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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 PETITION FOR ADMINISTRATION 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	**IDAHO GROUND WATER APPROPRIATORS, INC.'S MOTION OPPOSING IDAHO POWER COMPANY'S PETITION TO INTERVENE**

Idaho Ground Water Appropriators, Inc., ("IGWA"), through its attorneys Jeffrey C. Fereday and Michael C. Creamer of the law firm of Givens Pursley LLP hereby opposes Idaho Power Company's ("IPCo") Petition to Intervene in the above-captioned matter now pending before the Idaho Department of Water Resources ("Department"). The grounds for this opposition are stated below.

1. IGWA is an intervenor party to the above-captioned contested case. IGWA was granted party status by order of the Department dated February 14, 2005 (the "February 14 Order").

2. On February 14, 2005, IPCo filed a letter with the Department supporting the Surface Water Coalition's ("Coalition") delivery call and requested curtailment of ground water rights in the Eastern Snake Plain Aquifer ("ESPA"). IPCo also requested that its letter be treated as a "motion to intervene" if the Department initiated a contested case or formal administrative proceeding in the above-captioned matter and/or the Coalition's Petition for Designation of the ESPA as a Ground Water Management Area ("GWMA").

3. On February 14, 2005, IPCo filed a formal Petition to Intervene in the matter of the Coalition's Petition for GWMA designation.

4. In the February 14 Order, the Department initiated two contested cases in response to the Coalition's request and Petition, denied the Coalition's request to designate the ESPA as a GWMA and withheld a decision on IPCo's requested intervention.

5. Department Rule of Procedure 350 provides that "Persons 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 party, if a formal hearing is required by statute to be held in the proceeding." IDAPA 37.01.01.350.

6. 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 interests are adequately represented by existing parties. IDAPA 37.01.01.353.

7. IPCo's February 11, 2005 letter demonstrates that its interests already are adequately represented by existing parties—namely the Coalition—and that if granted intervention, IPCo will unduly broaden the issues in this proceeding.

8. IPCo's February 11, 2005 letter expresses IPCo's "support of the request for water right administration and delivery call submitted [to the Department] by a group of surface water interests identified as the 'Surface Water Coalition." (*See* IPCo February 11, 2005 letter at 1). That letter goes on to confirm that IPCo is "similarly situated with the members of the Coalition" and that IPCo has "similar expectations" with respect to the Coalition's request for administration of ground and surface water rights. (*See* IPCo February 11, 2005 letter at 2).

9. The administration sought by the Coalition is direct curtailment of junior priority ground water rights This is the form of administration sought by IPCo as well (*see* IPCo February 11, 2005 letter at 3, in which IPCo asserts the primary tool for achieving long-term sustainability of southern Idaho's water resources is "curtailing the use of water under junior priority water rights that impact senior water rights through priority administration"). On its face, IPCo's request for intervention demonstrates that its legal position and the relief sought are the same as those of the Coalition.

10. The Coalition consists of seven large irrigation districts represented by four different law firms—i.e., existing parties fully represented by legal counsel. The Department can reasonably conclude that IPCo's interests are adequately represented by existing parties.

11. Moreover, IPCo's February 11, 2005 letter also clearly indicates that if IPCo were granted intervention, it would unduly broaden the issues before the Department by revisiting the intent and terms of the Swan Falls Agreement between IPCo and the State. The 1984 Swan Falls Agreement subordinated many of IPCo's Snake River hydropower rights, provided for staged, <u>continued</u> development of ground water rights on the ESPA (i.e, those rights of IGWA's members developed after 1984 in reliance on that agreement) and contemplated the incremental reduction of Snake River flows down to a minimum summertime flow of 3900 cfs.

Nevertheless, IPCo asserts that its reason for supporting the Coalition is the need to curtail junior ground water rights that it alleges have reduced Snake River flows serving its subordinated hydropower rights which may result in IPCo increasing its customers' power rates.

12. IPCo has an alternative legal means to raise such issues: IPCo can seek to renegotiate the Swan Falls Agreement with the State, or administratively, it may file its own delivery call under the Department's conjunctive management rules. Neither of these avenues , would unduly broaden the issues in the present contested case.

13. For the foregoing reasons, IPCo should not be granted intervenor status in the above-captioned matter.

DATED this 18th day of February 2005.

GIVENS PURSLEY LLP

By: _____
Michael C. Creamer
Attorneys for Idaho Ground Water Appropriators, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February 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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