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Department of Water Resources

Attorneys for Idaho Ground Water Appropriators, Inc.

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

IN THE MATTER OF MODIFYING THE
BOUNDARIES OF THE AMERICAN
FALLS GROUND WATER MANAGEMENT
AREA

**IDAHO GROUND WATER
APPROPRIATORS, INC.'S PETITION
TO INTERVENE**

Idaho Ground Water Appropriators, Inc., ("IGWA"), through its attorneys Jeffrey C. Fereday, Michael C. Creamer and Deborah E. Nelson of the law firm of Givens Pursley LLP, and pursuant to Idaho Department of Water Resources ("Department") Rules of Procedure 350, 351 and 352 and the Department's November 21, 2003 *Notice of Contested Case and Notice of Status Conference*, hereby petition for leave to intervene in the above-captioned matter. The grounds for this Petition are stated below.

INTERESTS OF IGWA AND ITS MEMBERS

1. IGWA is an Idaho non-profit corporation, organized to promote and represent the interests of Idaho ground water users. IGWA's address is P.O. Box 2624, Boise, Idaho 83701.
2. IGWA's members include six ground water districts, one irrigation district, various municipalities and municipal water providers, and commercial and industrial entities

operating within the State of Idaho. IGWA's members hold water rights authorizing ground water diversions for irrigation of approximately 855,000 acres and for other authorized beneficial uses.

3. Many of IGWA's members' ground water rights are diverted from wells within the Eastern Snake Plain Aquifer ("ESPA"), certain portions of which have been determined to be an interconnected source with the Thousand Springs Reach ("TSR") and American Falls Reach ("AFR") of the Snake River.

4. Magic Valley Ground Water District, North Snake Ground Water District, American Falls-Aberdeen Ground Water District and the Bingham Ground Water District ("Ground Water Districts") are IGWA members that represent ground water users within Water Districts 120 and 130.

5. The Ground Water Districts are authorized by Idaho Code § 42-5224(6) to represent their members with respect to their individual water rights in legal and administrative proceedings.

6. In designating the Thousand Springs Ground Water Management Area and the American Falls Ground Water Management Area (the "GWMAs"), which incorporate some or all of Water Districts 120 and 130, the Department's Director previously has held that certain of IGWA's and the Ground Water Districts' members' ground water rights within such GWMAs may be subject to administration and curtailment to prevent material injury to senior priority spring or surface water rights with points of diversion in the TSR and the AFR.

7. The Department's Conjunctive Management Rules, IDAPA 37.03.11 *et. seq.*, provide that junior priority ground water diversions that otherwise would be deemed out-of-

priority may be allowed when such diversions are made pursuant to an approved and effectively operating mitigation plan. IDAPA 37.03.11.040.01.b.

8. The Ground Water Districts, on behalf of their members, are parties to an Interim Stipulated Agreements (“Interim Agreements”) by which the Ground Water Districts agreed, among other things, to provide 40,000 acre-feet and 28,000 acre-feet of replacement water to the TSR and AFR respectively during 2002 and 2003.

9. The Department’s approval of the terms and conditions of the Interim Agreements, and the Ground Water Districts’ performance thereunder, constitute approved and effectively operating mitigation plans during the Interim Agreements’ term. The Interim Agreement for the TSR expires on December 31, 2003. The Interim Agreement for the AFR has been amended and extended.

10. On October 10, 2003, pursuant to Rule 43 of the Conjunctive Management Rules, IDAPA 37.03.11.043, the Magic Valley and North Snake Ground Water Districts filed with the Department an Application for Approval of a Preliminary Mitigation Plan by which they propose to continue to provide replacement water to the TSR for the years 2004 through 2008. The Preliminary Mitigation Plan is intended to satisfy the purposes and requirements of a mitigation plan as set forth in the Conjunctive Management Rules.

THE PETITIONS FOR A CONTESTED CASE

11. The Twin Falls Canal Company and North Side Canal Company (“Petitioners”) have filed a petition with the Department challenging the Department’s August 29, 2003 *Final Order Modifying the Boundaries of the American Falls Ground Water Management Area* (August 29, 2003 Order”), arguing that, by modifying the designation, the Department has given

up some of its authority to administer junior ground water rights to fill senior surface or spring rights.

12. On November 21, 2003, the Department issued a *Notice of Contested Case and Notice of Status Conference*, setting December 12, 2003 as the deadline by which a party could file a petition to intervene and as the date for the status conference in this matter.

DEPARTMENT INTERVENTION REQUIREMENTS

13. The Department's Rule of Procedure 350 provides that "Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party, if a formal hearing is required by statute to be held in the proceeding." IDAPA 37.01.01.350.

14. IGWA and IGWA's members, including the Ground Water Districts, have a direct and substantial interest in the instant contested case proceeding. The Department's initial GWMA designations directly implicated the conjunctive administration of ground water rights of IGWA's members and Petitioners' water rights. Petitioners' challenges to the Department's August 29, 2003 Order further implicate the right of IGWA's members to continue ground water diversions and the procedural and legal protections afforded them by the Conjunctive Management Rules, the Interim Agreements, the Preliminary Mitigation Plan and potential future mitigation plans in Water District 120, Water District 130 and elsewhere.

15. IGWA's participation as a party will not unduly broaden the issues before the Department.


16. The interests of IGWA and its members are not represented by any other party to this proceeding.

17. This Petition to Intervene is timely. No hearing previously has been held in this matter, and this Petition is filed in accordance with the deadline set forth in the November 21, 2003 *Notice of Contested Case and Notice of Status Conference*.

18. IGWA reserves the right to file responses to Petitioners' pending motions to stay and would stipulate to filing such responses on an expedited basis to prevent unreasonable delay in these proceedings.

DATED this 8th day of December 2003.

GIVENS PURSLEY LLP

BY: 
Michael C. Creamer
Deborah E. Nelson
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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December 2003, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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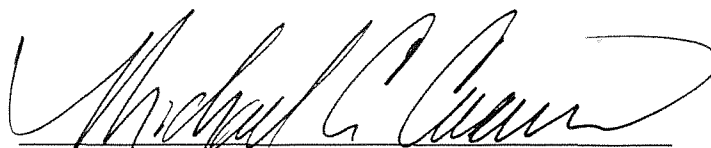
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