BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE REQUEST FOR ADMINISTRATION IN WATER DISTRICT 120 AND THE REQUEST FOR DELIVERY OF WATER TO SENIOR SURFACE WATER RIGHTS 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 FALLS CANAL COMPANY	)	**ORDER REGARDING INVOLVEMENT OF FORMER DEPARTMENT EMPLOYEE IN THIS PROCEEDING**

The Director of the Department of Water Resources ("Director" or "Department") issues this Order *sua sponte* in response to being informed that a current Department employee, Pamela Pace, Technical Hydrologist for the Department, has announced her intention to commence employment as a hydrologist with the Idaho Power Company ("Idaho Power") effective September 6, 2005. Ms. Pace has directly assisted the Director in his duties as Presiding Officer in the present action and is thus privy to information and communications considered confidential.

In Idaho, it is unlawful for a public servant to use "or disclose confidential information gained in the course of or by reason of his official position or activities in any manner with the intent to obtain a pecuniary benefit for himself...." I.C. § 18-1359(c).

The integrity of this administrative contested case proceeding and due process for the parties are placed in jeopardy by the potential communication of confidential information by a former Department employee to one of the participants in the proceeding. Unless Ms. Pace is precluded from communicating with the parties and public witnesses with respect to any privileged information gained through employment with the Department, there is a potential for prejudice to parties to the proceeding and to the Department.

Moreover, the present contested case proceeding is governed, in part, by the provisions of Idaho Code § 67-5253, which prohibits the Director as the presiding officer from communicating, directly or indirectly, regarding any substantive issue in the proceeding, with any party, except upon notice and opportunity for all parties to participate in the communication. This statutory prohibition must, out of necessity, extend to those employees of the agency who have directly assisted the Director in the hearing process in a material fashion. The Director issued an Order in this matter on January 25, 2005, providing that "any communications with the

Department regarding any substantive issue raised by the delivery calls filed by the Surface Water Coalition must be in writing with a copy placed in the Department's file for the matter and served upon or otherwise made available to any other parties to the action." *Order of January 25, 2005.*

Now an employee who is precluded from communicating on any substantive issue with any one party or participant in the proceeding intends to enter the employ of a participant in the proceeding.[1]

ORDER

Based upon and consistent with the foregoing,

IT IS HEREBY ORDERED that Pamela Pace shall be restrained from: (1) divulging any privileged communication between herself and the presiding officer; and (2) divulging any non-privileged information gained from her involvement in this contested case, except as authorized in accordance with the *Scheduling Order* issued on July 22, 2005, or until the case is fully resolved.

IT IS FURTHER ORDERED that Pamela Pace shall be enjoined and precluded from communicating with any individual party or public witness regarding this contested case in an *ex parte* manner.

DATED this 1st day of September 2005.

KARL J. DREHER
Director

[1] On July 22, 2005, the Director issued an order denying Idaho Power party status in this proceeding, but approving Idaho Power's participation in the case as a public witness pursuant to IDAPA 37.01.01.355. *Order Denying Idaho Power's Petition For Hearing.* Idaho Power has filed a Petition for Judicial Review challenging the Order of July 22, 2005. *Idaho Power Company v. Dreher*, No. CV OC 0506175 (4th Jud. Dist., Ada Co., Idaho, filed August 19, 2005). If successful in its appeal, Idaho Power will be able to participate in this proceeding as a full party.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of September, 2005, the above and foregoing, was served by the method indicated below, and addressed to the following:

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