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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 PETITION TO INTERVENE (GWMA ADMINISTRATION)**

Idaho Ground Water Appropriators, Inc., ("IGWA"), through its attorneys Jeffrey C. Fereday and Michael C. Creamer of the law firm of Givens Pursley LLP, and pursuant to Idaho Department of Water Resources ("Department") Rules of Procedure 350, 351 and 352 hereby petition for leave to intervene in the above-captioned matter. The grounds for this Petition are stated below.

INTERESTS OF IGWA AND ITS MEMBERS

1. IGWA is an Idaho non-profit corporation, organized to promote and represent the interests of Idaho ground water users. IGWA's address is P.O. Box 2624, 1109 West Main, Suite 300, Boise, Idaho 83701.

2. IGWA's members include six ground water districts, one irrigation district whose irrigators are reliant on ground water, various municipalities and municipal water providers, and commercial and industrial entities operating within the State of Idaho. IGWA's members hold water rights authorizing ground water diversions for irrigation of approximately 855,000 acres and for other authorized beneficial uses.

3. Many of IGWA's members' ground water rights are diverted from wells within the Eastern Snake Plain Aquifer ("ESPA"), certain portions of which have been determined to be an interconnected source with the Thousand Springs Reach ("TSR") and American Falls Reach ("AFR") of the Snake River.

4. Magic Valley Ground Water District, North Snake Ground Water District, American Falls-Aberdeen Ground Water District, Bingham Ground Water District and the Bonneville Jefferson Ground Water District are IGWA members that represent ground water users within Water Districts 120 and 130. A small portion of the boundary of the Madison Ground Water District extends within the ESPA. The Madison Ground Water District and the South West Irrigation District are not located within an organized water district. The above-referenced districts are hereinafter referred to as (the "Ground Water Districts").

5. The Ground Water Districts[1] are authorized by Idaho Code § 42-5224(6) to represent their members with respect to their individual water rights in legal and administrative proceedings.

6. The Ground Water Districts' members hold water rights with varying priorities ranging from the early 1900's to the late 1900's, some of which are junior to the various priorities of water rights claimed in the Petition by the A & B Irrigation District, American Falls

[1] With the exception of South West Irrigation District, which is organized under Title 43, Idaho Code.

Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company (collectively the "Petitioners").

THE PETITION FOR ADMINISTRATION

7. The Petition alleges, inter alia, that the Petitioners are "suffering material injury" by reason of ground water withdrawals by IGWA members.

8. The Petition alleges, inter alia, that the ESPA is a ground water basin, which may be approaching the conditions of a critical ground water area.

9. The Petition seeks action by the Department, including administration of ground water rights located outside organized water districts, which administration may impair the ability of IGWA's members to divert ground water under their water rights.

10. The Petition seeks designation of the entire ESPA as a ground water management area.

DEPARTMENT INTERVENTION REQUIREMENTS

11. The Department's 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.

12. IGWA's members have such interests.

ISSUES IMPLICATED BY THE PETITION THAT NECESSARILY MUST BE DETERMINED

13. The Petitioners assert the priority of their surface water rights, allege material injury to those water rights due to diversions under junior ground water rights, and seek

administration by curtailment of junior ground water rights. As such, the Petition necessarily implicates significant legal and factual issues that must be addressed by the Department in any decision on the merits of the Petition, including, but not limited to the following:

A. The validity, nature and extent of the Petitioners' water rights, none of which have yet to be adjudicated in the Snake River Basin Adjudication;

B. The extent of historical diversions and actual beneficial use of water that has heretofore been made by the Petitioners, their members or their shareholders;

C. The extent, if any, to which any water shortage alleged by the Petitioners actually has impaired, or will impair, the authorized beneficial uses under their senior water rights;

D. Whether material injury to an irrigation water right exists where sufficient water is available to the right holder to raise adequate agricultural crops;

E. The extent to which a delivery call may be placed or recognized based only upon anticipated or speculative material injury;

F. The extent to which the Petitioners' own use of water, including their respective prior actions in renting their water rights to others immediately prior to or during the course of the instant drought, has reduced the quantity of water available to the Petitioners, their members or their shareholders;

G. The extent to which reach gains that might be expected to result from curtailment of junior ground water withdrawals would result solely in additional water spilling past Milner Dam to be available for: 1) non-consumptive hydropower generation under junior water rights of the Petitioners or other water rights subordinated to the

priorities of IGWA's members by the Swan Falls Agreement; or 2) consumptive and non-consumptive uses outside the State of Idaho;

H. The extent to which the Petitioners' own actions in implementing winter water savings and water conservation practices may be a legal basis to impose or increase obligations on junior ground water users to offset the resulting reductions to incidental recharge to the ESPA or reach gains to the American Falls Reach of the Snake River;

I. Whether junior appropriators such as IGWA's members can have their water rights curtailed where current reach gains in reaches of the Snake River from which the Petitioners divert their natural flow rights show no change from the time the Petitioners originally made their appropriations (i.e., can priority administration be imposed to make a senior water right holder's ability to divert water better than it was when the senior appropriation was made?)

J. Whether senior surface water appropriators can be required to use all of their storage water rights during extended periods of severe drought (i.e., a one in two hundred year, or one in five hundred year drought event).

K. If senior surface water appropriators have never heretofore used, and are not required to use, all of their storage during extended severe drought periods, has that portion of the storage water right been forfeited or abandoned?

L. Whether the quantity of water in the ESPA is approaching a condition where there is insufficient ground water to provide a reasonably safe supply for the irrigation of cultivated lands or other uses in the basin at then current rates of withdrawal;

M. Whether the Department can implement any priority administration outside a ground water district in 2005 where the September 1, 2004 deadline for providing notice to affected water users has passed;

N. Whether a senior right holder seeking administration of junior rights may dictate the geographic scope of such administration;

O. Whether an action brought by a senior surface water user for priority administration of junior ground water rights must be brought pursuant to Idaho Code § 42-237b and resolved by a local ground water board;

P. The extent to which the Petition is barred by equitable doctrines, including waiver, estoppel, laches, or "customary preference"; and

Q. The extent to which the Petition is contrary to the State of Idaho's policy of "full economic development of underground water resources" as enunciated in the Ground Water Act, Idaho Code § 42-226 and the doctrine of maximum use of the State's water resources as mandated by the Idaho Constitution and the Idaho Supreme Court.

R. The extent to which the curtailment requested by Petitioners is a futile call;

S. The extent to which a senior right holder may be liable for reasonably foreseeable economic harm or other damages to junior right holders resulting from a delivery call based on speculation, harassment, or intimidation;

14. IGWA's members, including the Ground Water Districts and their respective members, have a direct and substantial interest in the instant contested case proceeding in that designation of their source of water as a ground water management area and/or administration as

requested by the Petitioners may impair the Ground Water Districts' members' ability to divert ground water under their water rights. As such, IGWA opposes the Petition.

15. IGWA's participation as a party will not unduly broaden the issues before the Department.

16. The interests of IGWA and its members are not represented by any other party to this proceeding.

17. This Petition to Intervene is timely. No hearing previously has been set or held in this matter.

18. IGWA reserves the right to file an answer to the Petition at such time as intervention is granted, to obtain discovery, to call, examine and cross-examine witnesses, and to state further issues and otherwise participate as a full party in all proceedings.

DATED this 3rd 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 3rd 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:

Mr. Karl J. Dreher Director Idaho Department of Water Resources 322 East Front Street P.O. Box 83720 Boise, ID 83720-0098	_____ U.S. Mail _____ Facsimile _____ Overnight Mail ✓ Hand Delivery
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