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	)	**ORDER REGARDING IGWA REPLACEMENT WATER PLAN**

This matter is before the Director of the Department of Water Resources ("Director" or "Department") as a result of the *Idaho Ground Water Appropriators' Initial Plan for Providing Replacement Water* ("Replacement Water Plan"), submitted to the Department on April 29, 2005, by the Idaho Ground Water Appropriators, Inc. ("IGWA") 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 April 19, 2005, the Director 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 by consumptive diversions of ground water under junior priority rights. As part of the Order, the Director required 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.

Based upon the Director's consideration of the documents in thismatter, the Director enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Procedural History

1. On January 14, 2005, the Surface Water Coalition ("Coalition")[1] delivered to the Director a letter ("Letter") regarding *Request for Water Right Administration in Water District*

[1] The Coalition is composed 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.

120 (portion of the Eastern Snake Plain Aquifer) / Request for Delivery of Water to Senior Surface Water Rights. The same day, the Coalition also filed its petition ("Petition") captioned *Petition for Water Right Administration and Designation of the Eastern Snake Plain Aquifer as a Ground Water Management Area*. In the Letter and Petition, the Coalition stated that junior ground water diversions have caused material injury to its members' natural flow and storage water rights. Accordingly, the Coalition sought administration of junior ground water rights and delivery of water to its respective natural flow and storage water rights.

2. On February 3, 2004, IGWA filed two petitions to intervene. The first was filed to intervene in the request for administration and curtailment of ground water rights within Water District No. 120, and the second was filed to intervene in the request for administration and curtailment of ground water rights in the American Falls Ground Water Management Area and designation of the Eastern Snake Plain Aquifer as a Ground Water Management Area.

3. On February 11, 2005, Idaho Power Company ("Idaho Power") filed a letter in which it requested that the letter be treated as a motion to intervene should a contested case be initiated in response to the Letter and Petition filed by the Coalition.

4. On February 14, 2005, the Director issued his initial Order ("Initial Order") in this matter, responding to the Letter and Petition filed by the Coalition, designating the requested water right administration in Water District No. 120 and the American Falls Ground Water Management Area as contested cases, and granting the two petitions to intervene by IGWA. Pursuant to Department Rule of Procedure 710, IDAPA 37.01.01.710, the Initial Order was an interlocutory order and not subject to review by reconsideration or appeal, with the exception of the portions of the Initial Order (1) determining certain water rights to be junior in priority for the purposes of distributing water to any decreed, licensed, or permitted water rights and (2) denying the portion of the Petition seeking designation of the Eastern Snake Plain Aquifer as a ground water management area. Those two portions of the Initial Order were final on March 7, 2005. The Coalition filed a petition with the Department seeking a hearing on the denial of designation of the Eastern Snake Plain Aquifer as a ground water management area.

5. On February 17 and March 7, 2005, respectively, the Idaho Dairymen's Association ("IDA") and the United States Bureau of Reclamation ("USBR") each filed petitions to intervene in the request for administration and curtailment of ground water rights within Water District No. 120.

6. On April 6, 2005, the Director issued an Order denying Idaho Power's February 14, 2005, petition to intervene; however, the Director granted intervention by the IDA and the USBR. *Order on Petitions to Intervene and Denying Motion for Summary Judgment; Renewed Request for Information; and Request for Briefs*.

7. On April 19, 2005, the Director 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 ("Amended Order").

8. In the Amended Order, the Director found that consumptive ground water diversions under junior priority rights in Water Districts No. 120 and 130 are reasonably likely to cause material injury to senior natural flow and storage water rights during the 2005 irrigation year, which begins on November 1, 2004, and ends on October 31, 2005. As a result, the Director instructed the holders of ground water rights in Water Districts No. 120 and 130, "having priorities of February 27, 1979, and later . . . to either curtail the diversion and use of ground water for the remainder of 2005, provide replacement water to the members of the Surface Water Coalition as mitigation, or combination of both." *Amended Order* at p. 44, ¶ 53.

9. The Amended Order provides that no later than 5:00 p.m. on April 29, 2005, "the North Snake, Magic Valley, Aberdeen-American Falls, Bingham, and Bonneville-Jefferson ground water districts, and other entities seeking to provide replacement water or other mitigation in lieu of curtailment, must file a plan for providing such replacement water . . . ." *Id.* at p. 46, ¶ 9.

