**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

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| 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 | ) | **SUPPLEMENTAL ORDER AMENDING REPLACEMENT WATER REQUIREMENTS** |

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*. These entities, or members, are referred to herein as the "Surface Water Coalition" or "Coalition." The Order of April 19, 2005, was amended on May 2, 2005 (herein referred to as the "May 2 Order").

The May 2 Order included a determination that surface water rights held by or for the benefit of members of the Surface Water Coalition were reasonably likely to incur material injury in 2005 because of the diversion and consumptive uses of ground water under junior priority water rights. In response, the Director ordered ground water districts representing certain holders of junior priority ground water rights to provide replacement water pursuant to a plan submitted to the Department no later than April 29, 2005.

In determining that senior priority water rights were reasonably likely to incur material injury, the Director found that "[w]hether effects of ground water depletions result in material injury to the senior priority surface water rights held by the members of the Surface Water Coalition in a particular year depends in large part on the total water supply, under natural flow water rights and from reservoir storage, and in some instances supplemental ground water rights, otherwise available to each member of the Coalition in that year." *May 2 Order* at p. 19, Finding 88.

Findings in the May 2 Order set forth the following process in making the determination whether senior surface water rights held by or for the benefit of members of the Surface Water Coalition would be reasonably likely to incur material injury in 2005:

(1) Determine the minimum full water supply for irrigation (natural flow and reservoir storage releases) for the most recent year when the members of the Surface Water Coalition (the Director determined that 1995 was the most recent year that the members of the Surface Water Coalition received a minimum full water supply);

(2) Compare the forecast as of April 1, 2005, for unregulated inflow from the Upper Snake River Basin for the time period of April 1, 2005, through July 31, 2005, with historic unregulated inflow from the Upper Snake River Basin for the period of April 1 through July 31;

(3) Select a year or years of similar unregulated inflow and assume that: (a) natural flow diversions in 2005 will be essentially the same as the natural flow diversions in the similar year(s); (b) water stored in the reservoirs after April 1 in the similar year(s) added to the volume actually stored as of April 1, 2005, adjusted for evaporation, will be the total reservoir storage available for release and use in 2005; and (c) the sum of the predicted natural flow diversions and the predicted reservoir storage, adjusted for evaporation, constitutes the "the predicted 2005 water supply"; and

(4) For each member of the Surface Water Coalition, subtract the predicted total water supply for 2005 from the minimum full water supply needed, and to the remainder[1] add the amount of carryover storage reasonably needed assuming a drought year in 2006, unless the remainder is negative and the value equals or exceeds the reasonably needed carryover storage.

Finding 96 of the May 2 Order stated in pertinent part:

> [I]t is reasonable to conclude that as for the American Falls Reservoir District #2, the North Side Canal Company, and the Twin Falls Canal Company, the A&B, Burley, Milner, and Minidoka irrigation districts each had a full supply of water in 1995 considering both natural flow and storage releases.

In Finding 100 of the May 2 Order, the Director determined that:

> The joint operating forecast prepared by the USBR [United States Bureau of Reclamation] and the USACE [United States Army Corps of Engineers] for unregulated inflow from the Upper Snake River Basin predicted for the Heise Gage for the period April 1 through July 31 . . . predicts an unregulated inflow of 2,340,000 acre-feet. . . . the predicted inflow is similar to the measured, unregulated inflows at the Heise Gage for two recent years in the present sequence of drought years, 2002 and 2004.

For each member of the Surface Water Coalition, the Director (1) averaged the 2002 and 2004 natural flow diversions; (2) estimated the 2005 storage allocation based on the average of the volume of water stored after April 1, 2002, and after April 1, 2004, added to the volume of water actually in storage on April 1, 2005, less estimated 2005 evaporation; and (3) summed the average natural flow diversions and estimated 2005 storage allocations. The sum of natural flow diversions averaged for 2002 and 2004 and the estimated 2005 storage allocations based on the

[1] Negative remainder indicates water in excess of minimum needed without consideration of reasonable carryover storage needed. Positive remainder indicates shortage from minimum needed without consideration of reasonable carryover storage needed.

actual storage as of April 1, 2005, and the storage after April 1 averaged for 2002 and 2004 was deemed the predicted 2005 water supply for each Surface Water Coalition Member.

