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DEPARTMENT OF  
WATER RESOURCES

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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 )  
\_\_\_\_\_ )

**IGWA'S AMENDED PETITION  
FOR RECONSIDERATION  
OF THE DIRECTOR'S  
SEVENTH SUPPLEMENTAL ORDER  
AMENDING REPLACEMENT WATER  
REQUIREMENTS**

Idaho Ground Water Appropriators, Inc. ("IGWA") by the undersigned counsel and on behalf of its members, hereby petitions for reconsideration of the Director's Seventh Supplemental Order Amending Replacement Water Requirements dated December 20, 2007 ("Seventh Order").

**INCORPORATION OF PRIOR PETITIONS FOR RECONSIDERATION**

IGWA has filed the following petitions, briefs and/or affidavits with the Department in connection with previous Orders issued in this proceeding:

1. Petition for Reconsideration and/or Clarification of Director's May 2, 2005 Amended Order; Request for Hearing; Motion for Stay of Amended Order, dated May 16, 2005;
2. Petition for Reconsideration of Order Approving of Order Approving IGWA's Replacement Water Plan for 2005 dated July 8, 2005;
3. Petition for Reconsideration of the July 22, 2005 Supplemental Order Amending Replacement Water Requirements dated August 5, 2005;
4. Petition for Reconsideration of the December 27, 2005 Second Supplemental Order Amending Replacement Water Requirements dated January 10, 2006;
5. Affidavit of Charles M. Brendecke in Support of IGWA's Petition for Reconsideration of Second Supplemental Order dated January 10, 2006;
6. IGWA and Pocatello's Joint Response to the Surface Water Coalition's Motion for Partial Summary Judgment dated April 28, 2006;
7. Affidavit of Charles M. Brendecke in Support of IGWA's and Pocatello's Response to Motion for Partial Summary Judgment dated April 28, 2006;
8. IGWA's Petition for Reconsideration of the Director's Third Supplemental Order Amending Replacement Water Requirements Final 2005 and Estimated 2006 dated July 13, 2006;
9. Ground Water Districts' Amended Joint Replacement Water Plan for 2007, dated May 15, 2007, Request for Reconsideration on page 5;
10. IGWA's Petition for Reconsideration of the Director's Fourth Supplemental Order on Replacement Water Requirements for 2005 dated July 31, 2006;
11. IGWA's Petition for Reconsideration of the Director's Fifth Supplemental Order on Replacement Water Requirements Final 2006 and Estimated 2007 dated Jun3 5, 2007; and
12. IGWA's Petition for Reconsideration of the Director's Sixth Supplemental Order on Amending Replacement Water Requirements and Approving IGWA's 2007 Replacement Water Plan dated July 18, 2007.

To the extent that the Seventh Order carries forward the errors identified in the above IGWA filings, and fails to give due consideration to, or otherwise take into account, the issues, arguments and facts presented therein, IGWA hereby incorporates by reference and restates each of IGWA's grounds for reconsideration and supporting facts and opinions contained in the above-referenced filings as if set

forth fully herein. IGWA files this Petition to preserve its right to present evidence at a hearing on these and other issues.

### RECONSIDERATION SPECIFIC TO THE SEVENTH ORDER

IGWA submits the following additional objections specific to the Seventh Order:

1. IGWA's Amended Joint Replacement Water Plan for 2007 dated May 15, 2007 ("2007 Plan") was approved by the *Sixth Supplemental Order Amending Replacement Water Requirements and Order Approving IGWA's 2007 Water Replacement Plan* ("Sixth Supplemental Order"). The 2007 Replacement Water Plan provided at page 8 that the Ground Water Districts would "mitigate any and all material injury by guaranteeing and underwriting Twin Falls Canal Company's irrigation season supply as measured at the broad crested weir at the main canal headgate up to 1,075,900 AF based upon 3/4s inch per acre headgate delivery." The 2007 Plan also provided "in determining the 2007 water supply available to Twin Falls Canal Company ("TFCC") and any actual shortage to be made up by the Ground Water Districts, the watermaster shall apply appropriate accounting procedures determined by the Department, including but not limited to the following:

- (1) If Twin Falls Canal Company diverts its allocated natural flow and storage of 1,075,900 AF or more, then there is no in-season injury and no mitigation is required.
- (2) If Twin Falls Canal Company does not divert 1,075,900 AF, no mitigation requirement shall exist if Twin Falls Canal Company has carryover storage remaining when the final 2007 Water District 01 water accounting is complete. (Emphasis added.)

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- (10) In no event will any actual shortage to be made up by the Ground Water Districts as determined by the watermaster exceed the actual 2007 shortfall to Twin Falls Canal Company as determined by the Director of the Department. (Emphasis added.)

