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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	**IDAHO GROUND WATER APPROPRIATORS' QUESTIONS FOR STATUS CONFERENCE**

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"), hereby responds to the April 22, 2005 Notice of Status Conference ("Notice") issued by the Director, the Idaho Department of Water Resources ("Director"). The Notice specified that the parties' questions at

the status conference be in writing and be limited to the implementation of the Director's April 19 Order in this matter ("Order").

At this time, the Ground Water Districts have these questions, all of which relate to implementation of the Order (all paragraph and page references are to the Order):

1. Paragraphs 27 and 122 state that actual material injury will be determined at a later time. When and how is actual material injury to be later determined?

2. If at such later time additional material injury is found, what will be the required schedule of any additional deliveries or curtailment to mitigate it?

3. Paragraphs 124-127, p. 28, contain the phrase "over time." Does this refer to the first year, or to some other time period?

4. Paragraph 124 finds that curtailing ground water rights junior to February 27, 1979 within the ground water model area for the ESPA would increase reach gains in the Snake River between the Near Blackfoot gage and the Minidoka gage by 133,900 acre-feet. Paragraph 126 finds that curtailing ground water rights junior to that date within Water Districts 120 and 130 would increase reach gains in the this reach by 101,000 acre-feet. The difference between these amounts is 32,900 acre-feet.

    a. Assuming the Director has, by April 2006, created additional water districts to encompass the area of the ESPA represented by the ESPA model, does implementation of the Order require that ground water users in the newly created water districts have a obligation, in 2006, to provide this 32,900 acre-feet as mitigation?

    b. If the ground water users in the newly created water districts will have an immediate mitigation requirement of 32,900 acre-feet, when must that water be provided to avoid curtailment?

5. The Order finds that water users in existing ground water districts within Water Districts 120 and 130 have a current, 2005 mitigation requirement of 101,000 acre-feet, and requires minimum mitigation of 27,700 acre-feet in 2005.

    a. Does the 27,700 acre-foot minimum mitigation requirement represent the obligation of only the five existing ground water districts that are in WD 120 or WD 130, or are these five districts obligated for only their share of 27,700 in the same proportion as 101,000 bears to 133,900 (i.e. 75%)?

    b. Is the 27,700 acre-foot minimum in addition to the 101,000 acre-feet, or would providing 27,700 acre-feet of replacement water in 2005 result in a remaining balance toward the 2005 mitigation requirement of 73,300 acre-feet?

c. If the ground water districts provide the minimum requirement of 27,700 acre-feet of replacement water in 2005, when must the water be delivered and through what mechanisms or facilities?

d. Over what period of time may the balance, if any, of the ground water districts' 2005 mitigation requirement be met, and if it is met using replacement water, at what specific times must the water be delivered?

6. Pg 29, paragraph 127: What is the meaning of the tabulation of "6-month accruals" with respect to implementation of the Order, and what do these 6-month accruals indicate with respect to calculating mitigation credits and/or scheduling replacement water deliveries?

7. Pg. 43, paragraph 1: This paragraph requires that replacement water be provided "in amounts equal to the annual depletions to the reach gains." Are these annual depletions figured on a steady-state basis? If not, how are they to be calculated in implementing the Order?

8. How will the Order be implemented with regard to determining the amount of replacement water to be provided by non-irrigation users within the affected portion of the ESPA? Is this requirement limited to users junior to February 1979?

9. Assuming the ground water districts provide replacement water in the quantities and at the times required by the Order, will non-irrigation ground water users who are ground water district members be required to provide any separate mitigation for their continued diversions?

10. Pg. 44, paragraph 4: How are replacement supplies to be delivered by the ground water districts to the members of the Surface Water Coalition ("SWC")? How are such deliveries to be credited against the individual ground water district obligations listed in this paragraph?

11. Can the Director describe the accounting process or system that will be used to track future obligations and carry-forward credits? Will IDWR develop this accounting system? What aspects of this accounting will be the responsibility of the ground water districts or the two water districts?

12. Will the accounting system account for water bank transactions, including rental of storage to non-SWC members or for delivery below Milner, in determining year-to-year whether the SWC members have reasonable carryover?

13. Not all storage reservoirs used by members of the SWC are physically affected by conditions of ESPA water use. Is it necessary for all such space to fill to cancel any mitigation obligation being carried forward? Does this fill have to be simultaneous?

14. Pg. 45, paragraph 7: Does the restriction limiting curtailment to lands that were irrigated in the previous year mean that no credit will be given for multi-year curtailments? If so, how will the Order be implemented in light of mitigation credits that might be attributed to CREP or other similar programs?

15. In implementing the Order, will IDWR consider and include in relevant calculations, the modeled benefits to surface water flows resulting from the ground water districts' curtailment, under prior years' interim stipulated agreements, of pumping on specified irrigated acres?

16. Curtailment in any one year will generate reach gain benefits in later years even if the curtailed lands subsequently are brought back under irrigation. Recognizing that such benefits will occur whether or not there is a determination of injury in such later years, in the implementation of the Order how are such carryover benefits to be credited against mitigation obligations?

17. In implementing mitigation deliveries under the Order, will the Director accept non-priority-based curtailment as a method of meeting mitigation obligations? How will credit for such curtailments be calculated?

18. The Department previously has agreed that the depletive effect of diversions by certain ground water users within the Aberdeen-American Falls Ground Water District who also are shareholders in the Aberdeen-Springfield Canal Company ("ASCC"), can be mitigated by ASCC diversions.[1] These ground water rights are appurtenant to some 15,100 acres within the ASCC service area. The Department previously has determined that the mitigation requirement for these ground water rights is approximately 28,100 acre-feet, and that they are mitigated to that extent when the amount available for mitigation due to diversions of surface water into the ASCC canal system is greater than 28,100 acre-feet. Among these ground water rights, approximately 40 have priority dates junior to February 27, 1979.

    a. Will the April 19 Order be implemented so as to account the ASCC ground water mitigation entitlement as a credit against the ground water users' mitigation obligation under the Order?

    b. How are other ground water users with priorities junior to February 27, 1979 who might already have an approved mitigation plan incorporated into the Director's analysis of injury or determination of the overall mitigation obligation?

19. At what time does the Director expect to review and approve a permanent mitigation plan such as the mitigation plan filed by the ground water districts in February 2005?

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[1] *Settlement Agreement Regarding Aberdeen-Springfield Canal Company's Basin 01 Surface Water Rights and Consolidated SRBA Subcase No. 35-2315* (June 7, 2002).

RESPECTFULLY SUBMITTED this 26th day of April 2005.

GIVENS PURSLEY LLP

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April 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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