For each Surface Water Coalition Member, the predicted 2005 water supply was subtracted from the water supply in 1995, which was deemed the minimum full water supply needed. If the difference was greater than zero, the difference was the "Predicted Shortage in 2005." The total predicted shortage for 2005 for the members of the Surface Water Coalition that were predicted to incur shortages was 27,700 acre-feet.

Finding 119 of the May 2 Order established a reasonable amount of carryover storage at the end of 2005 for each member of the Surface Water Coalition "by averaging (1) the amounts of carryover storage required for Coalition members to have full supplies of water in 2006 if the divertible natural flow and storage accruals in 2006 are the same as in 2002 and (2) the amounts of carryover storage required for Coalition members to have full supplies of water in 2006 if the divertible natural flow and storage accruals in 2006 are the same as in 2004."

The "Predicted 2005 Material Injury" for each member of the Surface Water Coalition was determined by summing the "Predicted Shortage in 2005," if any, and the amount, if any, that the predicted carryover storage at the end of 2005 was less than the reasonable carryover storage determined in Finding 119 of the May 2 Order. The total "Predicted 2005 Material Injury" for all of the members of the Surface Water Coalition, computed by summing the predicted injury for each of the members, was 133,400 acre-feet, 101,000 acre-feet of which was determined to be caused by the diversion and consumptive use of ground water under junior priority rights in Water District No. 120 and No. 130 based on simulations using the Department's ground water model for the ESPA.

Following issuance of the May 2 Order, the Idaho Ground Water Appropriators, Inc. ("IGWA") proposed a replacement water plan, the Director ordered that IGWA submit additional information, and IGWA submitted a revised replacement water plan. The collective information submitted by IGWA will be referred to hereafter as "IGWA's Replacement Water Plan." On June 24, 2005, the Director issued his *Order Approving IGWA's Replacement Water Plan* (referred to hereafter as the "June 24 Approval Order").

IGWA's Replacement Water Plan, approved by the June 24 Approval Order, offered at least 27,700 acre-feet as replacement water for the Predicted Shortage in 2005.

The Director stated in the May 2 Order at page 47, paragraph 10:

> The Director 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.

Based upon the Director's consideration of changes in the water supplies available for the remainder of the 2005 irrigation season, the Director enters the following Findings of Fact, Conclusions of Law, and Order.

## FINDINGS OF FACT

1. Following issuance of the May 2 Order, precipitation in May and June of 2005 was unusually high. In May of 2005, widespread areas in the Upper Snake River Basin received near or above 150 percent of the long-term average precipitation for May; with several locations receiving near or above 200 percent of average, and one location, Idaho Falls, receiving more than 275 percent of average. In June of 2005, widespread areas in the Upper Snake River Basin received well above 150 percent of the long-term average precipitation for June; with several locations receiving near or above 250 percent of average, and one location, Ashton, receiving just above 400 percent of average. *Natural Resources Conservation Service, U. S. Department of Agriculture.*

2. Along with some increase in snow accumulation and increased streamflows in the Upper Snake River Basin, the unusually high precipitation, coupled with cool temperatures in May and June, resulted in significant delay in irrigation demands for natural flow. Through about June 30, 2005, members of the Surface Water Coalition had limited needs to divert water for irrigation, and those limited needs were essentially satisfied with the available natural flow, although there were some small releases from reservoir storage in May and June.

3. The unusually high precipitation and cool temperatures in May and June, and the resulting delay in irrigation demands, also allowed runoff from the melting snow accumulation to be stored in Upper Snake River Basin Reservoirs that under normal conditions would have been diverted for irrigation.

4. On June 30, 2005, maximum storage in the Upper Snake River Basin Reservoirs had accrued. Preliminary accounting on June 30, 2005, showed Jackson, Walcott, American Falls, and the Palisades winter-water-savings accounts had filled to 100 percent. Henrys Lake had a total fill of 37,948 acre-feet (42.2 percent), Island Park had a fill of 133,218 acre-feet (98.7 percent), Grassy Lake had a fill of 10,406 acre-feet (68.4 percent), the Palisades 1939 water right had a fill of 427,701 acre-feet (45.5 percent), and Ririe had filled 2,641 acre-feet (3.3 percent). These reservoir fills included carryover storage from 2004 irrigation.

5. The U. S. Bureau of Reclamation ("USBR") and the U. S. Army Corps of Engineers ("USACE") jointly issue forecasts each year for unregulated inflow through July 31 at the Heise Gage after February 1, March 1, April 1, and May 1. The USBR and USACE do not jointly prepare forecasts for unregulated inflow after May 1.

