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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 HEARING ON DIRECTOR'S MAY 2, 2005 AMENDED ORDER	**SURFACE WATER COALITION'S RESPONSE TO IGWA / POCATELLO EXTENSION MOTIONS AND REQUEST FOR STATUS CONFERENCE**

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 Company (collectively hereafter referred to as the "Surface Water Coalition" or "Coalition"), by and through counsel of record, and pursuant to the Hearing Officer's May 2, 2006 *Order Inviting Responses to Motions for Changes in Scheduling Order* hereby responds to *Pocatello's Motion for Extension of Deadlines and to Reset Hearing* filed by the City of Pocatello ("City") and *IGWA's Separate Motion for Extension of Time* filed by the Idaho Ground Water Appropriators, Inc. ("IGWA").

RESPONSE

The Surface Water Coalition agrees with Pocatello and IGWA that the parties have engaged in negotiations with the assistance of a state appointed mediator during the period of the stay, and after the stay expired on April 11, 2006. The Coalition further agrees that no formal settlements have been achieved as of today.

Like Pocatello's and IGWA's experts, the Coalition's experts have been involved in assisting in negotiations over the past three months, significantly limiting their ability to complete rebuttal reports and prepare for depositions. Additional time to complete these and other related tasks is needed.

In addition, the Coalition has two outstanding dispositive motions that must be decided before further discovery of experts takes place. Since the scope of the hearing and the issues to be addressed, including the need for additional expert rebuttal reports, is contingent upon the Hearing Officer's decisions regarding the Coalition's *Motion for Partial Summary Judgment* and *Motion in Limine to Exclude Expert Report of John Church*, a decision should be rendered prior to the continued discovery relating to the parties' experts. In order to avoid wasting the parties'

and the Department's time and resources on issues and testimony that should be excluded from the hearing, it is in the best interests of the Hearing Officer and the parties to have these issues resolved in a timely manner. To that end, the Coalition is filing together herewith amended motions requesting hearing for the Coalition's two dispositive motions.

With resolution of the Coalition's dispositive motions by the end of the month the Coalition agrees with Pocatello and IGWA that the hearing should be reset to provide for adequate time to complete discovery and submission of expert rebuttal reports. Since the parties' experts' reports were submitted in January, only their depositions and rebuttal reports remain to be completed in this case for discovery purposes. Moreover, additional time between the submission of the expert rebuttal reports and the start of the hearing is needed to complete depositions of additional expert rebuttal witnesses, if any. The Coalition's proposed schedule differs slightly from IGWA's/Pocatello's[1] proposed schedule as follows:

1. May 16, 2006: Hearing on Dispositive Motions at 9:00 a.m. at IDWR.

2. May 31, 2006 (or earlier): Decision on Dispositive Motions

3. June 1 – 30, 2006: Expert Depositions

4. August 7, 2006: Submission of Expert Rebuttal Reports

5. September 1, 2006: Parties identify exhibits, data, scientific information, and all documents that may be used at hearing.

6. September 1, 2006: Parties may submit proposed orders to govern procedures at hearing.

7. September 8, 2006: Pre-hearing conference at 9:00 a.m. at the Idaho Department of Water Resources.

[1] As set forth in its *Motion*, IGWA believes that its proposed schedule (advancing all dates 90 days from the current schedule and a hearing start date of September 5th) would be agreeable with Pocatello.

8. September 19, 2006: Parties submit written opening arguments, and, if desired, trial brief.

9. September 26, 2006: Hearing commences at 9:00 a.m. at IDWR.

Accordingly, the Coalition agrees with parts of the proposed motions filed by IGWA and Pocatello to extend the present deadlines in this matter, and further requests that the hearing schedule be reset as set forth above.

REQUEST FOR STATUS CONFERENCE

The Coalition hereby requests a status conference regarding the above referenced motions and responses.

DATED this 9th day of May, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2006, I served a true and correct copy of the foregoing *Surface Water Coalition's Response to Pocatello's Motion for Extension of Deadlines / Request for Status Conference* on the following by the method indicated:

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