10. "The plan will be disallowed, approved, or approved with conditions by May 6, 2005, or as soon thereafter as practicable in the event an extension is granted as provided in the order granting the extension." *Id* at p. 47, ¶ 9.

11. Excluding in-house culinary uses, "consumptive ground water rights for agricultural, commercial, industrial, and municipal uses . . . are required to provide replacement water to the members of the Surface Water Coalition as mitigation for out-of-priority depletions, as provided herein, in amounts equal to the annual depletions to the reach gains in the Snake River between the Near Blackfoot Gage and the Minidoka Gage under their rights as determined using the Department's ground water model for the ESPA." *Id.* at p. 45, ¶ 1.

12. Holders of affected ground water rights where the purpose of use is irrigation "shall provide the required replacement water through the North Snake, Magic Valley, Aberdeen-American Falls, Bingham, or Bonneville-Jefferson ground water districts. Holders of ground water rights for irrigation that are not members of one of these ground water districts shall be deemed a nonmember participant for mitigation purposes . . . and shall be required to pay the ground water district nearest the lands to which the water right is appurtenant for replacement water as mitigation pursuant to Idaho Code § 42-5259." *Id.* at p. 45, ¶ 2.

13. "Holders of ground water rights affected by this Order where the purpose is commercial, industrial, or municipal may provide the required replacement water through a ground water district as a nonmember participant for mitigation or may separately or jointly provide the required replacement water." *Id.* at p. 45, ¶ 3.

14. The Director allocated replacement water between the North Snake Ground Water District (2,400 acre-feet), Magic Valley Ground Water District (17,800 acre-feet), Aberdeen-American Falls Ground Water District (58,700 acre-feet), Bingham Ground Water District (14,900 acre-feet), and Bonneville-Jefferson Ground Water District (7,200 acre-feet). *Id.* at p. 46, ¶ 4.

15. While the total amount of replacement water was calculated at 101,000 acre-feet, "[t]he total amount of replacement water provided for mitigation *in 2005 shall not be less than 27,700 acre-feet*, which equals the amount of the predicted shortage in 2005 . . . ." *Id.* at p. 46, ¶

5 (emphasis added). "If at any time the mitigation for out-of-priority depletions is not provided as required herein, the associated water rights are subject to immediate curtailment, based on the priorities of the rights, to the extent mitigation has not been provided." *Id.* at p. 46, ¶ 8.

16. In stating his intent to "monitor water supply requirements and the water supplies available throughout the irrigation season [,]" *id.* at p. 47, ¶ 10, the Director also stated that the amount of mitigation for the 2005 irrigation season could vary, depending on "the final accounting for surface water diversions from the Snake River for 2005[,]" *id.* at p. 47, ¶ 11. "To the extent less mitigation is provided than was actually required, a mitigation obligation will carry forward to 2006 and be added to any new mitigation determined to be required for 2006. To the extent more mitigation is provided than was actually required, a mitigation credit will carry forward to 2006 and be subtracted from any new mitigation determined to be required for 2006." *Id.*

17. The Director stated that he would continue to evaluate conditions in the Eastern Snake Plain Aquifer on an annual basis "after April 1, when the USBR and U[nited] S[tates] A[rmy] C[orp] [of] E[ngineers] release forecasts for inflow to the Upper Snake River Basin for the period April 1 through July 31, and require mitigation or curtailment as warranted without further demand by members of the Coalition until such time that a permanent mitigation plan may be approved." *Id.* at p. 47, ¶ 12.

18. "Mitigation debits and credits resulting from year-to-year mitigation will continue to accrue and carry forward until such time as the storage space held by the members of the Surface Water Coalition under contract with the USBR fills. At that time, any remaining debits and credits will cancel." *Id.* at p. 47, ¶ 13.

19. The Amended Order was a final order of the Department.

<u>The Districts' Replacement Water Plan</u>

20. Before 5:00 p.m. on April 29, 2005, IGWA, on behalf of the Districts, filed its Replacement Water Plan with the Department, purporting to comply with paragraph 9, page 46, of the Director's May 2, 2005, Amended Order, which required a plan for providing replacement water to the Coalition.

