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, MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, AND TWIN FALLS CANAL COMPANY	)	**ORDER APPROVING IGWA'S REPLACEMENT WATER PLAN FOR 2005**

On April 19, 2005, the Director of the Department of Water Resources ("Director" or "Department") issued his order *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*, which was amended May 2, 2005, finding that senior natural flow and storage water rights are reasonably predicted to incur material injury in 2005 by consumptive diversion of ground water under junior priority rights. As part of the Order, the Director ordered ground water districts representing certain holders of junior priority ground water rights to submit a plan for replacement water with the Department no later than April 29, 2005.

On April 29, 2005, the Idaho Ground Water Appropriators, Inc. ("IGWA") filed a *Plan for Providing Replacement Water* on behalf of its members, which include, Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, Southwest Irrigation District, and North Snake Ground Water District (collectively referred to as "the Districts").

On May 6, 2005, the Department issued an *Order Regarding IGWA Replacement Water Plan*. The order conditionally approved IGWA's replacement water plan for 2005. The order also identified deficiencies in the replacement plan, and required that IGWA submit additional information to correct deficiencies on or before May 23, 2005.

On May 23, 2005, IGWA submitted a document titled *IGWA Information Submittal Responding to May 6, 2005 Order Regarding IGWA Replacement Water Plan.* On June 3, 2005, IGWA submitted another document titled *IGWA's Supplement to Information Submittal.*

FINDINGS OF FACT

The following findings of fact summarize the deficiencies identified in the *Order Regarding IGWA Replacement Water Plan* of May 6, 2005, and discuss whether the deficiencies are adequately addressed by the responses of May 23 and June 3, 2005, by IGWA.

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 will hereafter be referred to as "the Surface Water Coalition" or "the Coalition."

Private Leases of Storage Water

Previous Deficiencies

1. IGWA was required to provide "[d]ocumentation that the 20,000 acre-feet of storage water proposed for lease from Peoples Irrigation Company, the Idaho Irrigation District, and the New Sweden Irrigation District, and any other storage water available or dedicated to IGWA for replacement water is leased to the Water District 01 Rental Pool for delivery to and use as replacement water by the Coalition. Delivery of this water for any other mitigation or replacement requirements will not be recognized by the Director as replacement water for the Coalition unless IGWA technically determines the Near Blackfoot to Minidoka reach gains resulting from the other mitigation activities as confirmed by the Department."

Additional Information Analysis

2. IGWA submitted executed lease agreements with Peoples Irrigation Company, the Idaho Irrigation District, and the New Sweden Irrigation District that lease a total of 20,000 acre-feet of storage water. IGWA also submitted a letter from Ron Carlson, Watermaster for Water District No. 01, confirming that the 20,000 acre-feet of storage water is dedicated for use by the ground water districts.

Allocation of Stored Water from Private Leases

3. The portion of the stored water from private leases provided as replacement water to members of the Surface Water Coalition pursuant to the Amended Order of May 2, 2005, must be allocated to the members of the Surface Water Coalition in the 2005 irrigation year (November 1, 2004, through October 31, 2005).

4. Since the Department will make the allocation, the portion of the stored water from private leases provided as replacement water to members of the Surface Water Coalition must be assigned to the Department.

FMC Lease

Previous Deficiencies

5. IGWA was required to submit "[d]ocumentation that 6,820 acre-feet of water has been leased from FMC to the Idaho State Water Bank and rented by IGWA as replacement water for delivery to one or more members of the Coalition."

Additional Information Analysis

6. IGWA submitted information confirming a valid private lease agreement between FMC Idaho, L.L.C. and American Falls-Aberdeen Ground Water District, Bingham Ground Water District, and Bonneville-Jefferson Ground Water District to lease water right nos. 29-2284 and 29-2301 and claim no. 29-11342. IGWA also submitted copies of checks executed in 2005 for lease of the FMC water rights. Finally, IGWA submitted an application to lease water to the Idaho Water Resource Board Water Supply Bank ("Water Supply Bank") and a parallel application to lease the same water rights from the Water Supply Bank. The Department has not yet approved the lease applications.

7. In reviewing the water right records, the Department found that the Snake River Basin Adjudication ("SRBA") District Court disallowed claim no. 29-11342 in 2004. FMC is presently attempting to obtain leave of the Court to file a late claim for a similar amount of water that was transferred by the City of Pocatello under water right no. 29-2338. The validity, ownership, and historical place of use must be established prior to recognition of claim no. 29-11342 as a basis for providing replacement water to the members of the Surface Water Coalition.

