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 (Water Districts No. 120 and No. 130)	)	**FOURTH SUPPLEMENTAL ORDER ON REPLACEMENT WATER REQUIREMENTS FOR 2005**

On June 29, 2006, the Director of the Department of Water Resources ("Director" or "Department") issued his *Third Supplemental Order Amending Replacement Water Requirements Final 2005 & Estimated 2006*. The Order of June 29, 2006 (herein referred to as the "June 29 Order"), required that by July 9, 2006, the North Snake, Magic Valley, Aberdeen-American Falls, Bingham, and Bonneville-Jefferson ground water districts, or the Idaho Ground Water Appropriators, Inc. ("IGWA") on behalf of the ground water districts, provide the remaining 27,006 acre-feet of minimum replacement water required to mitigate material injury in 2005 to water rights held by the Twin Falls Canal Company caused by the diversion and use of junior-priority ground water rights. On Friday, July 7, 2006, counsel for IGWA contacted counsel for the Department and described IGWA's intent to conditionally comply with the June 29 Order.

Because July 9, 2006, fell on a Sunday, provision of the replacement water became due on Monday July 10, 2006. *See* Rule 56 of the Department's Rules of Procedure, IDAPA 37.01.056. On Monday, July 10, 2006, IGWA hand delivered a letter to the Director stating that, under protest, IGWA would provide the required remaining replacement water from a combination of lease of natural flow through the water bank, rental of storage water from the Water District 01 rental pool, and several private leases of storage water in Water District 01. The IGWA letter of July 10, 2006 (herein referred to as the "July 10 IGWA Letter"), authorized the Director to retrieve water from the listed sources and "deliver or credit to Twin Falls Canal Company a total of 27,006 acre-feet of water." A copy of the July 10 IGWA Letter is attached to this Order as Attachment A.

Based on the foregoing, the Director enters the following Findings of Fact, Conclusions of Law, and Order, which supplement the June 29 Order and amend the quantity of the remaining minimum replacement water required by the June 29 Order.

FINDINGS OF FACT

1. On June 29, 2006, the Director issued his *Third Supplemental Order Amending Replacement Water Requirements Final 2005 & Estimated 2006*, the June 29 Order.

2. The June 29 Order required that, by July 9, 2006, the North Snake, Magic Valley, Aberdeen-American Falls, Bingham, and Bonneville-Jefferson ground water districts, or IGWA on behalf of the ground water districts, provide the remaining 27,006 acre-feet of minimum replacement water required to mitigate material injury in 2005 to water rights held by the Twin Falls Canal Company caused by the diversion and use of ground water rights having priority dates of or later than May 23, 1979.

3. On Monday, July 10, 2006, IGWA hand delivered a letter to the Director, the July 10 IGWA Letter, stating that, under protest, IGWA would provide the 27,006 acre-feet of remaining replacement water from a combination of lease of natural flow through the water bank, rental of storage water from the Water District 01 rental pool, and several private leases of storage water in Water District 01.

4. The July 10 IGWA Letter authorized the Director to retrieve water from the sources listed in Finding 3 and "deliver or credit to Twin Falls Canal Company a total of 27,006 acre-feet of water." A copy of the July 10 IGWA Letter is attached to this Order as Attachment A.

5. Finding 29 of the June 29 Order stated that: "Using the Department's water right accounting program, it was determined that of the 6,024 acre-feet of reach gain (8.32 cfs for 365 days) from the non-use of ground water under water rights held by FMC Idaho [FMC Idaho, L.L.C.], which rights were leased [by IGWA] through the water bank operated by the Idaho Water Resource Board, a total of 694 acre-feet of the reach gain resulting from the lease was [distributed] to the Twin Falls Canal Company, the only member of the Surface Water Coalition receiving the reach gain during the irrigation season."

6. The remaining 27,006 acre-feet of minimum replacement water required to mitigate material injury in 2005 to water rights held by the Twin Falls Canal Company equaled the 27,700 acre-feet of minimum replacement water required by the Director's order issued on April 19, 2005, *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*, as amended on May 2, 2005, less the 694 acre-feet of reach gain provided to the Twin Falls Canal Company in 2005, as described in Finding 5.

7. The 694 acre-feet of reach gain provided to the Twin Falls Canal Company in 2005 through the water bank lease described in Finding 5 is the amount of storage credited to the Twin Falls Canal Company to offset the diversion and use of the natural flow leased by IGWA by entities other than the Twin Falls Canal Company, based on parallel runs using the Department's water right accounting program with and without the 8.32 cfs of natural flow resulting from the non-use of ground water rights held by FMC Idaho.

8. The 694 acre-feet of replacement water in 2005 credited to IGWA on behalf of the North Snake, Magic Valley, Aberdeen-American Falls, Bingham, and Bonneville-Jefferson ground water districts incorrectly excluded a credit of 1,133 acre-feet for the reduction in the amount of storage water used by the Twin Falls Canal Company in 2005 because of the lease by IGWA of ground water rights held and not used by FMC Idaho.

9. The total credit to IGWA on behalf of the North Snake, Magic Valley, Aberdeen-American Falls, Bingham, and Bonneville-Jefferson ground water districts for the lease and non-use of ground water rights held by FMC Idaho should have been 1,827 acre-feet, not 694 acre-feet. Thus, the remaining amount of minimum replacement water required to mitigate material injury in 2005 to water rights held by the Twin Falls Canal Company should have been 25,873 acre-feet, not 27,006 acre-feet.

