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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 BUY 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)

**POCATELLO's and IGWA's
JOINT MOTION TO VACATE
JUNE 21, 2007 HEARING ON
SWC's MOTION TO DISMISS
IGWA's REPLACEMENT PLAN**

Comes now the City of Pocatello (“Pocatello”) and the Idaho Groundwater Appropriator’s, Inc (“IGWA”), through counsel, and hereby jointly move to vacate the June 21, 2007 hearing on the Surface Water Coalition’s (“SWC”) Motion to Dismiss IGWA’s Replacement Plan, and request that the hearing be consolidated with the hearing to be scheduled on the May 2, 2005 Order. As grounds therefore:

1. Portions of the SWC Protest and Motion to Dismiss have been mooted. For example, the SWC argues that the Replacement Plan is premature because the Director has not yet issued an order describing purported injury to senior water rights in 2007. On May 23, 2007, the Director did issue such an order.
2. More importantly, the remainder of the SWC motion is simply premature. The IGWA Replacement Plan is inextricably tied to the 2007 Injury Order which the Department issued on May 23, 2007. The 2007 Injury Order (as well as the underlying order of May 2, 2005) is the subject of a scheduling hearing on June 5, 2007.
3. Until a hearing is held on the Injury Orders—including the May 2, 2005 Order and all those following it that relied on the same or related assumptions and methodologies—it’s impossible to have a hearing on either the adequacy or lawfulness of the Replacement Plan, as it is impossible to issue a final appealable order on SWC’s Protest and Motion to Dismiss.
4. IGWA and Pocatello are also concerned that this is merely another diversionary track down which SWC would like to take the Department and the ground water users in order to avoid a hearing on the May 2, 2005 Order.
 - a. In 2005 SWC filed a lawsuit challenging the Conjunctive Management Rules—the basis for Department decision-making regarding conjunctive management.

The Idaho Supreme Court rejected the constitutional challenge to the rules and found them to be facially constitutional.

- b. In the context of that ruling, the Idaho Supreme Court approved of the timeliness and methods (i.e., Replacement Plans) by which the Department had satisfied alleged shortages during the 2005 irrigation season. *American Falls Reservoir Dist. No. 2 v. Idaho Dept of Water Resources*, 154 P.3d 433, 446 (Id. 2007).
 - c. If the Department issues a final order on SWC's Motion to Dismiss, it has indicated in its pleadings that it will file an appeal to challenge the legality and the adequacy of the IGWA Replacement Plan. All parties to this matter will then once again be forced into protracted litigation on these issues without first creating the necessary evidentiary record and roadmap that will be established by a final ruling on the May 2, 2005 Order, addressing the relevant issues in dispute, including what constitutes material injury, what if any material injury the SWC has suffered the factual and legal basis and utilized in making such determinations.
5. The Department can avoid these problems by vacating the June 21, 2007 hearing, finding that the Protest and Motion to Dismiss are premature, and scheduling a hearing on the Injury Orders before the end of 2007.

WHEREFORE, Pocatello and IGWA respectfully request that the June 21, 2007 hearing on the SWC's Motion to Dismiss IGWA's Replacement Water Plan be vacated.

RESPECTFULLY SUBMITTED this 4th day of June 2007,

RACINE OLSON NYE BUDGE & BAILEY,
CHARTERED

By Sarah Klahn (for)
Randall C. Budge

Attorneys for Idaho Ground Water Appropriators, Inc.

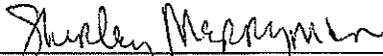
WHITE & JANKOWSKI, LLP

By Sarah Klahn
Sarah A. Klahn

Attorneys for the City of Pocatello

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June, 2007, I caused to be served a true and correct copy of the foregoing **Pocatello's and IGWA's Joint Motion to Vacate June 21, 2007 Hearing on SWC's Motion to Dismiss IGWA's Replacement Plan** by email and or facsimile to:


 Shirley Merryman, White & Jankowski, LLP

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