2. The Director determined in Finding of Fact 12 of the Seventh Order that TFCC actually diverted 1,045,506 AF of water which constituted a "full irrigation supply for the crop water requirement", to-wit:

As this 2007 total diversion volume was less than the minimum full supply of 1,075,900 AF, as set forth in Finding 116 of the May 2005 Order, TFCC can presumably only require the 1,045,506 AF of water diverted in 2007 to furnish a full irrigation supply for the crop water requirement, given that it had been guaranteed the full minimum supply via the Sixth Supplemental Order.

Since TFCC actually used 1,045,506 AF of water diverted in 2007, which the Director determined constituted a full irrigation supply for the crop water requirement, TFCC suffered no material injury and IGWA has no obligation to supply any mitigation water to TFCC pursuant to IGWA's 2007 Plan, paragraphs (2) and (10) cited above. Accordingly, the Director's 2007 predicted material injury of 17,345 AF set forth in Finding of Fact 12 and Conclusion of Law 2 of the Seventh Order is clearly erroneous.

3. If IGWA's 2007 Plan is strictly interpreted and IGWA's mitigation requirement is not zero as asserted above; then, alternatively, IGWA's mitigation requirement is at the most 7,739 AF, calculated as follows in acre feet:

TFCC Minimum Full Supply	1,075,900
TFCC Actual Use	- 1,045,506
Less 2007 Carryover storage	- <u>22,655</u>
2007 Predicted Material Injury:	7,739

4. While IGWA disputes that any carryover storage should be required and asserts that the reasonable carryover amount is zero,<sup>1</sup> to the extent that the Director determines a carryover amount, IGWA agrees with the "credit and debit" accounting mechanism described in the Seventh Order as follows:

Finding of Fact 16: IGWA should not be required to provide any shortfalls in reasonable carryover storage to members of the Coalition until after the joint operating forecast has been issued, which the Director will then use to predict shortfalls in reasonable carryover storage. IGWA should be required to provide reasonable carryover storage water to members of the Coalition when it is needed.

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<sup>1</sup> IGWA disputes any material injury to AFRD#2 and maintains that there is no material injury to carryover storage.  
IGWA'S AMENDED PETITION FOR RECONSIDERATION OF THE DIRECTOR'S SEVENTH SUPPLEMENTAL ORDER AMENDING  
REPLACEMENT WATER REQUIREMENTS Page 4

Conclusion of Law 7: IGWA will not be required to provide reasonable carryover water to members of the Coalition until after the USBR and USACE Joint Operating Forecast is issued and at such time as it is needed by members of the Coalition.

Order, paragraph 3: It is further ordered that the Director will make a final determination of the amounts of mitigation water and actually provided after the final accounting for surface water diversions from the Snake River for 2007 is complete. To the extent less mitigation is provided than was actually required, a mitigation obligation will carry forward to 2008 and be added to any new mitigation determined to be required for 2008. To the extent more mitigation is provided than was actually required, a mitigation credit will carry forward to 2008 and be subtracted from any new mitigation determined to be required in 2008.

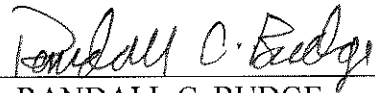
Order, paragraph 5: After the Joint Operating Forecast is issued, IGWA shall be required to provide water for reasonable carryover to members of the Coalition at such time as it is needed. Mitigation debits and credits resulting from a year-to-year mitigation will continue to accrue and carry forward until such time as the storage space held by the members of the Coalition under contract with the United States Bureau of Reclamation fills. At that time any remaining debits and credits will cancel.

### CONCLUSION

Based on the foregoing, IGWA respectfully requests that the Director reconsider the Seventh Order, recalculate the 2007 predicted material injury to TFCC, determine that there was no material injury to TFCC and that IGWA has no mitigation requirement since the 1,045,506 AF of water diverted in 2007 constituted a full irrigation supply for the crop water requirement; alternatively, that the 2007 predicted material injury to TFCC is not more than 7,739 AF, all in accordance with IGWA's approved 2007 Plan.

Respectfully submitted this 9<sup>th</sup> day of January, 2008.

RACINE OLSON NYE BUDGE &  
BAILEY, CHARTERED

By:   
RANDALL C. BUDGE  
Attorneys for IGWA

CERTIFICATE OF SERVICE

I hereby certify that on this 9<sup>th</sup> day of January, 2008, I served a true and correct copy of the foregoing IGWA'S AMENDED PETITION FOR RECONSIDERATION OF THE DIRECTOR'S SEVENTH SUPPLEMENTAL ORDER AMENDING REPLACEMENT WATER REQUIREMENTS AND REQUEST FOR AN EXTENSION OF TIME by delivering it to the following individuals by the method indicated below, addressed as stated.

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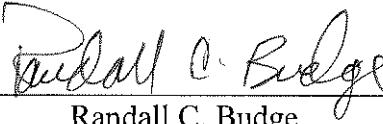
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