10. The July 10 IGWA Letter identifies the continuing lease and non-use of ground water rights held by FMC Idaho, resulting in increased reach gains or natural flow, as a source for a portion of the remaining amount of minimum replacement water required to be provided in 2006. Since the amount of credit for this lease of natural flow in 2006 can not be precisely determined until the final 2006 water rights accounting is completed in late February or early March of 2007, a preliminary credit of 1,827 acre-feet, equal to the final 2005 credit, is reasonable for the 2006 lease and non-use of the ground water rights held by FMC Idaho.

11. The July 10 IGWA Letter also identifies 5,000 acre-feet of storage water rented by IGWA from the Water District 01 rental pool as a source for a portion of the remaining amount of minimum replacement water required to be provided in 2006. This rented storage water can be made immediately available to the Twin Falls Canal Company pursuant to the authorization described in Finding 4.

12. The July 10 IGWA Letter also identifies additional amounts of storage water leased by IGWA through private leases with FMC Idaho[1], Mitigation, Inc., and the Aberdeen-Springfield Canal Company as additional sources for the remaining portion of the minimum amount of replacement water required to be provided in 2006. So that the leased storage water offered by IGWA can be distributed to the Twin Falls Canal Company, the private leases must be submitted to the Water District 01 rental pool pursuant to procedures adopted by the local rental pool committee (the Committee of Nine) and subsequently approved by the Idaho Water Resource Board. A copy of the approved rental pool procedures is attached to this order as Attachment B, excluding Table 1 described in Water District 01 Rental Pool Procedure 3.10, which is not pertinent to the distribution of storage water leased by IGWA.

13. Until IGWA has submitted the offered private lease of storage water from Mitigation, Inc. to the Water District 01 rental pool and documented how much storage water is available under that lease, the Director cannot determine the amount of storage water available to satisfy the remaining portion of the minimum amount of replacement water required to be provided in 2006.

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[1] The July 10 IGWA Letter identifies the lease of 5,000 acre-feet of water from storage space held by FMC Idaho in Palisades Reservoir. Although storage rights in Palisades Reservoir were completely filled in 2006, flood control releases by the U. S. Bureau of Reclamation subsequent to storage rights being filled reduced the storage allocated to FMC Idaho to 4,674 acre-feet.

CONCLUSIONS OF LAW

1. Idaho Code § 42-1762 directs the Idaho Water Resource Board to promulgate "rules and regulations governing the management, control, delivery and use and distribution of water to and from the water supply bank in compliance with chapter 52, title 67, Idaho Code." The statutes governing the water supply bank are at Idaho Code §§ 42-1761 through 42-1766.

2. The Idaho Water Resource Board promulgated Water Supply Bank Rules, IDAPA 37.02.03, pursuant to Idaho Code § 42-1762, which rules provide for the appointment of local rental pool committees and the adoption and approval of rental pool procedures for storage water.

3. The Idaho Water Resource Board has appointed the Committee of Nine, the advisory committee for Water District 01, as the local rental pool committee for the Water District 01 rental pool and has approved rental pool procedures adopted by the Committee of Nine.

4. Pursuant to the approved rental pool procedures for Water District 01, IGWA has rented 5,000 acre-feet of storage water from spaceholders who have agreed to supply water to the Water District 01 rental pool, which water is immediately available to be supplied to the Twin Falls Canal Company.

5. The approved rental pool procedures for Water District 01 require that private leases for storage water in Water District 01 be submitted to and processed through the Water District 01 rental pool for accounting purposes, and that such private leases are subject to established administration fees and surcharges by the Idaho Water Resource Board (*see* Water District 01 Rental Pool Procedure 1.9).

6. Although IGWA has submitted documentation indicating that it has secured sufficient amounts of water to satisfy the obligations of the North Snake, Magic Valley, Aberdeen-American Falls, Bingham, and Bonneville-Jefferson ground water districts to provide the remaining amount of replacement water required to mitigate material injury in 2005 to water rights held by the Twin Falls Canal Company caused by the diversion and use of junior-priority ground water rights, most of the water is storage water secured through private leases that need to be submitted to and processed through the Water District 01 rental pool to enable distribution of the required amount of storage water to the Twin Falls Canal Company.

7. Once IGWA submits its private leases for storage water in Water District 01 to the Water District 01 rental pool, water pursuant to those leases will be available for distribution to the Twin Falls Canal Company to mitigate material injury in 2005 to water rights held by the Twin Falls Canal Company caused by the diversion and use of junior-priority ground water rights.

8. Once IGWA submits its private lease for storage water from Mitigation, Inc. to the Water District 01 rental pool and documents how much storage water is available, the remaining storage water available under that private lease can be determined and accounted for.

9. The amount of remaining replacement water required in 2006 for material injury in 2005 to water rights held by the Twin Falls Canal Company should be reduced from 27,006 acre-feet, as set forth in the June 29 Order, to 25,873 acre-feet to properly credit IGWA, and the ground water districts it represents, for the reduction in storage water use by the Twin Falls Canal Company in 2005 resulting from the lease and non-use of ground water rights held by FMC Idaho.

