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 (Water Districts No. 120 and No. 130)	)	**PROTECTIVE ORDER**

This matter is before the Director of the Department of Water Resources ("Director" or "Department") as a result of a joint *Stipulated Motion for Entrance of Protective Order* ("Stipulated Motion") filed on January 25, 2006, by the Surface Water Coalition, Idaho Ground Water Appropriators, Inc. ("IGWA"), and City of Pocatello ("Pocatello"). The "proposed Protective Order" accompanying the Stipulated Motion sought a stay of sixty (60) days in the proceedings for purposes of allowing the parties to investigate settlement. The Director has addressed the stay request in a separate order. The following parties did not sign the Stipulated Motion: State Agency Ground Water Users, Idaho Dairymen's Association, and United States Bureau of Reclamation.

On February 3, 2006, the Director conducted a status conference with the parties pursuant to a Notice issued on February 1, 2006, to ascertain whether any party objected to entry of the requested protective order in this proceeding. All parties were represented at the status conference with the exception of the Idaho Dairymen's Association. No party objected to entry of the protective order.

Based on the Stipulated Motion for Entrance of Protective Order, for good cause shown, and under the authority set forth in Rule 26(c) of the Idaho Rules of Civil Procedure and IDAPA 37.01.01.532, the Director finds that entry of the following Protective Order is appropriate in this case.

IT IS THEREFORE ORDERED THAT:

1. This Protective Order ("Protective Order") shall govern and apply to the discovery phase or process in this proceeding.

2. This Protective Order governs the treatment of all information contained in documents, depositions, deposition exhibits, interrogatory answers, responses to requests for

admissions, and other written, recorded, computerized electronic or graphic material, copies, excerpts, or summaries of documents (all "Discovery Material") produced by any party or non-party ("Producing Party").

3. As used in this Order, "Confidential Discovery Material" shall mean any Discovery Material which a party (a) considers to contain or constitute a "trade secret" meaning information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, in accordance with Rule 26(c) of the Idaho Rules of Civil Procedure; (b) designates as confidential; and (c) provides to another party, either orally or in writing, as a part of the discovery process.

4. As used in this Protective Order "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program.

5. Any Producing Party may designate as confidential any part or all of Discovery Material that it believes, in good faith, contains Confidential Discovery Material. This designation shall apply regardless of the form in which the Confidential Discovery Material is kept or maintained, and extends to any documents, including exhibits, copies, notes, abstracts, summaries, or analyses, to the extent that such documents reflect Confidential Discovery Material. All Confidential Discovery Material shall be handled in strict accordance with the terms of this Protective Order.

6. All Confidential Discovery Material in the form of physical objects or documents shall be designated by stamping or affixing the word "Confidential" on the face of the document and on each page or portion thereof.

7. Confidential Discovery Material that is designated "Confidential" may be disclosed or made available without written consent from the Producing Party ***only*** to the following persons:

a. The parties to this litigation, and agents of the parties to this litigation, ***provided that*** such agents execute the Certificate of Compliance, in the form attached hereto as Exhibit A, prior to disclosure and a copy of such signed Certificate of Compliance is retained by counsel for the party making such a disclosure to agents;

b. Counsel for the respective parties to this litigation, including attorneys, paraprofessionals, and employees of such law firms;

c. Experts or consultants retained to assist counsel for the parties described in subparagraph 7(a), ***provided that*** such experts or

consultants, and professional employees execute the Certificate of Compliance prior to disclosure and a copy of such signed Certificate of Compliance is retained by counsel for the party making such a disclosure to such expert(s) or consultant(s);

d. Any witness deposed in this proceeding, who shall be provided prior to or at the outset of his, hers, or its deposition with a copy of this Protective Order on the record at the deposition. In such instance, the witness shall be bound by the provisions of this Protective Order and shall be informed that he, she, or it, and such person's counsel, if any, is bound by the terms of this Protective Order;

e. Stenographers or court reporters who record testimony taken at any time or place in the course of this proceeding or persons operating video recording equipment of and at such testimony.

8. Confidential Discovery Material shall be disclosed only under the circumstances and to the persons specifically provided for in this or subsequent orders of the Department, or with the prior written consent of the Producing Party.

9. Any party or person in possession of Confidential Discovery Material who receives a subpoena (or other process) from any person (including natural persons, corporations, partnerships, firms, governmental agencies, departments or bodies, boards, or associations) who is not a party or person bound by this Order, which subpoena seeks production or other disclosure of such Confidential Discovery Material, shall promptly give written notice by facsimile to counsel for the party who produced or designated the materials as confidential identifying the materials sought and enclosing a copy of the subpoena or other process. The Producing Party may move against the subpoena or other process, or otherwise oppose entry of any order by a court of competent jurisdiction compelling production of the Confidential Discovery Material. If the Producing Party objects to or moves against the subpoena or other process, the person or party receiving the subpoena or other process shall not produce Confidential Discovery Material before the actual due date for compliance, and shall not object to or interfere with any effort by the Producing Party to seek a prompt judicial determination on the Producing Party's motion or objection before compliance is required.

10. The inadvertent failure to stamp a document, or a portion thereof, with the "Confidential" designation in no way alters or waives the protected and confidential nature of the document otherwise deserving of such a designation and does not remove it form the scope of this Protective Order, ***provided that*** the Producing Party gives such notice in writing within thirty (30) days after becoming aware that the Confidential Discovery Material was not properly designated. Such written notice shall identify with specificity the information or documents the Producing Party is then designating to be Confidential Discovery Material and promptly provide a replacement copy of such material with the appropriate "Confidential" designation thereupon. Treatment of inadvertently produced confidential material in a manner inconsistent with this Protective Order prior to notice of such inadvertent production is not a breach of this Protective Order, but the parties shall take all reasonable steps to

recover or retrieve any Confidential Discovery Materials if a designation permitted under this paragraph is made.

