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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	**PETITION REQUESTING HEARING ON DIRECTOR'S FEBRUARY 14, 2005 ORDER DENYING REQUEST TO DESIGNATE EASTERN SNAKE PLAIN AQUIFER AS A GROUND WATER MANAGEMENT AREA**

COMES NOW, 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 (hereinafter collectively referred to as "Petitioners"), pursuant to Idaho Code § 42-1701A and the Department's rules of procedure (IDAPA 37.01.01), and hereby requests a hearing on the Director's February 14, 2005 *Order* (hereinafter "*Order*"), in which the Director denied the Petitioners' request to designate the Eastern Snake Plain Aquifer ("ESPA") as a ground water management area pursuant to Idaho Code § 42-233b. The initial basis for the Petitioners' request is as follows.

INTRODUCTION

The Petitioners request a hearing on and rescission of the Director's following decision in his February 14, 2005 Order:

> 3. The part of the Petition seeking the designation of the ESPA as a ground water management area is denied. This portion of the Order is final. Any person aggrieved by this final portion of the Order has the right to request a hearing before the Department pursuant to the provisions of Idaho Code § 42-1701A(3).

Order at 34, ¶ 3.

FACTS

1. The ESPA is defined as the aquifer underlying the Eastern Snake River Plain as delineated in the report "Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake Plain, Idaho." USGS Professional Paper 1408-F, 1992, IDAPA 37.03.11.050.01.

2. The water supply in the ESPA is hydraulically connected to the Snake River and tributary water sources at various places and to varying degrees. *August 3, 2001 Orders Designating the American Falls and Thousand Springs Ground Water Management Areas* at 1.

3. The Petitioners' water rights, both natural flow and storage rights, depend upon various spring flows and reach gains to the Snake River that occur along various points of the

river from Shelley, Idaho, downstream to Minidoka Dam just east of Burley, Idaho (hereinafter referred to as the "American Falls reach").

4. Tributary spring flows and reach gains to the American Falls reach have been in steady decline in recent history resulting in inadequate water supplies to satisfy the Petitioners' water rights.

5. The Director previously issued three moratorium orders regarding the processing and approval of all applications for permit to appropriate water from surface and ground water sources, including areas in the ESPA. *See May 15, 1992 Moratorium Order*; *January 6, 1993 Moratorium Order*; *April 30, 1993 Amended Moratorium Order*. The latest moratorium was recently continued and reaffirmed by Governor Dirk Kempthorne through Executive Order No. 2004-02 on March 20, 2004.

6. The Director designated portions of the ESPA as two separate ground water management areas on August 3, 2001; the American Falls Ground Water Management Area and the Thousand Springs Ground Water Management Area. *See Orders Designating the American Falls and Thousand Springs Ground Water Management Areas*. Two years later, on August 29, 2003, the Director issued an *Order Dissolving the Thousand Springs Ground Water Management Area* and an *Order Modifying the Boundaries of the American Falls Ground Water Management Area*. The Director's latest orders have been challenged and are the subject of separate contested cases.

BASIS FOR PETITION

Factual:

1. Water levels across the ESPA have declined, in both general regional and specific locations.

2. The ESPA has witnessed unreasonable negative changes in water storage in recent history.

3. Tributary spring outflows from the ESPA have declined, both in total water supply and seasonally.

4. Reach gains to the Snake River in the American Falls reach have declined, particularly in the last five years.

5. The water supply in the ESPA is insufficient to meet the demands of all existing water rights, including surface water natural flow and storage rights and ground water rights.

6. An increased number of applications for permit to appropriate ground water have been filed with the Department in recent history.

7. An increased number of wells have been drilled in the ESPA, both for new water right applications, and for transfers of existing points of diversion that no longer provide adequate water supplies.

8. Increased power consumption by existing ground water rights.

9. Wells across the ESPA have been re-drilled and deepened. Increased impact on domestic wells across the ESPA.

10. Artesian well flows have declined in certain areas of the ESPA.

11. Surface water irrigation diversions have decreased in recent history, resulting in decreased incidental recharge to the ESPA.

12. Surface water rights, including natural flow and storage rights, have not been satisfied due to reduced tributary spring flows and reach gains.

13. State of Idaho drought declarations in the last five years. Water measurement data for the Snake River Basin watershed for the last six years.

14. Evidence of drought histories in the Pacific Northwest, statistical evaluations of probabilities of extended drought.

15. Recent snow surveys and watershed conditions, predictions for 2005.

16. Additional facts that may arise and be presented prior to or at the hearing.

Legal:

1. The ESPA at least meets the definition of a ground water management area as defined in Idaho Code § 42-233b.

2. The Department previously recognized that portions of the ESPA were approaching the conditions of a "critical ground water area"; hence the designations of the American Falls and Thousand Springs Ground Water Management Areas in 2001.

3. Ground water management areas and water districts perform different regulatory functions and can coexist.

4. The Director's *Order* denying Petitioners' request to designate the ESPA as a ground water management area is contrary to Idaho law.

5. Additional legal theories and claims that may arise and be presented prior to or at the hearing.

REQUESTS FOR RELIEF

1. A hearing on the portion of the Director's February 14, 2005 Order denying the Petitioners' request to designate the ESPA as a ground water management area.

2. Appointment of an independent hearing officer as provided for by Idaho Code § 42-1701A(2).

3. Review and rescission of the portion of the Director's February 14, 2005 Order denying the Petitioners' request to designate the ESPA as a ground water management area.

4. Designation of the ESPA as a ground water management area, and immediate implementation of the authorized and required actions of the Director provided for in Idaho Code § 42-233b.

DATED this 7th day of March 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2005, I served a true and correct copy of the foregoing *Petition Requesting Hearing on Director's February 14, 2005 Order Denying Petition to Designate the Eastern Snake Plain Aquifer as a Ground Water Management Area* on the following by the method indicated:

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