District, Bonneville-Jefferson Ground Water District, Southwest Irrigation District, and Madison Ground Water District (the "Ground Water Districts"), files this reply brief regarding IGWA's Motion to Consolidate the proceedings related to IGWA's Mitigation Plan and the Surface Water Coalition's ("SWC") Delivery Call (the "Motion").

Contrary to SWC's assertions: 1) the delivery call contested case and the mitigation plan contested case do "present issues that are related"; and 2) the rights of the respective parties involved in each of those contested cases will not be prejudiced by the proposed consolidation.

A. The Two Contested Cases "Present Issues That Are Related"

As previously argued, the two contested cases can be seen as indivisible parts of the same controversy. The core issues in each case overlap significantly. For example, use of the Department's model to accurately predict the patterns and consequences of connectivity between surface and ground waters is at the forefront in both cases. In the delivery call case, the Director plainly intends to employ the model to determine if IGWA's members' groundwater pumping has materially injured the SWC. In the mitigation plan case, the Director will look to it to determine what mitigation, if any, would be proper. In each case, application of the groundwater model is vital.

IGWA believes it is important to bring both cases to conclusion by the start of the 2006 irrigation season. Consolidation will help assure that this happens. The administrative records that must be developed in the two cases will be indistinguishable in many, if not most, respects. Because the two cases are substantially overlapping, IGWA moved to consolidate them in an effort to conserve the financial resources and time of all parties concerned, including those of the Department. If the cases are not consolidated, then IGWA, SWC and other parties may be

forced in the mitigation plan case to recreate the voluminous record created in the delivery call case. The two contested cases are intertwined and should be consolidated.

B. Consolidating the Two Contested Cases Will Not Prejudice the Rights of Any Party to Either Case

SWC fails to state any potential prejudice to the rights of any party as required under Rule 556. IDAPA 37.01.01.556. Even assuming, for purposes of argument, that consolidation will add additional evidentiary requirements to the delivery call proceeding, SWC fails to explain how this will prejudice its rights or those of any other party to either case. Whether the two cases are resolved in one proceeding or in two distinct proceedings, the same number of issues will have to be addressed. However, the crucial advantage of consolidation is that the parties will not be forced to engage in additional discovery on once-visited questions or recreate what promises to be an enormous evidentiary record. Consolidation will conserve everyone's time and money.

As for any potential confusion, the Director can easily choose to hear the consolidated case in two phases, first taking up the delivery call portion to determine if SWC has suffered any material injury as a result of the actions of IGWA's members, then addressing second what mitigation, if any, IGWA's members owe to SWC. Indeed, the Department's Rule of Procedure 556 specifically anticipates as much, providing: "In consolidated hearings the presiding officer determines the order of the proceeding." IDAPA 37.01.01.556.

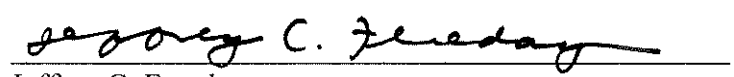
As for any potential problems related to mixing the parties in the two cases, this can easily be resolved by the Director ordering that every party's participation in the consolidated case be limited to the issues raised in each party's previously filed pleadings. That is to say, for example, that only those parties who have previously appeared only in the mitigation plan case would be allowed to participate in the second phase of the consolidated case, after the Director

has determined whether IGWA's members caused SWC's members to suffer material injury that must be mitigated.

IGWA remains confident that the Director can efficiently conduct and capably manage a consolidated case addressing multiple issues and multiple parties, and in the process conserve the time and financial resources of all parties concerned.

RESPECTFULLY SUBMITTED this 6th day of July, 2005.

GIVENS PURSLEY LLP



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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July 2005, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated.

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