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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 THE SURFACE WATER COALITION'S RENEWED MOTION TO DISMISS**

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 the Surface Water Coalition's ("SWC") July 6, 2005 Renewed Motion to Dismiss ("Renewed Motion").

The thrust of SWC's Renewed Motion is that the Director has improperly granted IGWA the opportunity to file, and then augment, its Replacement Water Plan. SWC's position is that the Director erred in allowing continued use of ground water subject to a replacement water condition, and that the Director instead simply should have ordered the shut-off of essentially all ground water rights in Water Districts 120 and 130 pending the hearing in this case. SWC also asserts that the Director proceeded under improper procedures in responding to SWC's delivery call.

SWC has made all these points before, such as in its May 5, 2005 *Protest, Objection, and Motion to Dismiss "Replacement Water Plan"* (SWC's "Protest and Motion"). Because the Renewed Motion rehashes previous arguments, IGWA hereby incorporates its May 18, 2005 *Response to Objections to Plan for Providing Replacement Water*, which responded to those previous assertions.

The Renewed Motion, like SWC's earlier attempts, should be denied. If SWC continues to believe it is injured by ground water pumping by the Ground Water Districts' members, it can proceed to the hearing in this matter and make its case. In the meantime, IGWA is entitled, on behalf of the Ground Water Districts, to comply with the Director's orders pertaining to replacement water.

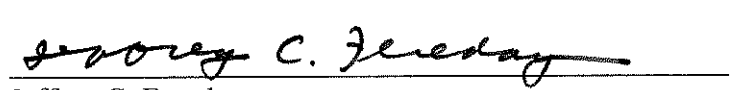
It is not clear why SWC persists in these repeated challenges to the Director's approval of IGWA's replacement water plan in the face of substantial increases, due to April-June rains, in storage and natural flow available to fill SWC's irrigation needs in 2005. IGWA believes that, whatever else might be argued about the question of material injury due to ground water pumping, SWC can show no such injury this year.

While SWC's proposal to dismiss IGWA's Replacement Water Plan is off the mark, a dismissal in IGWA's favor eventually could be the correct outcome should the Director find, based on current conditions, that no replacement water is necessary even given the assumptions of the May 2 Order. In that case, a dismissal of the Replacement Water Plan would not expose the Ground Water Districts to curtailment. But that currently is not the situation. Until further direction from the Department, IGWA intends to comply with the Director's orders pending a full hearing in this case.

In summary, IGWA has diligently and in good faith assembled all replacement water supplies, and the documentation for it, ordered by the Director. Complying with orders should not be subject to a motion to dismiss. The Renewed Motion should be denied.

RESPECTFULLY SUBMITTED this 19th day of July 2005.

GIVENS PURSLEY LLP



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CERTIFICATE OF SERVICE

I hereby certify that on this 19th 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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