6. On July 12, 2005, the Department requested that the USBR develop a forecast for the unregulated inflow at the Heise Gage for the period July 1, 2005, through September 30, 2005, the end of the 2005 water year. In response to the request, the USBR prepared a forecast for this period, predicting unregulated inflow at the Heise Gage of 875,000 acre-feet. This forecasted July 1 through September 30 unregulated inflow for 2005 is between the actual unregulated inflow for July 1 through September 30 in 2002 of 804,000 acre-feet and 923,000 acre-feet in 2004.

7. While acknowledging the uncertainty in predicting the remaining amount of unregulated inflow that may be divertible in 2005 under the water rights held by individual members of the Coalition, the average of the natural flow diverted in 2002 and 2004 during the

irrigation year continues to provide a reasonable likely projection of the natural flow that may be available for each member of the Coalition.

8. The average of the natural flow diverted in 2002 and 2004 for each member of the Surface Water Coalition is set forth in Finding 104 of the May 2 Order and is as follows with the allocations between the Burley and Minidoka irrigation districts based on the annual allocations used in the water rights accounting for 2002 and 2004, rather than canal diversions:

| | 2002 Diversions (acre-feet) | 2004 Diversions (acre-feet) | Average Diversions (acre-feet) |
|---|---|---|---|
| A&B Irrigation District: | 900 | 0 | 500 |
| American Falls Res. Dist. #2: | 17,800 | 100 | 9,000 |
| Burley Irrigation District: | 94,000[2] | 104,100[3] | 99,100 |
| Milner Irrigation District: | 5,100 | 3,600 | 4,400 |
| Minidoka Irrigation District: | 143,500[4] | 139,600[5] | 141,600 |
| North Side Canal Company: | 357,000 | 309,500 | 333,300 |
| Twin Falls Canal Company: | 855,100 | 883,500 | 869,300 |

9. The predicted natural flow diversions for the 2005 irrigation year based on the natural flow diversions averaged for 2002 and 2004 for each member of the Surface Water Coalition set forth in Finding 8 supercede the amounts set forth in Finding 104 of the May 2 Order.

10. On July 6, 2005, the following preliminary storage accruals for the benefit of the members of the Surface Water Coalition and estimated reservoir evaporation were determined by Water District No. 01:

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[2] 39.6 percent of total natural flow diversions by Minidoka Project for the 2002 irrigation year.

[3] 42.7 percent of total natural flow diversions by Minidoka Project for the 2004 irrigation year.

[4] 60.4 percent of total natural flow diversions by Minidoka Project for the 2002 irrigation year.

[5] 57.3 percent of total natural flow diversions by Minidoka Project for the 2004 irrigation year.

| | 2005 Max. Storage (acre-feet) | 2005 Evap. (acre-feet) | Preliminary 2005 Net Storage (acre-feet) |
|---|---|---|---|
| Jackson Lake: | 847,000 | 22,000 | 825,000 |
| Palisades Winter Water Savings: | 259,600 | 6,700 | 252,900 |
| Other Palisades Reservoir: | 427,000 | 11,100 | 415,900 |
| Henrys Lake: | 34,300 | 900 | 33,400 |
| Island Park Reservoir: | 134,500 | 3,500 | 131,000 |
| Grassy Lake: | 0 | 0 | 0 |
| Ririe Reservoir: | 2,600 | 100 | 2,500 |
| Amer. Falls Winter Water Sav.: | 156,800 | 4,100 | 152,700 |
| Other American Falls: | 1,515,800 | 39,300 | 1,476,500 |
| Lake Walcott: | 95,200 | 2,500 | 92,700 |
| Totals: | 3,472,800 | 90,200 | 3,382,600 |

11. The preliminary storage accruals in 2005 for the benefit of the members of the Surface Water Coalition set forth in Finding 10 supercede the amounts set forth in Finding 105 of the May 2 Order.