8. In a letter written by Norman C. Young, dated August 2, 2002, the Department approved 6,820 acre-feet of mitigation resulting from non-use of the FMC water rights. The 6,820 acre-feet included a contribution from claim no. 29-11342. The letter of August 2, 2002, was sent prior to disallowal of claim no. 29-11342 in the SRBA. The letter stated that the Department might further adjust the volume recognized for mitigation based on further review. The Department has determined that the pro-rata portion of the 6,820 acre-feet attributable to claim no. 29-11342 is 796 acre-feet. Subtracting 796 acre-feet from 6,820 acre-feet leaves a remainder replacement credit for the FMC lease of 6,024 acre-feet.

Dry Year Leases

Previous Deficiencies

9. IGWA was required to submit copies of contracts with current owners; change of ownership documents; information reconciling discrepancies and

inconsistencies between flow rate, acreage irrigated, and total volume of consumptive use foregone; identification of lands that will be dried up within each 40-acre parcel; and aerial imagery and sworn statements that the lands described were irrigated in 2004 or have been continuously and uninterruptedly not irrigated for multiple years because of a mitigation plan already approved by the Department.

Additional Information Analysis

10. IGWA submitted information about all of the water rights originally proposed for dry year lease except for water right no. 35-2550, held by Howard and Joyce Klempel. As a result, water right no. 35-2550 was removed from the dry year lease proposal.

11. IGWA submitted acceptable change of ownership documentation and copies of lease contracts with the current owners. Inconsistencies about water use were resolved by submittal of 2005 satellite imagery. The acreage to be dried up was not identified by 40-acre parcel, but water use was reviewed and confirmed by Lewis Rounds, Watermaster for Water District No. 120.

12. The following is a revised table from the Order of May 6, 2005, that recognizes leases to dry-up acreage irrigated in 2004.

Name	Water Right	Total Acres Irrigated Per WD 120 Review	Flow Rate Reduced (cfs)
KBC Farms LLC	35-2426	291	3.4
J. Henry Olsen	35-2384 35-7092	296	4.5 1.07
Foster Land and Cattle	35-02653 35-12933	250	2.5
Foster Land and Cattle	35-2503A	200	2.63
William Toevs	35-8626	129	1.88

13. The information listed above and associated information from the water rights was input into the ground water model for the Eastern Snake Plain Aquifer ("ESPA"), and the model was run to determine the reach gains for Near Blackfoot to Minidoka resulting from cessation of pumping. Based on the model results, it was determined that in 2005, the dry year leases result in a reach gain of 435 acre-feet.

14. If the reach gain attributable to the dry year leases is not identified and delivered directly to the Surface Water Coalition members, the gain may be diverted by

other water right holders whose water rights bear earlier priority dates than the priority dates of the rights held by the members of the Surface Water Coalition. Although not identified as a deficiency in the Director's Order of May 6, 2005, applications for lease to and from the Water Supply Bank must be approved for the dry year lease water rights.

Snake River Natural Flow Water Right Lease and Exchange

Previous Deficiencies

15. IGWA was required to submit copies of executed contracts to lease water rights authorizing diversion from Snake River natural flow, and an exchange approved by the Department allowing the exchange of water rights authorizing diversion of Snake River natural flow, and leased by IGWA, with storage of water held or leased by the United States Bureau of Reclamation ("USBR") that is physically deliverable between Near Blackfoot and Minidoka.

Additional Information Analysis

16. IGWA submitted executed lease agreements with Snake River natural flow water right holders. IGWA proposes to lease Snake River water rights to/from the Water Supply Bank authorizing the irrigation of 23,683.5 acres and associated water volume of 75,048 acre-feet. In addition, IGWA agreed to lease an additional 4,644 acre-feet from the Water Supply Bank. The total volume of water proposed to be leased from the Water Supply Bank is 79,692 acre-feet.

17. Department staff generally reviewed the lands and associated water rights. Staff concluded that the lease agreement water rights are likely to be accepted for lease into and from the Water Supply Bank. The exact quantity of water leased may change when more carefully reviewed by Department staff. Department staff will refine the acreage and volumes eligible for Water Supply Bank acceptance by corresponding with IGWA, the USBR, and the water right holders.

18. IGWA has not yet submitted agreements with the USBR to exchange the Snake River natural flow water rights leased with storage water held or leased by the USBR in the reservoirs above Milner Dam. The Department has not yet received an application for exchange.

19. 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 Department understands the USBR will reduce the storage exchanged with the natural flow leased from the Water Supply Bank by 80.65 percent. Multiplying 79,692 acre-feet by 0.8065 results in 64,272 acre-feet. This is the approximate amount of Snake River storage water that will be available to IGWA for replacement water.

Allocation of Stored Water from Exchange with Snake River Natural Flow

20. The portion of the stored water from exchange with Snake River natural flow leased by IGWA and provided as replacement water to members of the Surface Water Coalition pursuant to the Amended Order of May 2, 2005, must be allocated to the members of the Surface Water Coalition in the 2005 irrigation year (November 1, 2004, through October 31, 2005).

