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DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE 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	**IGWA'S RESPONSE TO POCATELLO'S MOTION FOR STAY**

Idaho Ground Water Appropriators, Inc. ("IGWA"), on behalf of its members, hereby responds to the June 9, 2006 Motion for Stay filed by the City of Pocatello ("Pocatello") in this matter. IGWA agrees with Pocatello that deadlines should be suspended for a period of time to allow the Department and the parties to determine whether the hearing date will be vacated pending any final resolution of Judge Wood's order in *American Falls Res. Dist. No. 2 et al. v. Idaho Department of Water Resources*, Case No. CV- 2005-600 (Dist. Ct., Fifth Jud. Dist.) (the

"Gooding County Order"). However, IGWA wants to make clear its position that, under the circumstances, the Director should impose a stay of all current proceedings, including all scheduled depositions, until such time when these matters reasonably can be restarted. IGWA makes this point only because it is unclear whether Pocatello's motion seeks such an immediate stay of proceedings or simply an extension of deadlines.

This question of a stay is squarely presented by circumstances now. Petitioner Surface Water Coalition ("SWC") has noticed the deposition of Dr. Charles Brendecke, one of IGWA's experts for this week, June 15 and 16, 2006. The parties also have agreed on dates for depositions of other experts that have not yet been noticed. Because it now is highly uncertain whether the remaining discovery, including depositions of other parties' experts, will occur, it is appropriate that the Director immediately stay all proceedings in this matter, including the scheduled depositions, at least for a period of time to allow the Department and the parties to analyze the effect and likely appeal of the Gooding County Order, and to determine whether a hearing is feasible until that matter has been finally decided. There is potential prejudice to IGWA's members if a stay halting proceedings is not imposed. This is because it is quite likely, under the current deposition notices, that IGWA could be required to make its experts available for deposition in the near term, only to have proceedings suspended or stayed before IGWA has the opportunity to depose the other parties' experts.

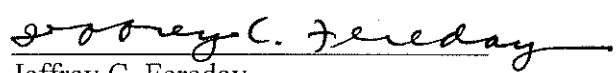
Furthermore, if the hearing is delayed to any significant extent, conducting expert depositions now likely will result in testimony that is stale, or at least will need updating, whenever the hearing is rescheduled. This would be a waste of money for both sides.

Accordingly, IGWA supports Pocatello's Motion for Stay, and also specifically requests that the Director enter an order staying all proceedings, including discovery and current notices of deposition, until the Director determines that the hearing in this matter can go forward.

Counsel for IGWA has attempted to confer with other parties regarding the stay proposed herein, but understand they have been in meetings and were unable to confirm their position as of the time of this filing.

Respectfully submitted this 12th day of June, 2006.

GIVENS PURSLEY, LLP



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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June 2006, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated.

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