10. Because IGWA has continued to lease the incremental increase in natural flow resulting from the non-use of ground water rights held by FMC Idaho for the benefit of the Twin Falls Canal Company, IGWA should be given a credit in 2006 equal to the credit determined from the final water rights accounting in 2005 using the Department's water rights accounting program (694 acre-feet plus 1,133 acre-feet for a total of 1,827 acre-feet) pending final water rights accounting for 2006.

11. The Director should order the immediate transfer of 5,000 acre-feet of storage water rented by IGWA from the Water District 01 rental pool to the Twin Falls Canal Company.

12. The Director should order that the remainder of the remaining minimum replacement water offered by IGWA to meet the obligation imposed and due to the Twin Falls Canal Company in 2006 for material injury incurred by the Twin Falls Canal Company in 2005 (25,873 acre-feet less 1,827 acre-feet from the 2006 natural flow lease from FMC Idaho less 5,000 acre-feet from the Water District 01 rental pool in 2006, or 19,046 acre-feet) be distributed by Friday, July 21, 2006, through whichever of the private leases secured by IGWA that IGWA would choose to utilize.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED as follows:

1. The amount of replacement water remaining to be provided in 2006, as required by the June 29 Order, by the North Snake, Magic Valley, Aberdeen-American Falls, Bingham, and Bonneville-Jefferson ground water districts, or by IGWA on behalf of the ground water districts, to mitigate material injury in 2005 caused by the diversion and use of ground water under water rights junior in priority to water rights held by the Twin Falls Canal Company is corrected from 27,006 acre-feet to 25,873 acre-feet. The reduction of 1,133 acre-feet is made to account for the reduction in storage water used by the Twin Falls Canal Company in 2005 resulting from the lease by IGWA to the Twin Falls Canal Company of ground water rights held and not used by FMC Idaho.

2. The watermaster for Water District 01 is instructed to immediately transfer the 5,000 acre-feet of storage water rented by IGWA on behalf of the ground water districts from the Water District 01 rental pool to the storage account of the Twin Falls Canal Company.

3. On or before July 21, 2006, IGWA on behalf of the North Snake, Magic Valley, Aberdeen-American Falls, Bingham, and Bonneville-Jefferson ground water districts must place a minimum of 19,046 acre-feet of storage water into the Water District 01 rental pool through its private leases with FMC Idaho, Mitigation, Inc., and the Aberdeen-Springfield Canal Company, and pay established administration fees and surcharges of the Idaho Water Resource Board pursuant to the rental pool procedures adopted by the Committee of Nine and approved by the Idaho Water Resource Board. Once the require 19,046 acre-feet of storage water is placed into the Water District 01 rental pool, the watermaster for Water District 01 is to immediately transfer the water provided to the Twin Falls Canal Company.

4. If IGWA on behalf of the North Snake, Magic Valley, Aberdeen-American Falls, Bingham, and Bonneville-Jefferson ground water districts fails to submit a sufficient amount of storage water to the Water District 01 rental pool, which IGWA offered through its private leases, such that the remaining 19,046 acre-feet of water due from 2005 can be distributed to the Twin Falls Canal Company, then ground water rights in Water District No. 120 and No. 130 shall be curtailed to the extent necessary, beginning with the latest priority, to provide the remaining replacement water.

5. All other provisions of the June 29 Order remain in effect including that the Director will continue to monitor water supply and climatic conditions through the 2006 irrigation season and issue additional orders requiring additional replacement water in 2006 or further instructions to the watermasters for Water District No. 120, No. 130, and 01 should material injury occur to rights held by or for the benefit of members of the Surface Water Coalition, including the Twin Falls Canal Company.

DATED this 17th day of July, 2006.

KARL J. DREHER
Director

ATTACHMENT A

RECEIVED
JUL 10 2006
DEPARTMENT OF WATER RESOURCES

IDAHO GROUND WATER APPROPRIATORS, INC.

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Phone: 208.381.0294
Fax: 208.344.8585

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2957 Deeg Road
American Falls, ID 83211

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GWD Members:
Aberdeen American Falls GWD
Bingham GWD
Bonneville-Jefferson GWD
Madison GWD
Magic Valley GWD
North Snake GWD
South West ID
City Members:
City of American Falls
City of Blackfoot
City of Chubbuck
City of Heyburn
City of Jerome
City of Paul
City of Post Falls
City of Rupert
Business Members:
Busch Agricultural
Jerome Cheese
United Water of Idaho

July 10, 2006

Via Hand Delivery

Mr. Karl J. Dreher
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Re: Provision of 27,006 acre-feet pursuant to June 29, 2006 Order in the Surface Water Coalition's Delivery Call

Dear Karl:

The Idaho Ground Water Appropriators, Inc., on behalf of North Snake, Magic Valley, Madison, Aberdeen-American Falls, Bingham, and Bonneville-Jefferson Ground Water Districts, sends this letter to comply in full with your June 29, 2006 Third Supplemental Order Amending Replacement Water Requirements ("June 29 Order") to provide you with 27,006 acre-feet of water to disperse for the benefit of Twin Falls Canal Company ("TFCC") to compensate it for alleged material injury to its natural flow water rights in 2005.[1] The June 29 Order was issued on an emergency, pre-hearing basis. For several reasons, we disagree that TFCC suffered such injury. We list some of these reasons below to underscore our request that you assure that this water is tendered subject to the outcome of the hearing in this matter. We provide this water "under protest," and will expect it to be reimbursed to IGWA or its member Ground Water Districts to the extent it is shown that TFCC in fact had less than the injury you found.

