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**BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES  
 OF THE STATE OF IDAHO**

In the Matter of )  
 )  
 DISTRIBUTION OF WATER TO )  
 WATER RIGHT NOS. 36-02356A, )  
 36-07210, AND 36-07427 )  
 (Blue Lakes Delivery Call) )  
 \_\_\_\_\_ )  
 In the Matter of )  
 )  
 DISTRIBUTION OF WATER TO )  
 WATER RIGHT NOS. 36-04013A, )  
 36-04013B, AND 36-07148 (SNAKE )  
 RIVER FARMS); AND TO 36-07083, )  
 36-07568 (CRYSTAL SPRINGS FARMS) )  
 (Clear Springs Delivery Call) )  
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**PETITION FOR  
 RECONSIDERATION OF  
 THE DIRECTOR’S JUNE 15,  
 2007, CURTAILMENT ORDER,  
 AND PETITION FOR  
 DECLARATORY RULING**

COME NOW the Idaho Ground Water Appropriators, Inc., North Snake Ground Water District and Magic Valley Ground Water District, for and on behalf of their respective members (collectively the “Ground Water Users”), through counsel, and hereby petition the Director or designated Hearing Officer for reconsideration of the *Director’s June 15, 2007 Order Curtailing Junior Priority Ground Water Rights* (the

“Curtailment Order”). Idaho Code § 42-1701A(3), and IDAPA 37.01.01.740.02.a. The Ground Water Users further petition for a declaratory ruling that no Idaho law precludes the Ground Water Users from utilizing replacement water from alternate sources to mitigate compensable shortages to the above-stated water rights. Idaho Code § 67-5232 and IDAPA 37.01.01.400.

This Petition is supported by the attached affidavits of R. Lynn Carlquist, Orlo H. Maughan, Carlquist & Maughan jointly, Ronald Dean Carlson, and Charles M. Brendecke. This Petition is further supported by Petitioners’ *Memorandum in Support of Petition for Reconsideration, Petition for Declaratory Ruling, and Motion for Summary Judgment* filed herein and incorporated by reference.

**PETITION FOR RECONSIDERATION**

While the Idaho Department of Water Resources (“IDWR”) has no substantive administrative rules pertaining to petitions for reconsideration, Idaho case law addressing motions for reconsideration brought under Rule 11(a)(2)(B) of the Idaho Rules of Civil Procedure instructs that a tribunal or decision maker “should take into account any new facts presented by the moving party that bear on the correctness” of the order. *Nationsbank Mortgage Corp. of New York v. Cazier*, 127 Idaho 879, 884, 908 P.2d 572, 577 (Ct. App. 1995); *Coeur D’Alene Mining Co. v. First National Bank*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990).

The Curtailment Order is based upon delivery calls made by certain spring water users (collectively the “Spring Users”) and seeks to deliver water to the above-stated water rights which all have as their source various springs located in the Hagerman, Idaho, region (collectively the “Spring Users’ Water Rights”). The Curtailment Order

and all prior orders upon which it is predicated, together with all delivery calls underlying such orders, should be dismissed by reason of one or more of the following affirmative defenses:

1. The Spring Users' Water Rights are subordinate to the Ground Water Users' water rights pursuant to the Swan Falls Agreement and Idaho State Water Plans.
2. The Curtailment Order impermissibly fails to comply with statutory requirements under I.C. 42-237(a) that a local ground water board be convened.
3. The Spring Users' Water Rights rely upon unreasonable means of diversion which are not protected under Idaho law.
4. The Curtailment Order is impermissibly based upon alleged shortages of waste water.
5. The Curtailment Order exceeds the Department's statutory authority and is an abuse of discretion.
6. No reasonable pumping level has been established.
7. The delivery calls upon which the curtailment order is based constitute "futile calls."
8. The Curtailment Order effectuates a taking of Petitioners property without due process of law and just compensation.

#### **PETITION FOR DECLARATORY RULING**

The Curtailment Order, if sustained, may place an obligation on the Ground Water Users to mitigate compensable shortages to the Spring Users' Water Rights. Therefore, the Ground Water Users request a declaratory ruling under Idaho Code § 67-5232 and IDAPA 37.01.01.400 that no Idaho law precludes them from utilizing replacement water from alternate sources to mitigate compensable shortages to the Spring Users' Water Rights.

