James S. Lochhead
Adam T. DeVoe
BROWNSTEIN HYATT & FARBER, P.C.
410 17th Street, Twenty-Second Floor
Denver, Colorado 80202
jlochhead@bhf-law.com
adevoe@bhf-law.com
Telephone: 303.223.1100
Facsimile: 303.223.1111

RECEIVED
JUN 29 2005
DEPARTMENT OF
WATER RESOURCES

James Tucker, ISB #2038
Senior Attorney,
Idaho Power Company
Legal Dept.
1221 West Idaho Street
Boise, Idaho 83702
jamestucker@idahopower.com
Telephone: 208.388.2112
Facsimile: 208.388.6935
Attorneys for Idaho Power Company

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO VARIOUS WATER RIGHTS HELD BY OR FOR THE BENEFIT OF 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 AND IN THE MATTER OF GROUND WATER DISTRICTS' APPLICATION FOR APPROVAL OF MITIGATION PLAN FOR THE AMERICAN FALLS REACH OF THE SNAKE RIVER	**IDAHO POWER COMPANY'S OPPOSITION TO IGWA'S MOTION TO CONSOLIDATE THE CONTESTED MATTER ON THE DIRECTOR'S MAY 2, 2005 AMENDED ORDER WITH THE CONTESTED MATTER ON THE MITIGATION PLAN APPROVAL**

Idaho Power Company ("Idaho Power"), by and through its counsel, respectfully submits this Opposition To IGWA's Motion to Consolidate the Contested Matter on the Director's May 2, 2005 Amended Order with the Contested Matter on the Mitigation Plan Approval, pursuant to the June 16, 2005 *Order Regarding Status and Scheduling Conference of June 15, 2005* issued by the Director, Idaho Department of Water Resources ("IDWR").

I. PROCEDURAL BACKGROUND

A. The Coalition's Requests for Water Right Administration within and outside Water District No. 120

On January 14, 2005, the Surface Water Coalition ("Coalition") delivered a letter to Karl Dreher, Director of the Idaho Department of Water Resources, requesting water right administration within and outside of Water District 120. On May 2, 2005 the Director issued an Amended Order ("May 2nd Order"), without hearing, addressing the request for administration.

B. Ground Water Districts' Application for Approval of a Mitigation Plan

On February 8, 2005 the American Falls-Aberdeen Ground Water District, Bingham Ground Water District, Bonneville County-Jefferson Ground Water District, Madison Ground Water District, South West Irrigation District, North Snake Ground Water District, and Magic Valley Ground Water District (hereinafter collectively referred to as the "Ground Water Districts") applied for the approval of a Mitigation Plan. Idaho Power, the Coalition and USBR filed motions to dismiss the application for approval of the Mitigation Plan filed by the Ground Water Districts. The motions to dismiss are still pending and the Director has not yet set a schedule in that proceeding.

C. IGWA Motion to Consolidate

On June 14, 2005, the Idaho Ground Water Appropriator's, Inc. ("IGWA") filed a motion to consolidate the hearing of the May 2nd Order with the Mitigation Plan matter.

II. ARGUMENT

A. Standard for Consolidation

Rule 556 of IDWR's Rules of Procedure provides that the Department "may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and the rights of the parties will not be prejudiced." IDAPA 37.01.01.556. The standard requires the cases to contain "related issues" and demands that no parties can be "prejudiced" by a consolidation. The hearing on the Director's May 2, 2005 Amended Order responding to the Coalition's request for water right administration and the contested case involving the Ground Water Districts' Mitigation Plan do not involve "related issues" and will prejudice the parties to these individual matters.

B. Idaho Power and Others Will be Prejudiced by Consolidation

Idaho Power would be prejudiced if it was required to proceed with a hearing for approval of the mitigation plan filed by the Ground Water Districts along with the hearing on the Director's May 2nd Order. At the June 15th Pre-Hearing Conference on the May 2nd Order, the Director stated that he intends to hold a hearing in January 2006. That expedited schedule leaves approximately six months to conduct discovery, file motions, complete expert reports and testimony, and conduct a hearing on the Director's lengthy May 2nd Order involving numerous legal, technical, and factual issues. The large number of issues stated by each party who filed a petition requesting a hearing on the May 2nd Order is reason enough to decline consolidation. Adding more issues to this list, by including those involved with the Mitigation Plan and the protests to that plan, would only broaden the scope of the hearing and further hinder the ability of the parties to adequately prepare for a hearing.

