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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 PETITION FOR ADMINISTRATION 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 FALL CANAL COMPANY	)	**STATE AGENCY GROUND WATER USERS' POSITION STATEMENT FOR STATUS AND SCHEDULING CONFERENCE**

The Idaho Department of Fish & Game, the Idaho Department of Health & Welfare, the Idaho Department of Juvenile Corrections, and the Idaho Transportation Department, who have intervened as the State Agency Ground Water Users, by and through their counsel of record, Michael S. Gilmore, Deputy Attorney General, file this Position Statement associated with the State Agency Ground Water Users' Petition for Reconsideration, Hearing and Clarification From Amended Order for use at the Status and Scheduling Conference.

1. The State Agency Ground Water Users' first issue was that the Department deprived the State Agency Ground Water Users of due process of law when it directed the water-masters of Water District Nos. 120 and 130 to advise holders of consumptive water rights (excluding in-house culinary uses) in the areas designated by the Department and with priority dates on or after February 27, 1979, that they would be subject to curtailment if they did not provide replacement water or participate in an approved mitigation plan because the Department

had not provided notice of and had not alleged its quantifications of the State Agency Ground Water Users' (i) depletions to the aquifer from their rights identified by the watermaster, (ii) material injury to the Surface Water Coalition members from their use of these rights, and (iii) their obligation to provide replacement water. Regarding the State Agency Ground Water Users' first issue, the State Agency Ground Water Users:

(a) anticipate raising these issues at hearing and anticipate that trying these issues will take less than one day's hearing time,

(b) (i) do not anticipate filing motions at the present time, (ii) will want to propound discovery concerning these issues to the Petitioners, to the Department's technical staff, and possibly to members of the Idaho Ground Water Appropriators far enough before hearing (iii) to be able to analyze the answers to discovery to decide whether the State Agency Ground Water Users will call witnesses or contest any of the factual positions of these other parties, and (iv) will not be able to identify witnesses (if any) or exchange exhibits (if any) until that discovery is answered and analyzed,

(c) can participate in hearings in July, August or September 2005, except July 11-15, 2005, July 21-22, 2005, and August 17-18, 2005,

(d) opine that there is little potential for consolidation of these issues at hearing with other parties' issues,

(e) opine that there is little likelihood that their proof will be cumulative with other parties' proof, and

(f) assert the following rights under Idaho Code § 67-5251: (i) to be apprised of the names of all IDWR staff members who have provided any staff memoranda or data to the Director that was reviewed in whole or in part by the Director before he issued his Order of April 20, 2005, or his Amended Order of May 2, 2005, and of the memoranda or data that each staff member provided, (ii) to "be afforded a timely and meaningful opportunity to contest and rebut the facts or material so noticed" by deposing one or more of these staff members at least two weeks before the State Agency Ground Water Users

must decide whether or how they will participate in a hearing, and (iii) to cross-examine one or more of these staff members as necessary for presentation of their case at hearing.

2. The State Agency Ground Water Users' second issue was whether it was arbitrary, capricious and an abuse of discretion for the Department to provide in the Amended Order that holders of commercial, industrial and municipal water rights (the major categories of non-irrigation water rights affected by the Amended Order) could provide replacement water through a ground water district as a nonmember participant or separately or jointly provide replacement water and not to provide similar options for less common categories of non-irrigation water rights, namely a wildlife water right held by the Idaho Department of Fish & Game and domestic water right for a highway rest stop held by the Idaho Transportation Department (ITD). Regarding the second issue, the State Agency Ground Water Users:

(a) contend that this issue that can be decided by briefs and legal argument on a statement of uncontested facts without an evidentiary hearing,

(b) anticipate that this issue can be decided by motion upon a statement of uncontested facts without discovery, exhibits, etc.,

(c) can participate in hearings in July, August or September 2005, except July 11-15, 2005, July 21-22, 2005, and August 17-18, 2005,

(d) opine that there is little potential for consolidation of these issues at hearing with other parties' issues,

(e) opine that there is little likelihood that its proof will be cumulative with other parties' proof, and

(f) have no other matters to bring up.

3. The State Agency Ground Water Users' third issue was that the watermaster had acted contrary to the Amended Order when he identified ITD's in-house culinary use of water at a highway rest stop as a use subject to the Amended Order when the plain language of the Amended Order excluded in-house culinary uses from the water uses subject to the Amended Order. Regarding the third issue, the State Agency Ground Water Users:

(a) contend that this issue can be decided by briefs and legal argument on a statement of uncontested facts without an evidentiary hearing,

(b) anticipate that this issue can be decided by motion upon a statement of uncontested facts without discovery, exhibits, etc.,

(c) can participate in hearings in July, August or September 2005, except July 11-15, 2005, July 21-22, 2005, and August 17-18, 2005,

(d) opine that there is little potential for consolidation of these issues at hearing with other parties' issues,

(e) opine that there is little likelihood that its proof will be cumulative with other parties' proof, and

(f) have no other matters to bring up.

DATED this 8th day of June, 2005.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By _____
MICHAEL S. GILMORE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of June, 2005, I caused to be served a true and correct copy of the foregoing by regular U.S. Mail, postage prepaid, to:

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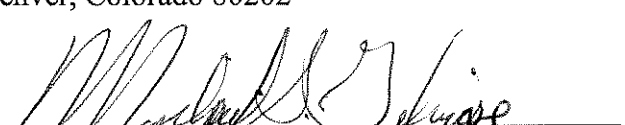

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