21. The Districts state in their Replacement Water Plan that the mitigation plan that was filed on February 8, 2005, *Application for Approval of Mitigation Plan (AFR)* and *Ground Water Districts' Mitigation Plan for American Falls Reach of the Snake River*, "is broad enough in scope and substance to satisfy the minimum requirements the Director's Order imposes on the 120/130 Districts for 2005." *Replacement Water Plan* at p. 2. "However, because the Director's Order contains requirements not contemplated in the February 2005 Mitigation Plan, and because it provides a specific obligation for replacement water in 2005, this Replacement Water Plan is submitted to comply with the Director's Order." *Id.*

22. While the Districts state they are not withdrawing or amending their February 2005 Mitigation Plan, the Districts declare that "[t]o the extent that this Replacement Water Plan is deemed a mitigation plan under the Department's Conjunctive Management Rules . . . the . . .

Districts incorporate herein by reference each provision of the February Mitigation Plan as may be required by such rules to be included in a mitigation plan under consideration by the Department." *Id.* at p. 3.

23. The Districts' Replacement Water Plan describes sources and amounts of water to be used for replacement purposes, as well as mitigation credits that should accrue in 2005 and subsequent years.

24. According to the Replacement Water Plan, IGWA, on behalf of the Districts, "commits to make available 27,700 acre-feet of replacement water during the 2005 irrigation season . . . from one or more of the sources shown in Attachment A." *Id.* at p. 3. "Unless the Director otherwise requires, IGWA will determine which of the[] water sources [described in Attachment A] will be provided to meet the 2005 Replacement Obligation, and will, at the appropriate time, notify the Director in writing and authorize him to take immediate control of such water and instruct the District 1 Watermaster or other agents or employees to deliver it to fulfill the 2005 Replacement Obligation." *Id.*

25. The first page of Attachment A describes the replacement water sources as follows:

2005 Replacement Water Sources

Source	**Acre-Feet**
FMC Lease	6,820
New Sweden Irr. Dist.	15,000
Peoples Canal Co.	3,000
Snake River Valley Irr. Dist.	2,000
Grindstone-Butte, et al. (High-lift exchange)	47,970*
United Water Idaho (High-lift exchange)	9,833**
Subtotal -- Surface water supplies	84,623
WD 120 Dry-Year Leasing	2,522***
Subtotal -- Above Milner water	87,145

* Based on total 2005 lease of 58,500 AF at 82% exchange credit from USBOR. Letter of Intent executed between Ground Water Districts and Lessors. Exchange Agreement with USBOR is pending.

** Based on total 2005 lease of 11,992 AF at 82% exchange credit from USBOR. Execution of lease agreement with Lessor and exchange agreement with USBOR are pending.

*** Eight separate dry-year lease agreements affecting 1,261 total acres in Bingham and Power Counties have been executed. Total associated consumptive use foregone in 2005 is 6,828 AF. First year reach gain increase in Blackfoot to Milner reach is 520 AF. Second year reach gain increase is 344 AF.

Replacement Water Plan, Attachment "A".

26. The second page of Attachment A is titled "Lease Program Offers," and summarizes Water District No. 120 dry-year leases.

Replacement Water Provided by Storage

27. Documentation is provided in Attachment B to the Replacement Water Plan that verifies that IGWA, on behalf of the Districts, has entered into agreements to secure, for replacement purposes, the water described in Attachment A. *Replacement Water Plan* at p. 3.

28. The first document in Attachment B, dated April 28, 2005, is an agreement by the Peoples Canal & Irrigation Co. "to lease 3,000 A/F of water to the ground water users, represented by Lynn Tominaga [IGWA Executive Director]. The water will be available upon receipt of payment for the water as agreed."

29. The second document in Attachment B, dated April 28, 2005, is an agreement by Snake River Valley Irrigation District with Mr. Tominaga to "lease 2000 af of water for the 2005 irrigation season."

30. The third document in Attachment B, dated March 15, 2005, is a Private Lease Agreement whereby the New Sweden Irrigation District agrees to lease 15,000 acre-feet of water to the Water District 01 Rental Pool as mitigation water for "Bonneville/Jefferson and Bingham and American Falls/Aberdeen Ground Water Districts. . . . [U]pon the payment of the appropriate Rental Pool fees, and the approval of the Watermaster, the parties of this agreement agree and request that the Watermaster change the point of delivery for 15,000 acre-feet of storage from New Sweden Irrigation to the Ground Water Districts, for the year ending October 1, 2005."

31. IGWA, on behalf of the Districts, proposes to dedicate Snake River storage water totaling 20,000 acre-feet as replacement water.