Consolidation also prejudices the parties by confusing procedural, legal and factual issues, as well as the standards of review. Thus, consolidation will further complicate an already truncated hearing schedule on the May 2nd Order which involves legal, technical, and factual issues of first impression before the Department. As such, the parties would be prejudiced by consolidation of these issues.

C. The Matters Involve Distinct and Separate Issues

The May 2nd Order proceedings and the Mitigation Plan proceedings concerns distinct issues which are fundamentally different in both procedural and substantive aspects. The matter contesting the May 2nd Order concerns legal and factual issues regarding the Director's obligations to administer water rights according to priority, whereas the Mitigation Plan proceeding involves the adequacy of the Mitigation Plan and whether or not it meets the requirements of Rule 43.

Also, the Mitigation Plan sought to be approved by IGWA is a mitigation plan filed for and on behalf of certain named ground water districts, many of which are not within Water Districts 120 and 130, are not presently bound by any delivery call, and are apparently not affected by the May 2nd Order. The disparity of parties may substantially confuse the issues before the Director and cause an already tight hearing schedule to become unmanageable. Accordingly, these dissimilar matters should not be heard in the same proceeding, and the Director should deny IGWA's Motion to Consolidate.

III. CONCLUSION

WHEREFORE, Idaho Power respectfully requests that IGWA's Motion to Consolidate be denied.

DATED this 29th day of June, 2005.

IDAHO POWER COMPANY

By: _____
James Tucker, Senior Attorney
IDAHO POWER COMPANY

and

James S. Lochhead
Adam T. DeVoe
BROWNSTEIN HYATT & FARBER, P.C.
410 17th Street
Twenty-Second Floor
Denver, CO 80202

CERTIFICATE OF MAILING

I hereby certify that on this 29th day of June, 2005, I served a copy of **IDAHO POWER COMPANY'S OPPOSITION TO IGWA'S MOTION TO CONSOLIDATE THE CONTESTED MATTER ON THE DIRECTOR'S MAY 2, 2005 AMENDED ORDER WITH THE CONTESTED MATTER ON THE MITIGATION PLAN APPROVAL** by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Tom Arkoosh
Arkoosh Law Offices
P.O. Box 32
Gooding, ID 83330
alo@cableone.net

Scott Campbell
Moffatt Thomas
P.O. Box 829
Boise, ID 83701
slc@moffatt.com

W. Kent Fletcher
Fletcher Law Office
P.O. Box 248
Burley, ID 83318-0148
wkf@pmt.org

Kathleen Carr
Office of the Field Solicitor
550 W. Fort Street MSC 020
Boise, ID 83724

Roger D. Ling
Ling Robinson
P.O. Box 396
Ruper, ID 83350-0396
lnrlaw@pmt.org

Matt Howard, PN-3130
US Bureau of Reclamation
Pacific Northwest Region
1140 N. Curtis Road
Boise, ID 83706

John Rosholt
Travis Thompson
Barker Rosholt
113 Main Ave West, Suite 303
Twin Falls, ID 83301-6167
jar@idahowaters.com
tlt@idahowaters.com

Ron Carlson
Lewis Rounds
IDWR
Eastern Regional Office
900 N. Skyline Drive
Idaho Falls, ID 83402-6105
ron.carlson@idwr.idaho.gov
lewis.rounds@idwr.idaho.gov

John Simpson
Barker Rosholt
P.O. Box 2139
Boise, ID 83701-2139
jks@idahowaters.com

Terry Uhling
J.R. Simplot
P.O. Box 27
Boise, Idaho 83707

Jeffrey C. Fereday
Michael C. Creamer
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720
cf@givenspursley.com
mcc@givenspursley.com

Allen Merritt
Cindy Yenter
IDWR
Southern Regional Office
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3033
allen.merritt@idwr.idaho.gov
cindy.yenter@idwr.idaho.gov

Josephine P. Beeman
Beeman & Associates, P.C
409 West Jefferson Street
Boise, Idaho 83702

Sarah A. Klahn
White & Jankowski, LLP
511 16th Street, Ste. 500
Denver, CO 80202

Michael S. Gilmore
Deputy Attorney General, State of Idaho
Statehouse, Room 210
Boise, Idaho 83720

Director Karl Dreher
Idaho Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098
karl.dreher@idwr.idaho.gov

James C. Tucker