[1] The June 29 Order specified July 9 as the date to provide this replacement water. Because that day is a Sunday, we are providing this today, the next business day. We believe this comports with Rule 56, IDWR Rules of Procedure, IDAPA 37.01.01.056.

Pursuant to these conditions, this is your authorization to retrieve from the following sources and accounts and deliver or credit to Twin Falls Canal Company a total of 27,006 acre-feet of water. The water should be withdrawn from, or credited based upon, the following accounts and in the order listed. As to each source, I list in parentheses the amounts of actual delivery to TFCC that we assume will occur; however, I recognize the actual amounts may vary according to your accounting. We will expect a written accounting from you as to what these amounts were. IGWA's entitlement to water from each of these sources is supported by a binding lease, and I have attached a copy of each for your information.

1. All natural flow accruing from IGWA's lease of the FMC Corporation ground water right (at least 3,514 acre-feet).[2]

2. All storage water accrued from IGWA's lease of the FMC 5,000 acre-feet of storage in Palisades Reservoir.

3. All storage water IGWA has rented in 2006 from the Water District 01 Rental Pool (5,000 acre-feet to date).

4. Storage water from IGWA's lease with Mitigation, Inc., necessary to supply the balance (IGWA believes there to be approximately 15,000 af still in this account from the 37,000 af originally leased).

5. If the above amounts together are insufficient, you are authorized to use that amount of storage water from IGWA's lease with Aberdeen-Springfield Canal Co., Inc. necessary to bring the total to the 27,006 acre-feet (20,000 acre-feet).

As noted above, IGWA, on behalf of its Ground Water District members, is complying with your June 29 Order under protest and subject to the final outcome of this contested case. We respectfully disagree that TFCC suffered any injury in 2005, and we intend to provide evidence at the upcoming hearing in this matter to demonstrate this. We provide this replacement water with the expectation that, in disbursing it to TFCC, you will take appropriate steps to ensure that, should the amount of replacement be shown to be less than 27,006 acre-feet, IGWA will be reimbursed or otherwise fully compensated for any amount provided that was not required to compensate for actual material injury.

[2] We calculate this as follows: According to the June 29 Order, the lease results in natural flow reach gains in the near-Blackfoot to Minidoka reach of 6,024 acre-feet each year that are available to TFCC's senior natural flow water right. Assuming TFCC is entitled to divert natural flows from April through October, the lease would make 3,514 acre-feet available for diversion (6,024 x 7/12) to TFCC during the irrigation season, and TFCC would be in a position to divert this ahead of any other right holder in this river reach.

There are several reasons we believe TFCC did not suffer any injury in 2005, none of which appear to have been considered in reaching the conclusions in your June 29 Order. Some of these are:

- TFCC's decree limits its natural flow water right, or at least the right for which it might place a delivery call, to five-eights miner's inches per acre. Both TFCC and the June 29 Order (and previous orders in this case) appear to base calculations of injury on an assumed entitlement of three-quarters inch.

- TFCC's decree also requires the company to implement a rotation of water use among its shareholders, a requirement that will improve efficiency and lessen the need for delivery calls. We believe this is not being done and that, if it were, it would significantly change your material injury calculations.

- We believe TFCC actually irrigates significantly fewer acres than those it has claimed. It is not entitled to seek or obtain curtailment of water rights, or the provision of replacement water, to support diversions to acres that are not irrigated. Like the previous orders, the June 29 Order assumes TFCC needs and is entitled to diversions to satisfy all its claimed acres. The 27,006 acre-feet involved here is about 2.5% of what you have determined to be TFCC's minimum full supply. This would be more than accounted for in even a 5,000-acre discrepancy between the approximately 198,000 acres TFCC claims and the acres actually irrigated. We believe this discrepancy, and more, exists.

- TFCC's actual diversion behavior in 2005 also indicates that it experienced no shortage of natural flow when and as needed. This is because TFCC allowed other natural flow water rights to divert ahead of it during large portions of the irrigation season even though these other rights are junior to TFCC's priorities.

- Your May 2 Order in this matter specifies that replacement water debits and credits accruing to any member of the Surface Water Coalition will be cancelled if the member's storage space fills in any year. Because such fill has occurred in 2005 and 2006, we believe that there can be no basis for carrying a 2005 obligation into 2006.

We look forward to hearing from you on your accounting of the 27,006 acre-feet being provided by this letter. If you have any questions please contact me or IGWA's general counsel listed below.

Very truly yours,

Lynn Tominaga

Lynn Tominaga, Executive Director

Encl: Leases
cc: Attached Service List
Lyle Swank, WD01 Rental Pool Manager
Jeffrey C. Fereday
Michael C. Creamer
Timothy P. Deeg
Dr. Charles M. Brendecke
Randall C. Budge, IGWA General Counsel
IGWA Board of Directors

ATTACHMENT B

WATER DISTRICT 1

RENTAL POOL PROCEDURES

RULE 1. AUTHORITY AND STATEMENT OF PURPOSE.

1.1. These procedures have been adopted by the Committee of Nine of Water District 1 pursuant to Section 42-1765, Idaho Code, to assure the orderly operation of the Water District 1 Rental Pool. Under no circumstances shall these procedures be interpreted or construed to limit the authority of the director of the Department of Water Resources, the Water Resource Board, or the Snake River Watermaster in discharging their duties as set forth in the statutes of the state of Idaho and rules and the regulations promulgated thereto.

