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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	**IGWA'S RESPONSE TO IDAHO POWER COMPANY'S PETITION FOR REVIEW OF ORDER APPROVING IGWA'S REPLACEMENT WATER PLAN FOR 2005**

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" or "IGWA"), hereby responds to Idaho Power Company's July 8, 2005 *Petition for Review of Order Approving IGWA's Water Plan for 2005* ("Petition").

Idaho Power has been denied intervention in this case. It has yet to allege any injury to any water right it holds. It has not filed its own delivery call. It has not joined in the delivery call filed by the Surface Water Coalition ("SWC"). It avoids mentioning that it has subordinated its water rights to the same junior ground water rights that are subject to the SWC's delivery call. Yet, Idaho Power persists in filing pleadings in this case.

The latest example is Idaho Power's present Petition in which the utility proclaims its belief that IGWA and the Director have made procedural mistakes—the Director in handling this case through the issuance of orders, IGWA by filing its Replacement Water Plan in conformance with these orders, and again the Director by ultimately approving the Plan. The Petition further states that IGWA's Replacement Water Plan "fails to provide sufficient water to mitigate impacts and injury to senior water rights." Petition at 3.[1] Finally, Idaho Power suggests that the Director's actions have denied due process to someone—perhaps even non-parties like it.

The Petition includes a "Request for Relief" asking the Director to rescind his orders approving the Replacement Water Plan, to direct IGWA instead to pursue a mitigation plan, and, in the meantime, to order the *shut down of ground water pumping by all junior water rights on the aquifer*. In other words, things are in such a state, according to Idaho Power, that the Director must completely reverse course, throw out everything he has done so far, and forthwith order the shut-off of virtually every ground water well across southern Idaho, from Twin Falls to Ucon. Irrigators, cities, industries—the lot.

[1]Idaho Power does not say whose water rights are being injured, or in what amounts. Surely any injured water rights could not include any held by Idaho Power. Not even Idaho Power's asserted contract for American Falls Reservoir storage could possibly be impaired in any way—even assuming Idaho Power would be able to assert any claim based on it in this proceeding—because American Falls filled this year. Presumably, the allegedly injured water rights are those of Idaho Power's chosen surrogates, the irrigation entities in the Surface Water Coalition.

As for those whose livelihoods, businesses, and communities would be wrecked by such a summary order, evidently Idaho Power believes the SWC's January 14 letter to the Director asking for administration provides adequate basis. So much for due process.

Idaho Power intrudes into this case without any claim whatsoever, but possessed of plenty of suggestions in a situation where it perceives no downside risk. However, it is evident that Idaho Power understands that the upside for it, in particular, is huge: nothing less than the cancellation, by means of a type of collateral attack through surface irrigator surrogates, of the water right subordination Idaho Power pledged in the 1984 Swan Falls Agreement. Let the irrigators in the Surface Water Coalition take the heat for the delivery call. Idaho Power will sit on the sideline, send in plays, and suggest the "relief" it thinks should be granted.

When one is on the outside of a case, and has no stake in any event, it is easy to write words on paper asking for one of the party's utter destruction. But Idaho Power's words, filed in pleadings, have consequences. Real parties, having a real economic stake, are obliged to respond, spending time and money doing so. The same goes for the Department.

Idaho Power's Petition should be denied.

RESPECTFULLY SUBMITTED this 20th day of July, 2005.

GIVENS PURSLEY LLP

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th 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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