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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 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	)	**IDAHO POWER COMPANY'S PETITION FOR REVIEW OF ORDERS APPROVING REPLACEMENT WATER PLANS**

Idaho Power Company ("Idaho Power"), by and through its counsel, Brownstein Hyatt & Farber, P.C., and James C. Tucker, Senior Attorney for Idaho Power Company, respectfully submits to the Idaho Department of Water Resources ("IDWR") its Petition for Review of the Orders Approving Replacements Water Plans under Rule 711 of the IDWR Rules of Procedure.

IDAPA 37.01.01.711. Specifically, Idaho Power requests that the Director rescind, alter and amend the May 6, 2005, Interlocutory Orders approving the Idaho Ground Water Appropriators ("IGWA"), Water Resource Coalition and Simplot replacement plans. In support of its Petition, Idaho Power states as follows:

I. INTRODUCTION

The Director issued an Order and Amended Order (April 19, 2005 and May 2, 2005, respectively) in this matter requiring IGWA, and other entities seeking to provide replacement water or other mitigation in lieu of curtailment, to file a plan for providing such replacement water with the Director on or before April 29, 2005. In response, IGWA, the Water Resources Coalition and Simplot filed plans for providing replacement water with the Director on April 29, 2005. In response, Idaho Power filed a Protest to IGWA Replacement Plan on May 4, 2005, which also incorporated Idaho Power's Motion to Dismiss the IGWA Mitigation Plan filed by Idaho Power on March 21, 2005.

In its Protest, Idaho Power states that the IGWA Replacement Plan, on its face, is so deficient and devoid of information that the Director must dismiss the Petition as inadequate, incomplete, and not in conformance with the Conjunctive Management Rules; that the Replacement Plan fails completely to identify how or where replacement sources will be provided; and that the Director denied due process to interested parties in calling for and considering the replacement plans. Similar protests were filed by the Surface Water Coalition, which also challenged Simplot's Replacement Plan, and the United States Bureau of Reclamation ("USBR").

The Idaho Power, Surface Water Coalition and USBR protests were filed before the Director issued his May 6th Orders. Idaho Power filed its Protest on May 4, 2005 (date stamped

copy attached as EXHIBIT A). The Surface Water Coalition filed its Protest on May 5, 2005, and USBR filed its protest on May 6, 2005.

II. GROUNDS FOR PETITION

As stated in the Protest filed by Idaho Power on May 4, 2005, the replacement plans fail to provide sufficient water to mitigate impacts and injury to senior water rights. The IGWA, Water Resource Coalition and Simplot plans are facially deficient and do not comply with IDWR's substantive or procedural rules for providing mitigation water. In addition, the Director denied interested parties procedural due process in the consideration and approval of the replacement plans.

Despite these objections and grounds for dismissing the replacement plans, the Director's May 6th Order fails to recognize or address the protest filed by Idaho Power. Likewise, the Director's May 6th Orders do not acknowledge the protests filed by the Surface Water Coalition and USBR to the IGWA, Water Resource Coalition and Simplot replacement plans. All of these protests were received in time for the Director to consider them before issuing his May 6th Orders. The Director's failure to acknowledge the protests filed against the replacement plans, which of themselves are an imaginative and wholly made-up remedy to senior water rights injuries with no basis in Idaho law, is an egregious denial of due process. Accordingly, the Director should rescind the May 6th Orders approving the replacement plans and consider the protests filed by Idaho Power, the Surface Water Coalition and USBR.

III. REQUEST FOR RELIEF

Based on the foregoing, Idaho Power Company respectfully requests that the Director take the following action with respect to the May 6th Orders approving the IGWA, Water Resource Coalition and Simplot replacement plans:

1. Rescind the May 6th Orders approving the replacement plans;
2. Dismiss the requests for approval of mitigation plans;
3. Require IGWA, the Water Resource Coalition and Simplot to file mitigation plans complying with Conjunctive Management Rule 43, if at all;
4. Provide the process required under Idaho state law and IDWR Procedural Rules if requests for approval of mitigation plans are filed with the Director; and
5. Curtail junior water rights until mitigation plans are approved and implemented.

Dated this 20th day of May, 2005.

IDAHO POWER COMPANY

By:_____
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and

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2005 a true and correct copy of the foregoing IDAHO POWER COMPANY'S PETITION FOR REVIEW OF ORDERS APPROVING REPLACEMENT WATER PLANS was deposited in the United States Mail, postage prepaid addressed to:

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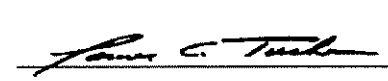
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