1.2. The purpose of these procedures is to provide:

A. The rules by which the Committee of Nine, acting under the authority of the appointment of the Committee of Nine by the Water Resource Board, as a local operating committee, will make stored water available through the Rental Pool.

B. A process, which complies with the Idaho Code and the Water Bank Rules of the Idaho Water Resource Board, by which stored water supplies will be made available by spaceholders for rental through the Water District 1 Rental Pool.

C. Incentives to storage space holders to participate in three after-the-fact rental processes established by these procedures: (1) The allocation of storage defined in these procedures as "late season fill" as the water supply made available for certain storage rentals made previously by the Committee during the irrigation season; (2) making spaceholder's space and water accruing thereto available to the rental pool for other users and uses through private leases and (3) making spaceholder's space and water accruing thereto available to the rental pool for other users and uses through specific assignments of water to the rental pool.

D. Expanded opportunities for all spaceholders to participate in and benefit from the proceeds of the Rental Pool.

E. Priorities for selecting between competing rental applications during times of water scarcity.

F. Funding for the Committee of Nine on behalf of spaceholders to defray costs in the operation of its rental pool, for making improvements in distribution facilities and improving efficiency in the distribution of water within Water District 1, for defending attacks from third parties on spaceholder's water rights, and in defending against challenges that might reduce state and private control and use of water resources in Idaho.

G. Controls, priorities and safeguards to insure that existing water rights are not injured and that an adequate supply of stored water may be obtained on a voluntary basis from available supplies for the stated needs set forth in these procedures.

1.3. All spaceholders will have an opportunity to participate in the monetary benefits of the Rental Pool. These procedures are designed to assure that spaceholders will have first priority in acquiring storage from the rental pool while making provisions which will provide the BOR an opportunity to provide water for flow augmentation.

1.4. All spaceholders who agree to participate in the Rental Pool will be considered to be suppliers to the Water District 1 Rental Pool of the Committee of Nine for the rental of water (to the extent the spaceholder has storage) for flow augmentation; will be a supplier of late-season fill water available to the Rental Pool; and will be able to be full participants in all benefits of the Rental Pool described in these Procedures. Spaceholders who choose to participate in the Rental Pool are deemed to be a voluntary participant of the Rental Pool for each and every year thereafter unless a spaceholder advises the Watermaster prior to February 1 of any given year that he wishes to "opt out". Spaceholders who opt out are not participants (either as suppliers or renters) unless they subsequently decide to participate by opting into the rental pool. Any non-participating spaceholder may "opt in" as a Rental Pool participant if he does so prior to February 1 of any year. Anyone opting in will not be eligible to receive a monetary payment for rentals or impacts that took place the previous year. Anyone who opts in will be eligible for all of the participation benefits of the Rental Pool beginning the year he opts in. If after February 1 of any year, less than seventy-five percent (75%) of the contracted storage space is committed to the rental pool by participating spaceholders, the Committee of Nine will revise the rental pool procedures as determined to be necessary prior to April 1.

1.5. All participating spaceholders will receive payment for water rented from the rental pool from the late season fill using an after the fact process during the current irrigation year based upon the amount of space they own in a water storage reservoir or reservoirs and distributed within Water District 1. These procedures anticipate that those spaceholders who choose to participate in the Rental Pool will generally be paid for water rented during the previous irrigation season according to the following payment distribution formula:

$$P = \left(\frac{R \times SP/TSP}{2} + \frac{R \times ST/TST}{2} \right)$$

Where: P = Payment to Participating Spaceholder
R = 70% of Net Proceeds from rental of late season fill
SP = Space of Participating Spaceholder
ST = Storage water of Participating Spaceholder
TSP = Total Space in System
TST = Total Storage in System

Because the Watermaster must determine ST (each spaceholder's current allocation), payments cannot be made to participating spaceholders until the Watermaster has computed final water distribution data for the year. Final storage allocation data will not be available for approximately nine (9) months after the end of the current irrigation year, or up to 18 months after the rental water was used. Therefore, payments made to impacted spaceholders will initially be based on preliminary data. Adjustments to impacted payments will be made after the final accounting has been completed at the end of the irrigation season.

1.6. If the reservoirs do not fill, each participating spaceholder will be paid for water leased through the rental pool the previous year based upon the extent to which the spaceholder's storage is found to have been impacted in the current year from the past year's rental activities. Those participating spaceholders found to have been impacted shall be paid from the remaining 30% of the proceeds from the net rentals, as described in rule 3.6 & 7.2 below.

1.7. In any year when the water rights for the surface water storage facilities distributed by Water District 1 do not fill, the Watermaster will determine, using a procedure developed by Water District 01, unless disapproved by the *Director: (1) what the fill would have been had the previous year's rentals not* taken place, (2) the storage space from which rental water was actually supplied for the previous year's rentals and (3) the amount of water each spaceholder's current allocation was reduced by the previous year's rental activities. Impacted spaceholders (who's space actually ended up suppling the water) will be paid, at the rate established in rule 3.6 below.

