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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 ORDER APPROVING IGWA'S REPLACEMENT WATER PLAN FOR 2005**

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 submit to the Idaho Department of Water Resources ("IDWR") its Petition for Review of the June 24, 2005 Order Approving IGWA's Replacement Water Plan for 2005 ("June 24th Order")

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 4th and June 24th Order approving the Idaho Ground Water Appropriators ("IGWA") replacement plan. 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. On May 6, 2005, the Director issued an Order Regarding IGWA Replacement Water Plan ("May 6th Order") conditionally approving IGWA's Replacement Plan, but identified deficiencies requiring additional information from IGWA. On May 20, 2005, Idaho Power filed a Petition for Review of Orders Approving Replacement Water Plans, requesting that the Director rescind, alter and amend the May 6th Order.

On May 23, 2005, IGWA submitted a document titled IGWA Information Submittal Responding to May 6, 2005 Order Regarding IGWA Replacement Water Plan. On June 3, 2005, IGWA submitted another document titled IGWA's Supplement to Information Submitted. On June 24, 2005, the Director issued an Order approving the IGWA Replacement Plan. The Director has not ruled on Idaho Power's Protest to the Replacement Plan filed May 4, 2005;

Idaho Power's Motion to Dismiss the IGWA Mitigation Plan filed March 21, 2005; or Idaho Power's Petition for Review of Orders Approving Replacement Water Plans, filed May 20, 2005.

II. GROUNDS FOR PETITION

As stated in the Protest filed by Idaho Power on May 4, 2005, the IGWA Replacement Plan fails to provide sufficient water to mitigate impacts and injury to senior water rights. The IGWA Replacement Plan 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 June 24th Order again fails to recognize or address the protest, motion to dismiss, and petition for review of the May 6th Order filed by Idaho Power. Likewise, the Director's June 24th Order does not acknowledge the protests filed by the Surface Water Coalition and United States Bureau of Reclamation ("USBR") to the IGWA Replacement Plan. 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 and June 24th Orders approving the IGWA Replacement Plan 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 and June 24th Orders approving the IGWA Replacement Plan:

1. Rescind the May 6th and June 24th Orders approving the IGWA Replacement Plan;

2. Dismiss the IGWA request for approval of its replacement plan;

3. Require IGWA to file a mitigation plan 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 8th day of July, 2005.

IDAHO POWER COMPANY

By: _____
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and

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July, 2005 a true and correct copy of the foregoing IDAHO POWER COMPANY'S PETITION FOR REVIEW OF ORDER APPROVING IGWA'S REPLACEMENT WATER PLAN FOR 2005 was deposited in the United States Mail, postage prepaid addressed to:

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