Deficiencies in Stored Water Proposal

32. IGWA submitted evidence of an agreement between IGWA and holders of storage water entitlements for rental of storage water by IGWA for the benefit of the Districts. IGWA did not submit documentation that the storage had been placed in the Water District 01 Rental Pool and was committed to IGWA for release as mitigation.

Lease of FMC Ground Water Right

33. The first line of Page 1 of Attachment A refers to an "FMC Lease" of 6,820 acre-feet of water.

34. In 2002, American Falls-Aberdeen Ground Water District and Bonneville-Jefferson Ground Water District leased all or portions of water right nos. 29-2284, 29-2301, and 29-11342 from FMC. In a letter dated August 6, 2002, the Department recognized a mitigation

credit to those ground water districts of 6,819.87 acre-feet of water resulting from the lease and nonuse of the FMC water rights.

Deficiencies in Proposed Lease of FMC Ground Water Right

35. IGWA did not submit documentation showing that it has executed an agreement with FMC to lease FMC water rights during 2005. Furthermore, IGWA did not submit documentation showing that water not diverted under FMC's water rights will be delivered as surface water flow to the Coalition as replacement water by placing the leased rights in Idaho State Water Bank for mitigation by IGWA and then renting the rights from the Water Bank for delivery to one or more members of the Coalition, or other acceptable means of delivery.

Dry-Year Leases

36. The second page of Attachment A is titled "Lease Program Offers," and cross-references to the line item "WD 120 Dry-Year Leasing" on page 1 of Attachment A . The dry-year leases are summarized on the second page of Attachment A as follows:

Name	Water Right	Total Acres	Flow Rate (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	9.0
Foster Land and Cattle	35-2503A	200	3.63
Howard & Joy Klempel	35-2550	95	2.7
William Toevs	35-8626	129	1.88

37. IGWA summarizes the augmentation to the Snake River flows resulting from the proposed dry-year leases in a footnote associated with page 1 of Attachment A. The footnote asserts that these dry-year leases will increase reach gains 520 acre-feet during the first year, and 344 acre-feet the second year. IGWA bases the reach gain increase on a foregone consumptive use of 6,828 acre-feet resulting from non-irrigation of 1,261 acres.

Deficiencies in Dry-Year Lease Proposal

38. The title "Lease Program Offers" infers that offers to lease ground water rights have been extended by IGWA, but IGWA did not submit copies of executed contracts for lease of the water.

39. Department staff reviewed the water right records of the water rights proposed for dry-year leases. Summaries of the water right records are attached to this order as Attachment 1.

40. Department staff found several inconsistencies in the page titled "Lease Program Offers." The inconsistencies are contrasted in parenthesis and bold text next to the original information presented by IGWA:

Name	Water Right	Total Acres	Flow Rate (cfs)
KBC Farms LLC **(Grandview Properties LTD)**	35-2426	291	3.4
J. Henry Olsen	35-2384 35-7092	296 **(320)**	4.5 1.07
Foster Land and Cattle **(Thayne R. Gneiting)**	35-02653 35-12933	250 **(461)** **(439)**	9.0
Foster Land and Cattle **(Thayne R. Gneiting)**	35-2503A	200 **(276)**	3.63
Howard & Joy Klempel	35-2550	95	2.7
William Toevs	35-8626	129	1.88

41. IGWA did not submit documentation showing that the places of use described by the above water rights were irrigated in 2004 or were not irrigated during continuous, consecutive past years preceding 2005 as part of a mitigation plan to provide replacement water to the Snake River between Near Blackfoot and Minidoka.

42. Crops grown on 1,261 acres cannot consume 6,828 acre-feet of water.

Snake River Natural Flow Water Right Lease and Exchange

43. The fourth document in Attachment B, dated April 1, 2005, is a Letter of Intent between IGWA, on behalf of the Districts, and Glenns Ferry, Murphy, and Mountain Home Groups ("high lift pumpers"). The purpose of the relationship between the parties to the Letter "is to acquire water rights by lease and/or purchase to facilitate a Water Exchange Agreement with the Bureau of Reclamation . . . . Pursuant to the Exchange Agreement the acquired water rights will be exchanged for water in the Upper Snake River Basin in order to augment Snake River flows above Milner Dam during the irrigation season to mitigate for ground water pumping in the Eastern Snake Plain Aquifer . . . ." The second page of the Letter, marked "Redacted," states "[a] Lease Agreement will be entered into pursuant to which the Owners will lease to the Districts 58,500 AF . . . for the 2005 irrigation season based upon a minimum of 3AFA. The rent will be (redacted) for 46,500 AF subject to the Purchase Option ('Option') described below, and (redacted) for 12,000 AF not subject to the Option, a total rent of (redacted)." Furthermore, "an irrevocable and exclusive Option to purchase approximately 53,100 AF" was contemplated.

