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Department of Water Resources

March 29, 2005

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Karl J. Dreher, Director
Idaho Department of Water Resources
The Idaho Water Center
322 E. Front Street
P.O. Box 83720
Boise, ID 83720-0098

Via Email and U.S. Mail

Re: Idaho Ground Water Appropriators' Motion for Summary Judgment 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

Dear Director Dreher:

On March 23, 2005, the Idaho Ground Water Appropriators filed with your office a "Motion for Summary Judgment" in response to the request for water right administration in Water District 120 filed on January 14, 2005, by various holders of surface water rights in the American Falls Reach of the Snake River (the "Surface Water Coalition"). Yesterday, the Surface Water Coalition responded to you, stating their position that a "Motion" is not authorized under the Rules of Procedure of the Idaho Department of Water Resources for informal proceedings, and requesting that you strike the IGWA Motion.

I am writing on behalf of Idaho Power Company to support the position of the Surface Water Coalition. It is our understanding that the proceedings in this matter – the call for administration of water in Water District 120 – is an informal proceeding. As such, motions are neither contemplated nor authorized under the Department's Rules of Procedure.

In any event, such a motion is not appropriate, as there are clearly numerous material issues of fact raised in the "Motion," which, if this were a formal proceeding, should be the subject of discovery and an appropriate evidentiary hearing.

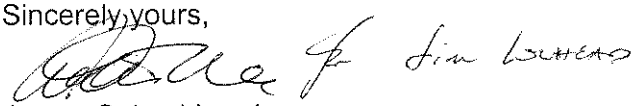
Moreover, the factual allegations and legal argument raised in the "Motion" are irrelevant to your consideration under the Department's Conjunctive Management Rules as to whether or not to honor the call. The IGWA raises numerous issues related to the drought and alleged economic injury that its members might suffer as a result of a call. These and other allegations in the "Motion" and attached affidavits are beyond the scope of the factors you must consider in honoring a call for administration of water rights. I.C. § 42-602; IDAPA 37.03.11.040; -042.

As a result, Idaho Power Company joins with the Surface Water Coalition in asking that you not consider the "Motion" filed by IGWA.

We would appreciate your confirmation that this matter is an informal proceeding. If for any reason you determine that you will consider the "Motion," Idaho Power requests that you notify either Jim Tucker or me, and provide Idaho Power with a sufficient opportunity to respond.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,



James S. Lochhead

cc: James C. Tucker
Travis L. Thompson
John K. Simpson
Roger D. Ling
W. Kent Fletcher
C. Tom Arkoosh
Kathleen Marion Carr
Scott Campbell
Michael Creamer