1.8. In addition to the late season fill using an after-the-fact method of leasing described herein, a spaceholder may assign additional water for agricultural rentals or recharge. If refill of the storage system does not occur the following year and the additional rentals caused impacts as determined by the procedures developed by Water District 01, unless disapproved by the Director, then the assigning spaceholder's subsequent year's storage allocation shall be reduced by an amount equal to such impacts and that portion of his accrual will be reallocated to mitigate the impacts. One hundred percent (100%) of the rental price shall be paid to the assignor, less all established administrative fees and Board surcharges.

1.9. Spaceholders may also enter into private leases, either within a system or between systems, for agricultural purposes above Milner. The lease price may be different from the current rental price. One hundred percent (100%) of the lease price shall be paid to the Lessors less all established administration fees and Board surcharges. If refill of the storage system does not occur the following year and private leases caused impacts determined by the procedures developed by Water District 01, unless disapproved by the Director, then the lessor's subsequent year's storage allocation shall be reduced by an amount equal to such impacts.

RULE 2. DEFINITIONS.

2.1 ACRE-FOOT - a volume of water sufficient to cover one acre of land one foot deep and is equal to 43,560 cubic feet.

2.2. ALLOCATION – the amount of stored water of a spaceholder, including carryover, that has accrued to a spaceholder's storage space on the date of allocation of stored water and will be available for the spaceholder's use during the year of allocation.

2.3. ANNUAL - refers to the Water District 1 accounting year. The period starting November 1 and ending October 31 of the succeeding calendar year.

2.4. APPLICANT – any person who seeks to rent storage water from the Rental Pool by submitting a written request to rent storage water, accompanied by the required cash deposit.

2.5. ASSIGNOR – a spaceholder who has assigned storage to the Rental Pool pursuant to these procedures.

2.6. BOARD - the Idaho Water Resource Board.

2.7. BUREAU - the Bureau of Reclamation, Department of the Interior, United States of America, or USBR.

2.8. COMMITTEE - the Committee of Nine, the advisory committee selected by Water District 1 at their annual meeting, and appointed as the local committee by the Board pursuant to I.C. §42-1765.

2.9. DEPARTMENT - the Idaho Department of Water Resources or IDWR.

2.10. DIRECTOR - the director of the IDWR.

2.11 DISTRICT - Snake River Water District 1 of the State of Idaho.

2.12 IMPACT FUND - The fund created by these procedures from a portion of certain rental receipts described in rule 1.6 above, held by the district for the benefit of the Committee for payment to spaceholders who have been impacted by past rentals of water.

2.13. LATE SEASON FILL –Additional storage that accrues after the date of allocation of storage in the year water is to be rented, and before the date of allocation of storage in the following year.

2.14. LEASE - a written agreement through which the watermaster is authorized to deliver storage rented from the Rental Pool to a point of diversion located in Water District 1.

2.15 LESSEE – person who leases from Committee or spaceholder.

2.16 LESSOR – Committee or Spaceholder who leases stored water to a Lessee.

2.17 MILNER - Milner Dam on the Snake River.

2.18 NET PROCEEDS - Rental Price per acre foot times the number of acre feet rented from late season fill.

2.19. PERSON - any individual, corporation, partnership, irrigation district, canal company, political subdivision or governmental agency.

2.20. RENT or RENTAL – act of leasing water from the Rental Pool.

2.21. RENTAL POOL – either the rental process established through actions of the Committee of Nine, the Board and these procedures or, the water supply that has been made available for lease or rental to other water users through a

signed rental agreement that has been approved by the Watermaster pursuant to these procedures.

2.22. RENTAL POOL COMMITTEE - A sub-committee composed of the Water District 1 Watermaster, a designated representative from the Bureau of Reclamation and three or more members or alternates of the Committee of Nine who have been appointed by the Chairman of the Committee of Nine to serve on the Rental Pool Committee.

2.23. RENTAL PRICE – The price for each acre-foot of water rented as established by the Committee and approved by the Board for the current year, excluding the District's $.80 administrative fees and the Board's 10% surcharge.

2.24. RENTER – lessee of stored water.

2.25. RESERVOIR SYSTEM CAPACITY – Useable reservoir system capacity for the reservoirs delivering water to the Water District 1 area, which has been determined to currently be 4,172,708 acre-feet.

2.26. SPACE - all or any portion of the active impoundment volume of a reservoir measured in acre-feet.

2.27. SPACEHOLDER – the person who holds the contractual right to the water stored in the space of a storage facility allocated to that person and distributed by the Watermaster of Water District 1.

2.28. STORAGE - the portion of the available space that contains stored water.

2.29. WATERMASTER - the watermaster of Water District 1.

2.30. WATER SUPPLY FORECAST – A forecasted unregulated runoff for the April 1 to September 30th time period at the Heise USGS gaging station.

RULE 3. GENERAL PROCEDURES.

3.1. It is the policy of the water users of Water District 1 and the Committee to operate the rental pool to achieve the maximum beneficial use of available surplus stored water.

3.2. The primary purpose in the operation of the rental pool will be to provide irrigation water to Spaceholders within Water District 1. These procedures are designed to assure that stored water made available through these procedures will not impact the allocation of any spaceholder without his consent or without his being made whole as far as possible. These procedures

were developed to assure that an impacted spaceholder will be compensated to the extent the actual impact can be determined by the procedures developed by Water District 01, unless disapproved by the Director. It is the intent of the Committee that these procedures provide an adequate mechanisms to assure that additional storage is made available to renters while assuring that the storage water rights and water allocations of others are not adversely impacted by these procedures.

