RECEIVED
JUL 01 2005
DEPARTMENT OF
WATER RESOURCES

KATHLEEN MARION CARR
Office of the Field Solicitor
550 W. Fort Street, MSC 020
Boise, Idaho 83724
Telephone: (208) 334-1911
Facsimile: (208) 334-1918

U.S. Department of the Interior, Bureau of Reclamation

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	**RECLAMATION'S MOTION FOR CLARIFICATION OF ORDER APPROVING IGWA'S REPLACEMENT WATER PLAN FOR 2005**

COMES NOW the U. S. Department of the Interior, Bureau of Reclamation ("Reclamation"), by and through its attorney, Kathleen Marion Carr, Office of the Field Solicitor, and seeks clarification of the Director's June 24, 2005 *Order Approving IGWA's Replacement Water Plan for 2005* (*Replacement Order*) pursuant to IDAPA 37.01.01.770.

BACKGROUND

On January 14, 2005, the seven irrigation districts, reservoir district, and canal companies named in the caption and referred to as the Surface Water Coalition (Surface Coalition) made a water delivery call to which the Director responded and issued an Order on April 19, 2005, and Amended Order on May 2, 2005 (Amended Order).

On February 8, 2005, the ground water districts filed a proposed mitigation plan with the Director pursuant to Rule 43 of the Idaho Department of Water Resources' (IDWR) Rules of Conjunctive Management in a separate case than that of the surface water call. On March 21, 2005, Reclamation filed both a protest to the Mitigation Plan and a Motion to Dismiss the Mitigation Application. In response to the ground water districts' Motion for Continuance of the Mitigation Plan hearing, the Director granted the continuance on March 18, 2005.

Subsequently, the Director issued the Amended Order in the surface call proceedings. The Amended Order required the ground water districts to provide to the Director a plan of replacement water for at least 27,700 acre feet or other mitigation in lieu of curtailment by April 29, 2005. *Amended Order* at 46 ¶ 9, and 46 ¶ 5. The Director stated that he intended to act on the plan on or about May 6, 2005, or as soon thereafter as practicable. *Amended Order* at 46 ¶ 5. IGWA, on behalf of the ground water districts, filed a *Plan for Providing Replacement Water* on April 29, 2005.

On May 6, 2005, the Director conditionally approved IGWA's replacement water plan for 2005, subject to IGWA correcting certain deficiencies. IGWA responded by providing additional information to IDWR on May 6, 2005 and June 3, 2005.

Thereafter, the Director approved IGWA's replacement water plan without hearing or other briefing on June 24, 2005. *See Replacement Order*. Reclamation and the Surface Coalition filed protests and objected to IGWA's replacement water plan on or about May 6, 2006. *See Reclamation's Protest to Idaho Ground Water Appropriators' Initial Plan for Providing Replacement Water* and the Surface Coalition's *Protest, Objection, and Motion to Dismiss "Replacement Water Plans."*

POINTS REQUIRING CLARIFICATION

1. Reclamation and the Surface Coalition's Protests were Not Addressed.

The *Replacement Order* neither addresses nor disposes of the issues raised by Reclamation and the Surface Coalition in its protests. One significant issue that has not been addressed is whether this is the proper proceeding to determine the amount of mitigation water to be provided through the so-called replacement water plans. Procedurally, the Director should either include his determination on those filings in this *Replacement Order* or set those issues for a separate hearing or briefing schedule. Either way, the parties are entitled to have those issues resolved while this matter is ripe.

2. Reclamation Awaits Information from IDWR to Complete the Exchange.

In paragraph 19, on page 5, of the *Replacement Order* the Director states:

> Because of ongoing negotiations with the USBR, IGWA is unable to execute a contract with the USBR until additional verification confirms how much water is available for lease and exchange with storage water.

The *Replacement Order* should be clarified to reflect that Reclamation is awaiting IDWR to provide information concerning the quantity available for the Exchange so that Reclamation can proceed with finalizing the exchange.