12. Using the Department's accounting program for storage, the preliminary maximum storage, less estimated evaporation for 2005, was allocated among all reservoir storage spaceholders in the Upper Snake River Basin, which resulted in the following preliminary storage allocations for the members of the Surface Water Coalition. When the preliminary storage allocations are added to the natural flow predicted to be available for the 2005 irrigation year, as set forth in Finding 8, the predicted total supply for each member of the Coalition is considered to be a reasonably likely projection of the total amount of water that may be available to each member of the Coalition during the 2005 irrigation year, subject to variations caused by climatic conditions, for the limited purpose of assessing reasonably likely material injury caused by the diversion and use of ground water under junior priority rights. The reasonably likely predicted total supply for the 2005 irrigation year for each member of the Coalition is as follows:

| | 2005 Natural Flow (acre-feet) | 2005 Storage (acre-feet) | Total 2005 Supply (acre-feet) |
|---|---|---|---|
| A&B Irrigation District: | 500 | 77,100 | 77,600 |
| American Falls Res. Dist. #2: | 9,000 | 383,400 | 392,400 |
| Burley Irrigation District: | 99,100 | 220,600 | 319,700 |
| Milner Irrigation District: | 4,400 | 66,200 | 70,600 |
| Minidoka Irrigation District: | 141,600 | 340,300 | 481,900 |
| North Side Canal Company: | 333,300 | 837,600 | 1,170,900 |
| Twin Falls Canal Company: | 869,300 | 239,600 | 1,108,900 |

13. The reasonably likely predicted total supply for the 2005 irrigation year for the members of the Surface Water Coalition set forth in Finding 12 supercede the amounts set forth in Finding 106 of the May 2 Order.

14. To predict the shortages in surface water supplies that are reasonably likely for members of the Surface Water Coalition for the 2005 irrigation year, the amounts of water diverted for the 1995 irrigation year, as described in the May 2 Order, are deemed to be the minimum amounts needed for full deliveries to land owners and shareholders. If crop evapotranspiration is greater in 2005 or precipitation during the irrigation season is less than in 1995, the amounts of water diverted in 1995 may be less than what is needed for a full supply in 2005. If crop evapotranspiration is less in 2005 or precipitation during the irrigation season is greater than in 1995, the amounts of water diverted in 1995 may be more than what is needed for a full supply in 2005.

15. The shortages in surface water supplies that are reasonably likely for members of the Surface Water Coalition in 2005 are estimated by subtracting the reasonably likely total supplies of natural flow and storage for the 2005 irrigation year, set forth in Finding 12, from the minimum amounts needed for full deliveries based on diversions in 1995 as follows:

| | Minimum Full Supply Needed (acre-feet) | Predicted 2005 Supply (acre-feet) | Predicted Shortages in 2005 (- is surplus) (acre-feet) |
|---|---|---|---|
| A&B Irrigation District: | 50,000 | 77,600 | -27,600 |
| American Falls Res. Dist. #2: | 405,600 | 392,400 | 13,200 |
| Burley Irrigation District: | 220,200[6] | 319,700 | -99,500 |
| Milner Irrigation District: | 50,800 | 70,600 | -19,800 |
| Minidoka Irrigation District: | 314,300[7] | 481,900 | -167,600 |
| North Side Canal Company: | 988,200 | 1,170,900 | -182,700 |
| Twin Falls Canal Company: | 1,075,900 | 1,108,900 | -33,000 |

16. Of the members of the Surface Water Coalition, only the American Falls Reservoir District #2 has any remaining reasonably likely predicted shortages in 2005 (13,200 acre-feet). Finding 15 supercedes the amounts set forth in Finding 116 of the May 2 Order.

17. The reasonably likely material injury predicted for 2005 is the sum of the shortages set forth in Finding 15, if any, and the shortfalls in predicted carryover as compared to the reasonable amounts of carryover storage set forth in Finding 119 of the May 2 Order, if any. The following are the predicted amounts of injury and ending carryover storage for 2005 for the members of the Surface Water Coalition, assuming any material injury predicted for 2005 is mitigated with replacement water:

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[6] 41.2 percent of total Minidoka Project diversions for the 1995 irrigation year from Water District 01 report.

[7] 58.8 percent of total Minidoka Project diversions for the 1995 irrigation year from Water District 01 report.

| | Predicted 2005 Material Injury Shortages + Carryover Shortfalls (acre-feet) | Predicted 2005 Carryover (acre-feet) |
|---|---|---|
| A&B Irrigation District: | 0 | 27,600 |
| American Falls Res. Dist. #2: | 64,400 | 51,200 |
| Burley Irrigation District: | 0 | 99,500 |
| Milner Irrigation District: | 0 | 19,800 |
| Minidoka Irrigation District: | 0 | 167,600 |
| North Side Canal Company: | 0 | 182,700 |
| Twin Falls Canal Company: | 5,400 | 38,400 |
| Totals: | 69,800 | 586,800 |

18. The reasonably likely material injury predicted for the 2005 irrigation year for the members of the Surface Water Coalition set forth in Finding 17 supercede the amounts set forth in Finding 120 of the May 2 Order.