44. The fifth document in Attachment B, is a package of agreements for water, signed during the month of April 2005, between IGWA and various water providers, entities, and private person for lease during the 2005 irrigation season, lease/option to purchase during the 2005 irrigation season, and option to sell.

Deficiencies in the Snake River Natural Flow Water Right Lease and Exchange

45. IGWA, on behalf of the Districts, did not submit executed contracts between it and the high lift pumpers for lease of the high lift pumpers' water rights during the 2005 irrigation season. Moreover, IGWA did not summit documentation establishing that the USBR has consented to the exchange of the water left undiverted by the high lift pumpers for storage in the Upper Snake River reservoirs that IGWA can dedicate to the Coalition as replacement water.

Overlap with Other Ongoing Mitigation

46. In addition to its obligation to provide at least 27,700 acre-feet of replacement water in 2005, the Districts state that they will provide 45,500 acre-feet of water from one or more of the sources described in Attachment A for the following three purposes:

> 1) provide water to the Sandy Pipeline Ponds to augment the water supply to water right holders in the Billingsley Creek subreach of the Thousand Springs Reach ('TSR'); 2) provide a surface water source for irrigation of lands previously converted from ground water irrigation as part of ongoing, stipulated and Department-approved mitigation actions of these Districts; and 3) potentially undertake small-scale, targeted recharge intended to augment the water supply to water right holders in the TSR.

Replacement Water Plan at p. 4.

Deficiency in Overlap with Other Ongoing Mitigation

47. IGWA, on behalf of the Districts, did not describe how the water delivered to the Sandy Pipeline Ponds, lands previously converted from ground water irrigation, and recharge augmenting the water supply to the Thousand Springs Reach, will replace any water in the Near Blackfoot to Minidoka Reach of the Snake River. Without an analysis of the reach gains to the Near Blackfoot to Minidoka Reach resulting from these efforts to supply replacement water to the Thousand Springs Reach, no credit will be recognized for activities providing water to a different source of surface water supply.

Mitigation Credits

48. According to the Replacement Water Plan, the "Districts intend to document and take full credit for all reach gains demonstrated by the Department's ESPA model to accrue to the AFR in 2005 and subsequent years . . . ." *Id.* at 5. Credits will be claimed by the District for reach gains attributable to Water District No. 130 mitigation actions, reach gains attributable to voluntary curtailments of ground water withdrawals in 2005, reach gains attributable to previous years' mitigation, recognition of mitigation credits for separate mitigation plans, and additional accounting for mitigation at season's end. *Id.* at p. 5-7.

Deficiencies in Mitigation Credits

49. IGWA, on behalf of the Districts, did not submit documentation to establish reach gains that accrued in past years or that will accrue in 2005 because of past mitigation activities of IGWA or its member ground water districts.

50. All reach gains resulting from past activities have already accrued to the Snake River, increased the flow of the Snake River, and have reduced the predicted deficit in the minimum reasonable supply of water for the Coalition. IGWA should not receive any credit for these benefits already derived.

CONCLUSIONS OF LAW

1. The Director of IDWR recognizes the importance under Idaho law of protecting the interests of a senior priority water right holder against interference by a junior priority right holder from a tributary or interconnected water source. Art. XV, § 3, Idaho Const.; Idaho Code §§ 42-106, 42-237a(g), and 42-607.

2. Idaho Code § 42-602 states:

> The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director. The director of

> the department of water resources shall distribute water in the water districts in accordance with the prior appropriation doctrine.

3. Idaho Code § 42-607 provides that the following shall apply during times of scarcity of water when it is necessary to distribute water between water rights in a water district created and operating pursuant to chapter 6, title 42, Idaho Code, in accordance with the priority of those rights:

> [A]ny person or corporation claiming the right to the use of the waters of the stream or water supply comprising a water district, but not owning or having the use of an adjudicated or decreed right therein, or right therein evidenced by permit or license issued by the department of water resources, shall, for the purposes of distribution during the scarcity of water, be held to have a right subsequent to any adjudicated, decreed, permit, or licensed right in such steam or water supply . . . .