3.3. The operation of the rental pool shall in no way recognize any obligation to maintain flows below Milner Dam or to assure the minimum stream flows established at the USGS gaging station on the Snake River near Murphy.

3.4. The operation of the rental pool shall be consistent with the statutes creating the Water Supply Bank, the rules and regulations of the Board, and the relevant provisions of the spaceholder's contracts with the United States.

3.5. Storage water available to the rental pool will be from those spaceholders who choose to participate and have submitted written notice of participation to the Watermaster's office in Idaho Falls. Unless specified otherwise an agreement to participate will be assumed to be effective until rescinded by the spaceholder. Any monies disbursed pursuant to these procedures will be limited to those who were participating spaceholders when the rental occurred.

3.6. Payments to participating spaceholders whose allocation was found to have been impacted in the current year by the rental of storage the previous year, will be made on or before July 15 of the current year. Payments shall be made *from the impact fund created by these procedures. The amount of the payment* shall be the current rental price for water used for agricultural purposes that would apply to any renter seeking water in the current year up to the number of acre feet impacted. However, impact payments in any one year shall not be greater than the participating spaceholder's pro-rata share of up to fifty percent (50%) of the impact fund, as determined by the formula set forth in Rule 7.2 below.

3.7. Should a non-participating spaceholder be impacted by the previous year's water rentals, sufficient water will be provided by increasing his allocation of storage in an amount equal to the impact through after-the-fact (end-of-the-year) accounting by adding the impacts of non-participating spaceholders proportionately to the impacts of participating spaceholders to eliminate the computed impact.

3.8. The Rental Pool Committee shall meet prior to July 1 of each year, evaluate the water supply situation and recommend to the Committee the amount of storage that will be made available through the rental pool for that year in

excess of the amount established by Table 1 plus 55,000 acre-feet. The Committee of Nine will consider the Rental Pool Committee's recommendation in determining the amount of water that will be available to renters located above Milner. The amount of water for flow Augmentation shall be the amount of storage determined through the use of Figure 1 of Rule 3.10, unless it is determined by the Committee of Nine on or before July 1 of any year that extraordinary precipitation has occurred since the April 1 forecast which was not anticipated and which would substantially increase the storage in Water District 1 and would justify a determination by the Committee of Nine that a specific amount of storage will be available through the rental pool for flow augmentation for that year, notwithstanding Figure 1 of Rule 3.10. The amount available for uses above Milner shall not be more than 55,000 acre-feet unless the rental requests made by those spaceholders impacted from the previous year's rentals exceed 50,000 acre-feet, such requests have been approved and no water has been assigned to the Rental Pool to meet such additional requests. In this case the minimum amount of water that will be available through the Rental Pool will be which ever is greater, the 50,000 acre-feet reserved for irrigation above Milner, or the amount of storage necessary to meet the demand of those shown to have been impacted by the previous year's rentals. Should impacted spaceholders request water after the 50,000 acre feet of storage reserved for irrigation has been leased, the Committee of Nine will meet and determine the amount of additional water that will be necessary to meet the requests of impacted spaceholders. Should additional water be deemed to be necessary, any participating spaceholder may elect to not participate in providing such additional water.

3.9 Two-party stored water leases within Water District 1, shall be transacted through the Water District 1 Rental Pool and shall be approved as to form by the Watermaster. Leases of storage by a spaceholder entity shall not count against the storage rental volume set by these procedures but shall be used in computing impacts the following year. Two-party leases shall not apply to deliveries for power generation or flow augmentation. Impacts will be provided with water as provided by Rule 1.9.

3.10 SEE TABLE 1 ATTACHED

RULE 4. MANAGEMENT.

4.1 The Rental Pool shall be operated pursuant to Idaho Code, Section 42-1761 through 42-1766, in accordance with these procedures.

4.2. A sub-committee of the Committee of Nine, known as the Rental Pool Committee, shall have the following general responsibilities:

A. To recommend needed changes in the general procedures regarding annual storage rentals.

B. To review these procedures and make recommendations to the Committee for necessary changes.

C. To advise the Committee of Nine on storage rental activities.

D. To develop recommendations for the annual Rental Pool supplies and rental rates.

E. To review monthly reports from the Watermaster as to applications, approvals and other similar rental pool items.

F. To assist the Watermaster in resolving disputes that may arise from the diversion of storage in excess of a storage lease or other storage entitlement.

4.3. The Watermaster shall manage the rental pool. The determination of impacts and those entitled to payment shall be based solely upon these procedures. The manager's authority shall include accepting water into the rental pool, executing rental agreements on behalf of the Committee of Nine, disbursing and investing funds generated through the rental of stored water with the advice and consent of the Rental Pool Committee, and distribution of water supplies from the rental pool. All funds invested shall be considered public funds for investment purposes and subject to the Public Depository Law, Chapter 1, Title 57, Idaho Code. The Committee of Nine, by resolution may assign specific responsibilities not covered in these procedures to the Rental Pool Committee.

RULE 5. PRIORITIES FOR RENTING WATER.