11. The Producing Party may, on the record of a deposition, or within fifteen (15) business days after receipt of the transcript(s) of such deposition, designate in good faith any portion or portions of the deposition as Confidential Discovery Material under the terms of this Protective Order. All copies of deposition transcripts that contain information or material designated as Confidential Discovery Material shall be prominently marked "Confidential" on the cover thereof and on each page that contains Confidential Discovery Material.

12. Confidential Discovery Material provided by any party through the discovery phase or process shall be used only for purposes of this litigation in accordance with this Protective Order. Confidential Discovery Material shall not be used by any other party or person bound by this Order for any commercial, business, competitive, or other purposes, or in or for any judicial or administrative proceedings, disputes, or cases, including the litigation of this matter, unless specifically authorized by the Director.

13. Nothing in this Protective Order shall be interpreted to prohibit or prevent the Producing Party from using or discussing its own Confidential Discovery Material in any way it sees fit to so use or discuss the material for any reason. Any such use or discussion of Confidential Discovery Material shall not be deemed a waiver of the terms of this Protective Order, unless the Producing Party utilizes the information in open hearing or in a pleading that is not specifically authorized by the Director pursuant to this Order.

14. Disclosure of information protected by the attorney-client, work product, or other applicable privilege or protection shall not constitute a waiver of any claim of privilege, and failure to assert a privilege in this litigation as to one document or communication shall not be deemed to constitute a waiver of the privilege as to any other document or communication, even involving the same subject matter. A party that discovers that it has produced privileged or protected information shall request its return within thirty (30) days of the discovery of such production. The privileged or protected information, together with all copies thereof, shall be returned to the party claiming privilege within five (5) business days after requested. Any motion challenging the privilege or protection, or otherwise referring to the document(s) at issue, shall be filed under seal.

15. The following procedures shall apply to any disputes arising from the designation of discovery materials as confidential pursuant to this Protective Order:

a. If a party in good faith disagrees with the Producing Party's confidential designation, that party shall forthwith inform counsel for the Producing Party in writing of that disagreement;

b. Upon written notification that a party disagrees with a confidential designation, counsel for the objecting party and the Producing

Party will confer in a good faith effort to resolve the dispute without the Director's intervention;

c. If the dispute is not resolved within fifteen (15) days of the Producing Party's receipt of the objecting party's written notification, the objecting party may invoke the Department's rules and procedures for raising discovery disputes. Unless otherwise provided by applicable law, the Producing Party shall bear the burden of proving that information has properly been designated as a Confidential Discovery Material; and

d. Until such time as any such judicial process has been initiated and resolved, all parties receiving Confidential Discovery Material shall abide by the designation.

16. Each document, material, or other thing, or portion thereof designated "Confidential" shall retain that designation and shall remain subject to the terms of this Protective Order until such time as the parties agree to the contrary or the Director renders a decision that a particular document, material, or other thing, or portion thereof is not subject to this Protective Order, and any and all proceedings or interlocutory appeals challenging such decision have been concluded.

17. Except as otherwise agreed in writing by the parties, within sixty (60) days after final resolution of this matter (including resolution of appeals or petitions for review), all Confidential Discovery Material supplied by a Producing Party and all copies thereof (including, without limitation, copies provided to testifying or consulting experts) shall, at the possessing party's choice, be returned to the Producing Party by whomever possesses the same, or the party's counsel shall certify to the Producing Party that all such materials in their possession, custody, or control have been destroyed. The burden of persuasion that Confidential Discovery Material is returned or destroyed is not on the Producing Party, but on the receiving party. This Protective Order shall survive the final termination of this matter with respect to any such Confidential Discovery Material, and shall be enforceable in law and equity as a contract between the parties.

18. This Protective Order shall become binding on the parties upon the Director's entry of the Order. This Protective Order shall be binding upon any party joined in this litigation unless and until the Director, pursuant to a request by a party or on his own accord, orders that the party is not subject to the terms of this Protective Order. This Protective Order shall be binding upon any non-party in this litigation who invokes its protection and authority, unless and until the Director, pursuant to a request by a party or a non-party, or on the Director's own accord, orders that a party or non-party is not subject to the terms of this Protective Order.

19. Any time limit contemplated by this Protective Order may be extended by an agreement in writing, signed by counsel of record for all parties.

20. Because a violation of this Protective Order could cause irreparable injury to the Producing Party, and there may be no adequate remedy at law for such violation, a party shall have the right, in addition to any other remedies available at law or in equity, to seek to enjoin any other person, entity, or party from any intentional violation of this Protective Order.

DATED this 10th day of February 2006.

KARL J. DREHER
Director

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 (Water Districts No. 120 and No. 130)	)	**CERTIFICATE OF COMPLIANCE** (Exhibit A to Protective Order)

I hereby acknowledge that I have read and understand the *Protective Order* entered on February 10, 2006, in the above-captioned matter, a copy of which is attached hereto and incorporated herein by reference. I recognize that I am bound by the terms of that Protective Order, and I agree to comply with those terms. I agree not to disclose information designated as "Confidential" to any person not entitled to access such confidential information under the Protective Order. I understand that unauthorized disclosure of designated confidential information constitutes violation of the protective order. I will not copy, use or disclose confidential information except in connection with the discovery process and not for any other purpose unless authorized by the terms of the Protective Order. I hereby consent to the jurisdiction of the District Court of the State of Idaho with respect to any proceedings relative to the enforcement of the attached Protective Order.

DATED this _____ day of _____ 2006.

_____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of February 2006, the above and foregoing, was served by the method indicated below, and addressed to the following:

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