19. The material injury predicted for 2005, as set forth in Finding 17, is reasonably likely. However, climatic conditions for the remainder of 2005 cannot be precisely predicted, meaning that the predicted material injury and the carryover storage, assuming the predicted material injury is mitigated with replacement water, are both likely to be greater or smaller.

20. On July 21, 2005, the National Weather Service Climate Prediction Center issued updated monthly and seasonal forecasts for temperature and precipitation. For the Upper Snake River Basin, which includes the lands irrigated by members of the Surface Water Coalition, the National Weather Service is forecasting that temperatures in 2005 are likely to be above normal during the month of August. The seasonal forecast for temperatures is also above normal for the months of August, September, and October. Additionally, seasonal precipitation in 2005 is forecasted to be below normal for the months of August, September, and October.

## CONCLUSIONS OF LAW

1. Conclusions of Law set forth in the May 2 Order, as applicable, are incorporated into this Supplemental Order.

2. Because of dynamic changes in water supply conditions, the Director must monitor the water supply conditions and determine whether predicted shortages to the water supplies available to individual members of the Surface Water Coalition during the 2005 irrigation year and corresponding predicted material injury to the water rights held by or for the benefit of individual members of the Coalition in 2005 are reasonable.

3. Based on changed water supply conditions, only the American Falls Reservoir District #2 is expected to incur a reasonably predicted shortage in available water supply during the 2005 irrigation season, and only the American Falls Reservoir District #2 and Twin Falls Canal Company are expected to incur reasonably predicted material injury during the 2005

irrigation season. The predicted shortage in the water supply available in 2005 to the American Falls Reservoir District #2 is 13,200 acre-feet, and the predicted material injuries to the American Falls Reservoir District #2 and the Twin Falls Canal Company are 64,400 acre-feet and 5,400 acre-feet, respectively.

4. Because there may or may not be actual shortages in the water supplies available to the individual members of the Surface Water Coalition, and because IGWA is providing replacement water in lieu of curtailment, the Director should hold the minimum amount of replacement water required for 2005 in the form of storage water provided by IGWA to be allocated by the Director among the members of the Coalition to offset actual shortages, as necessary, or to offset shortages in carry-over storage held by individual members of the Surface Water Coalition at the end of 2005, as determined by the Director to be reasonably needed.

5. Although water supply conditions for 2005 have improved, as reflected by the actual preliminary storage water allocations for individual members of the Surface Water Coalition compared with the storage water allocations predicted in the May 2 Order, the minimum amount of replacement water required for 2005 should remain at 27,700 acre-feet, given that the National Weather Service forecasts seasonal above normal temperatures and below average precipitation for the months of August, September, and October.

6. Because there may or may not be actual shortages in the amounts of carry-over storage determined by the Director to be reasonably needed for the individual members of the Surface Water Coalition at the end of the 2005 irrigation season, and because IGWA is providing replacement water in lieu of curtailment, the Director should wait until after the 2005 irrigation season to determine the amount of additional replacement water required to be provided by IGWA beyond 27,700 acre-feet that is necessary to mitigate for material injury determined by the Director in 2005.

## ORDER

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

1. The minimum amount of replacement water to be provided by IGWA for mitigation in 2005 remains 27,700 acre-feet.

2. The minimum amount of replacement water required is to be provided from natural flow and storage water leased by IGWA or storage water obtained through exchange in 2005. The minimum amount of 27,700 acre-feet of natural flow and storage water is to be assigned by IGWA to the Director for allocation by the Director among the members of the Surface Water Coalition to offset actual shortages in the water supplies available to the individual members of the Coalition, as necessary, or to offset shortages in carry-over storage held by individual members of the Coalition at the end of 2005, as determined by the Director to be reasonably needed.

3. The Director will wait until after the 2005 irrigation season to determine the amount of additional replacement water required to be provided by IGWA that is necessary to mitigate for material injury determined by the Director in 2005 beyond the minimum amount of 27,700 acre-feet and the amounts provided through other approved actions of IGWA.

DATED this 22nd day of July, 2005.

KARL J. DREHER
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July, 2005, the above and foregoing, was served by the method indicated below, and addressed to the following:

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