4. In water districts, watermasters must summarily determine: (1) whether a water right holder calling for delivery of water is receiving the water authorized by the water users water right; (2) if not, what junior water right diversions must be curtailed; and (3) whether there are alternative means to provide the water to senior water rights to reduce or eliminate injury to the senior water rights.

5. The temporary plan submitted by IGWA for providing replacement water will contribute sufficient water to supply the minimum requirement of 27,700 acre-feet of water during the 2005 irrigation season if additional information and commitments by IGWA are submitted to IDWR.

6. The additional information and commitments must be submitted on or before May 23, 2005, in order for the ground water users in Water Districts No. 120 and No. 130 to avoid curtailment.

7. Despite IGWA's request for flexibility in determining the source of water from which replacement water will be provided, the Director should determine an order of source preference for recognizing credit for replacement water. The order of preference is determined by the magnitude of the deficiencies identified in the findings of fact, the estimated time within which the deficiencies can be corrected, and the ease of monitoring the delivery of the replacement water. The sources of replacement water in order of preference are: storage water, FMC leased water, dry-year leases, natural flow leases and associated exchanges for storage, and credit for other mitigation activities.

ORDER

The Director enters the following Order for the reasons stated in the foregoing Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED as follows:

1. That IGWA's one-year proposal to provide replacement water will provide the necessary reach gains during the 2005 irrigation season and is **APPROVED** provided IGWA submits information in the following order of preference until a total of 27,700 acre-feet has been secured to provide replacement water to the Coalition. Rearrangement of all or a portion of the order of preference must be justified in writing by increases in the magnitude of present deficiencies, increases in the time within which assigned tasks can be accomplished, or increases in the difficulty of accomplishing the tasks.

2. IGWA must submit the following:

a. Documentation 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.

b. Documentation 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.

c. Documentation about the dry-year leases as follows:

i. Copies of contracts with the current owners of the water rights leased;

ii. Original change of ownership documents for any new owners of the leased water rights accompanied by the appropriate change of ownership filing fees;

iii. Information reconciling the discrepancies and inconsistencies between flow rate, acreage irrigated, and total volume of consumptive use foregone, as discussed in Finding 40;

iv. Identification of the lands described as a place of use that will be dried up within each 40-acre parcel; and

v. Aerial imagery and sworn statement that the lands described by the dry-year lease water rights were irrigated in 2004 or have been continuously and uninterruptedly not been irrigated for multiple years because of a mitigation plan already approved by the Department.

d. Documentation about high lift water rights and exchanges as follows:

i. Copies of executed contracts to lease water rights authorizing diversion from Snake River natural flow; and

ii. An approved exchange of water rights authorizing the exchange of water rights authorizing diversion of Snake River natural flow, and leased by IGWA, with storage water held by the USBR physically deliverable between Near Blackfoot and Minidoka.

3. The exchange must be approved under Idaho Code § 42-240 or as a temporary exchange under Idaho Code § 42-222A. Any temporary exchange must be preceded by a drought declaration for all the counties in which water will be diverted or left in the Snake River pursuant to the exchange.

4. Technical information regarding the reach gains to the Snake River between Near Blackfoot and Minidoka resulting from mitigation efforts that overlap the proposals by IGWA, or resulting in reach gains in 2005 from past mitigation efforts.

IT IS FURTHER ORDERED that information required by this order must be submitted by May 23, 2005, to fully remedy deficiencies identified in this order for at least 27,700 acre-feet of replacement water. Any request for extension of time of this deadline will be approved by the Director only upon a showing of good cause.

IT IS FURTHER ORDERED that failure to submit the information curing deficiencies for 27,700 acre-feet of replacement water on or before the due date will result in immediate curtailment consistent with the Director's Amended Order issued on May 2, 2005.

IT IS FURTHER ORDERED that any replacement water provided by the above instructions in excess of the 27,700 acre-feet will be credited toward the 101,000 acre-feet owed for 2005.

IT IS FURTHER ORDERED that pursuant to Department Rule of Procedure 710, IDAPA 37.01.01.710, this is an interlocutory order and is not subject to review by reconsideration or appeal. The Director may review this interlocutory order pursuant to Rule 711, IDAPA 37.01.01.711.

DATED this 6TH day of May 2005.

KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of May, 2005, the above and foregoing, was served by the method indicated below, and addressed to the following:

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