5.1 These procedures are intended to assure that spaceholders have the first priority in acquiring supplemental storage supplies from the Rental Pool. Priorities for renting water, other than for flow augmentation described in Rule 3.7 above, shall be as follows: (1) First priority: Spaceholders, who are rental pool participants and whose storage was found to have been impacted by rentals[1] from the previous year shall have the highest priority in acquiring

[1] Impacts other than from additional supply for agricultural/recharge rentals and private leases.

rental water[2], up to the annual impact to that spaceholder[3]. Existing long term leases with the Committee shall be supplied first from any balance of the 5,000 acre feet reserved for small users, then from any assigned water and then finally from the 50,000 acre feet described in rule 3.8 above. (2) Second priority: Spaceholders, for agricultural purposes up to the amount of their unfilled storage space. (3) Third priority: Rental by non-spaceholders for agricultural purposes above Milner or other uses above Milner. (4) Fourth priority: Rental for uses below Milner.

However, the priority does not guarantee that irrigators will always receive stored water ahead of others seeking water from the rental pool. During times when storage supplies appear to be relatively abundant it is anticipated that water will be supplied in the order in which it is requested. Therefore, those desiring to rent water and preserve his priority in a limited supply must make application within fifteen (15) days following final storage allocation of the system during the year in which he desires to rent water.

Rental supplies for augmentation will be determined through the process provided in Figure 1 or the exception provided by Rule 3.8. Rental Pool supplies for uses above Milner Dam may be limited to 50,000 acre-feet.

5.2 Because of the number of small users and the attendant regulation costs, those seeking to rent less than 100 acre-feet of storage per point of diversion, unless additional rental of storage water at that point of diversion under this Rule is approved by the Committee, will be approved in the same order in which their rental applications are received by the Watermaster so long as the total amount of these requests do not exceed 5,000 acre-feet of storage. Rental supplies for the 5,000 acre-feet will also be determined through the late season fill and after the fact accounting process described herein.

<u>RULE 6.</u> LEASE APPLICATIONS, PAYMENTS AND WATER COSTS.

6.1. The price for the storage rented from the rental pool:

A. **If the storage system fills, the Rental Price, excluding the Rental Price for flow augmentation, shall be $5.00 per acre foot plus the District's administrative fee ($.80) and the Board surcharge (10%). If**

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[2] Nevertheless, this priority shall not apply for the rental of water for the 2005 irrigation season.

[3] Nevertheless, this priority shall not apply for the rental of water for the 2005 irrigation season.

the storage system does not fill but water is provided for flow augmentation, the Rental Price, excluding the Rental Price for flow augmentation, shall be $12.00 per acre foot plus the District's administrative fee ($.80) and the Board surcharge (10%). If the storage system does not fill and no flow augmentation water is provided pursuant to Rule 3.8 and Rule 3.10 above and Rule 6.1B, the Rental Price shall be $18.00 per acre foot plus the District's administrative fee ($.80) and the Board surcharge (10%).

B. The Rental Price for water provided pursuant to Rule 3.10 and any other water for below Milner shall be $12.00 per acre foot plus the District's administrative fee ($.80) and the Board surcharge (10%), or as further approved by the Committee.

6.2 All lease monies held by the District for and on behalf of the Committee will be held in a separate interest-bearing account. Accrued interest will be first used to maintain the fund that is used by the Committee to pay impacted Spaceholders. Excess funds generated will be available to the Committee for authorized uses including funds generated by the Impact Fund set up pursuant to Rule 7.2 below.

6.3. Applications to lease storage shall be initiated upon forms provided by the Watermaster and shall include the following information:

A. The legal description of the point of diversion and the place of use.

B. The amount of water being leased.

C. The common name of the point of diversion. (e.g. Milner Dam, Harrison Canal, Covington pump etc.)

D. The beneficial use to be achieved through the delivery of water from the rented space. (e.g. irrigation, power production, recreation)

6.4. Applications must be received with the appropriate rental fee determined to be due in Rule 6.1. No applications will be accepted before April 5 of the year in which the rented water will be used.

RULE 7 SUPPLIER PAYMENTS

7.1 All monies submitted by applicants as provided in Rule 6 shall be deposited in an interest-bearing Rental Pool account established by the Committee for the potential rental of water. Monies in this account used to rent water shall represent Rental Pool funds that can be paid out to participating spaceholders,

District administrative fees and Board surcharges at the end of the irrigation year. Money in this account will be disbursed as set forth below:

A. 70% of the Net Proceeds shall be paid pursuant to the formula set forth in Rule 1.5 above.

B. 30% of the Net Proceeds shall be paid to the Impact Fund as set forth in Rule 7.2 below.

C. 10% of the Rental Price of rented water shall be paid to the Board.

D. $.80 per acre foot of rented water shall be paid to the District.

E. All accrued interest shall be paid to the Impact Fund.

F. Balances of the account that are not used to rent water shall be refunded to applicants.

7.2 An Impact Fund shall be created pursuant to these procedures by the District on behalf of the Committee to hold 30% of the Net Proceeds for the benefit of impacted participating spaceholders. Proceeds from the Impact Fund shall be paid to participating spaceholders who, by these procedures, have been determined to have provided water for the previous years rentals, pursuant to the provisions set forth in Rule 3.6 above using the following formula:

Sp = (Isp*RP) or ½ IF*(Isp/Ispt) (whichever sum is less)
Where:
Sp = Impacted Spaceholder payment per Acre Foot
Isp = Spaceholder's impacted space in acre feet
RP = Rental Price
IF = Impact Fund
Ispt = Total of all Spaceholder's impacted space in acre feet

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of July, 2006, the above and foregoing, was served by the method indicated below, and addressed to the following:

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