3. The Quantity for Exchange has not been Determined.

The Director also states in paragraph 19, on page 5, that approximately 64,272 acre feet will be available for Exchange. The *Replacement Order* should be clarified to reflect that Reclamation and IGWA have not yet agreed on a firm exchange and cannot do so until after IDWR provides the information described in Section 2 above.

CONCLUSION

Reclamation respectfully requests that the *Amended Order* be corrected to reflect: 1) the actual facts as provided above; 2) that Reclamation will defer to IDWR in making the allocation of exchanged water, but that it does not waive any contractual or legal obligations duties or rights; and 3) that the Director acts upon Reclamation or the Surface Coalition's protests to the Replacement Water Plan.

Respectfully submitted this 1 day of July, 2005.

U.S. Department of the Interior, Bureau of Reclamation

By Kathleen M. Carr
KATHLEEN MARION CARR

CERTIFICATE OF SERVICE

The undersigned certifies that on them 1 day of July 2005, a true and correct copy of **RECLAMATION'S MOTION FOR CLARIFICATION OF ORDER APPROVING IGWA'S REPLACEMENT WATER PLAN FOR 2005** was served on the following person(s) as shown below:

Director, Karl J. Dreher
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098
By Hand Carry and Facsimile
(208) 287-6700

John K. Simpson
Barker Rosholt & Simpson, LLP
P. O. Box 2139
Boise, ID 83701-2139
By U.S. Mail and Facsimile
(208) 344-6034

Travis Thompson
Barker Rosholt & Simpson, LLP
113 Main St. W, Ste. 303
Twin Falls, ID 83301-6167
By U.S. Mail and Facsimile
(208) 735-2444

Roger Ling
Ling Robinson & Walker
P. O. Box 396
Rupert, ID 83350
By U.S. Mail and Facsimile
(208) 436-6804

Jeffrey C. Fereday
Michael C. Creamer
Givens Pursley, LLP
P. O. Box 2720
Boise, ID 83701
By U.S. Mail and Facsimile
(208) 388-1300

W. Kent Fletcher
Fletcher Law Office
P. O. Box 248
Burley, ID 83318
By U.S. Mail and Facsimile
(208) 878-2548

C. Thomas Arkoosh
Arkoosh Law Office, Chtd.
P. O. Box 32
Gooding, ID 83330-0032
By U.S. Mail and Facsimile
(208) 934-8873

Josephine P. Beeman
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, ID 83702
By U.S. Mail and Facisimile
(208)331-0954

Idaho Department of Water Resources
Eastern Region Office
900 N. Skyline Dr.
Idaho Falls, ID 83402-6105
By U.S. Mail and Facsimile
(208) 525-7177

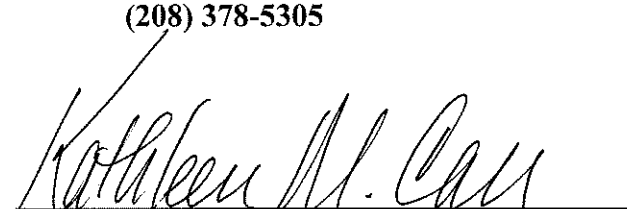
James S. Lochhead
Adam T. DeVoe
Brownstein Hyatt & Farber, P.C.
410 17th St., 22nd Floor
Denver, CO 80202
By U.S. Mail and Facsimile
(303) 223-1111

Scott L. Campbell
Moffatt Thomas Barrett Rock & Fields, Chtd
P. O. Box 829
Boise, ID 83701
By U.S. Mail and Facsimile
(208) 385-5384

James Tucker
Idaho Power Company
1221 W. Idaho St.
Boise ID 83702
By U.S. Mail and Facsimile
(208) 388-6935

Michael S. Gilmore
Deputy Attorney General, State of Idaho
Statehouse, Room 210
Boise, ID 83720
By U.S. Mail and Facsimile
(208) 334-2830

U.S. Bureau of Reclamation
Matt Howard, PN-3130
1150 N. Curtis Road
Boise, ID 83706-1234
By U.S. Mail and Facsimile
(208) 378-5305



KATHLEEN MARION CARR