21. Since the Department will make the allocation, the portion of the stored water from exchange with Snake River natural flow leased by IGWA and provided as replacement water to members of the Surface Water Coalition must be assigned to the Department.

Review of Water Supply Information

22. In paragraph 10 of the Section titled "Order" in the orders of April 19 and May 2, 2005, the Director stated he "will monitor water supply requirements and the water supplies available throughout the irrigation season and may issue additional orders or instructions to the watermasters as conditions warrant."

23. Following issuance of the Amended Order on May 2, 2005, May rainfall over the Snake River watershed significantly exceeded normal precipitation.

24. On June 14, 2005, IGWA filed a motion titled *IGWA's Motion to Reduce Replacement Water Obligation* seeking a review by the Director of the Director's determination of its obligation to provide replacement water to members of the Surface Water Coalition following the significantly above-average spring precipitation over the Snake River watershed.

25. As of the date of this order, storage in the Snake River Reservoirs has not been allocated to the storage space holders.

CONCLUSIONS OF LAW

1. The Department recognizes, as replacement water in 2005, 20,000 acre-feet of storage water leased from the Peoples Irrigation Company, the Idaho Irrigation District, and the New Sweden Irrigation District.

2. The Department recognizes as replacement water in 2005, 6,024 acre-feet leased by agreement from FMC Idaho, L.L.C. that will be leased into and from the Water Supply Bank by IGWA, and will be delivered as natural flow to the Surface Water Coalition members.

3. The Department recognizes, as replacement water in 2005, 435 acre-feet of reach gain resulting from dry year leases during the 2005 irrigation season. The water rights must be leased into and from the Idaho Water Supply Bank by IGWA and delivered as natural flow to the Surface Water Coalition members. Additional reach gain to the Snake River accruing after the irrigation season by nondiversion in 2005 will also be credited to future mitigation requirements.

4. The Department recognizes that approximately 64,272 acre-feet of water will be made available in 2005 from USBR storage as a result of an anticipated exchange between the USBR and the IGWA.

5. IGWA has submitted sufficient information for the Director to recognize replacement water in excess of the 27,700 acre feet required in 2005 by the Amended Order of May 2, 2005.

6. Stored water from private leases and exchange with Snake River natural flow leased by IGWA and provided as replacement water must be assigned to the Department for allocation to members of the Surface Water Coalition.

7. Because of significant changes in water supply conditions, the Director should review whether the changes in water supply would also change the extent of material injury likely to be incurred in 2005 by members of the Surface Water Coalition.

ORDER

IT IS HEREBY ORDERED that IGWA's Replacement Water Plan is Approved for 2005 as follows:

(1) Replacement water of 20,000 acre-feet of storage water leased from the Peoples Irrigation Company, the Idaho Irrigation District, and the New Sweden Irrigation District.

(2) Replacement water of 6,024 acre-feet leased from FMC Idaho, L.L.C.

(3) Replacement water of 435 acre-feet reach gains during the 2005 irrigation season resulting from nonirrigation of lands idled in 2005.

(4) Replacement water of approximately 64,272 acre-feet of storage water stored in Snake River reservoirs exchanged with the USBR that can be allocated to members of the Surface Water Coalition. The volume of storage water recognized as replacement water in 2005 may be amended upon further review as the leases and exchanges are processed.

IT IS FURTHER ORDERED that natural flow resulting from the FMC lease and the leases of nonirrigated farmland shall be delivered first to the Surface Water Coalition members when the natural flow water rights held by members of the Surface Water Coalition are not otherwise filled in 2005.

IT IS FURTHER ORDERED that IGWA must assign storage water rented directly from one of the upper Snake River water delivery organizations to the Department for allocation to the Surface Water Coalition members until the lease and exchange arrangements with the USBR are complete. None of the 20,000 acre-feet can be used for any other purpose until at least 21,241 acre-feet (obligation for 2005, less FMC lease, and less idled lands) are available for delivery from a storage water held or leased by the USBR that has been placed at the disposal of IGWA, for assignment to the Department for allocation, through an exchange approved by the Department.

IT IS FURTHER ORDERED that replacement water activities related to lease and exchange of Snake River natural flow water rights will be conducted within the normal Water Supply Bank and application for exchange processes. The final quantity of replacement water available for exchange with the USBR will also be determined by these administrative processes.

IT IS FURTHER ORDERED that the Director will review the Snake River water supply available to the Surface Water Coalition members following the allocation of storage in the Snake River reservoirs, and determine whether changes in the water supply also justify changes to the extent of injury predicted to likely occur to members of the Surface Water Coalition.

Dated this 24th day of June 2005.

KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of June, 2005, the above and foregoing, was served by the method indicated below, and addressed to the following:

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