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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	**SURFACE WATER COALITION'S PETITION FOR REVIEW OF DIRECTOR'S ORDER APPROVING IGWA'S REPLACEMENT WATER PLAN FOR 2005 / RENEWED MOTION TO DISMISS**

COME NOW, 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 (hereinafter collectively referred to as the "Surface

Water Coalition" or "Coalition"), and hereby file this *Petition for Review of Director's Order Approving Replacement Water Plan for 2005 / Renewed Motion to Dismiss* pursuant to Rules 260 and 711 of the Department's Rules of Procedures (IDAPA 37.01.01 *et seq.*). The bases for this petition and motion (hereinafter collectively referred to as "petition") are as follows:

FACTUAL BACKGROUND

The Surface Water Coalition hand delivered a letter to the Director on January 14, 2005, requesting administration of junior ground water rights within Water District No. 120 in 2005. *See January 14, 2005 Letter to Director.*

On April 19, 2005, the Director issued an order in response to the Coalition's request for water right administration. This order was later amended on May 2, 2005 ("*May 2, 2005 Order*"). As part of the order responding to the Coalition's request, the Director required the affected junior ground water right holders to submit a "plan" to provide mitigation and avoid curtailment:

> As required herein, 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 with the Director, to be received in his offices not later than 5:00 pm on April 29, 2005. Requests for extensions to file a plan for good cause will be considered on a case-by-case basis and granted or denied based on the merits of any such individual request for extension. 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. A plan that is approved or approved with conditions will be enforced by the Department and the watermasters for Water Districts No. 120 and No. 130 through curtailment of the associated rights in the event the plan is not fully implemented.

May 2, 2005 Order at 46-47.

Shortly after the April 19, 2005 Order was issued, the Watermasters for Water Districts 120 and 130 sent "curtailment letters" to affected ground water right holders on April 22, 2005

which required a "mitigation plan" to be filed with the Department by April 29, 2005. *See* Exhibit A. These letters directed the following:

> **If you do not provide replacement water in an approved mitigation plan as set forth below, diversions of ground water authorized by your water right(s) bearing a priority date of February 27, 1979 or later will be curtailed for the remainder of 2005 and/or in future years.**
>
> * * *
>
> Ground water districts must submit a mitigation plan to IDWR no later than April 29, 2005, on behalf of its members and other participants in its mitigation plan. Large commercial, industrial, or municipal water users who elect not to participate in a ground water district's plan must submit an alternative mitigation plan to IDWR no later than April 29, 2005.

Watermaster Letters at 1-2 (emphasis in original). *See* Exhibit A.

In response to the Director's order and the Watermaster letters, the Idaho Ground Water Appropriators, Inc. ("IGWA") filed an *Initial Plan for Providing Replacement Water* ("IGWA Plan") on April 29, 2005, J.R. Simplot Company filed a letter *Request for Approval to Provide Replacement Water* ("Simplot Plan") on April 28, 2005. Separate from these plans, IGWA and the Water Resource Coalition ("WRC") each filed *Applications for Approval of a Mitigation Plan* on February 8, 2005 and May 5, 2005.[1]

The Coalition, Idaho Power Company ("Idaho Power"), and the United States Bureau of Reclamation ("Reclamation") all filed protests to the Director's newly created "replacement water plan" process and the Coalition and Idaho Power moved to dismiss the IGWA Plan. *See* Coalition's May 5, 2005 *Protest, Objection, and Motion to Dismiss "Replacement Water Plans"*, Idaho Power's May 4, 2005 *Protest to IGWA's Initial Plan for Providing Replacement Water*, Reclamation's May 6, 2005 *Protest to Idaho Ground Water Appropriators' Initial Plan for*

[1] IGWA's and WRC's applications for approval of their proposed mitigation plans are the subject of separate contested cases before the Department and are not the subject of this petition.

Providing Replacement Water. The Coalition also filed a protest and motion to dismiss the Simplot Plan.

On May 6, 2005, the Director issued separate orders approving IGWA's, Simplot's, and the Water Resource Coalition's "replacement plans" with certain conditions. *See* May 6, 2005 *Order Regarding IGWA's Replacement Water Plan*, *Order Regarding Simplot Replacement Water Request*, and *Water Resource Coalition Replacement Water Plan*. The Director identified "deficiencies" with the IGWA Plan, but nonetheless allowed IGWA the opportunity to cure these deficiencies by May 23, 2005. *See Order Regarding IGWA Plan* at 13. The Director 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*** . . ." *Id.* (emphasis added). Despite the protests and motions to dismiss the various plans, the Director ignored the filings of the Coalition, Idaho Power, and Reclamation, and did not even acknowledge the fact those documents had been filed. Consequently, the Coalition and Idaho Power each filed *Petitions for Review of Orders Regarding Replacement Water Plans* on May 16, 2005 and May 20, 2005. The Coalition requested the Director to "review" the replacement plan orders and protests, and amend the orders "to acknowledge receipt of the Protests, and address the matters set forth in the Protests in an amended order." *Coalition May 16, 2005 Petition for Review* at 3. Idaho Power similarly requested the Director to "rescind" the replacement plan orders, dismiss the requests for approval of mitigation plans, and follow the processes provided for by Idaho law. *Idaho Power May 20, 2005 Petition for Review* at 4. To date the Director has refused to respond to these petitions filed by the Coalition and Idaho Power.

Contrary to the Director's request, IGWA did not file all of the requested information on May 23, 2005. Instead, IGWA filed some information on May 23, 2005, and then filed

additional information on June 3, 2005. *See* IGWA's May 23, 2005 *Information Submittal Responding to May 6, 2005 Order Regarding IGWA Replacement Water Plan*, IGWA's June 3, 2005 *Supplement to Information Submittal.* Although the deficiencies identified by the Director in the *May 6, 2005 Order* had not been cured by the required deadline, and no curtailment order was issued, the Director nonetheless issued an order approving the "replacement water plan" on June 24, 2005. *See Order Approving IGWA's Replacement Water Plan for 2005* ("*June 24, 2005 Order*"). This latest order, along with the Director's May 6, 2005 orders approving the replacement water plans with conditions, are the subject of this petition.

ARGUMENT

I. The Coalition Incorporates its Prior Protests and Motions By Reference

As explained above, the Coalition previously protested and moved to dismiss the IGWA Plan on May 5, 2005. The Coalition readopts that protest and motion and fully incorporates it herein by reference. Moreover, to the extent that the IGWA Plan is deemed to be a mitigation plan, the Coalition incorporates herein by reference each provision of the *Surface Water Coalition's Motion to Dismiss the Ground Water District's Application* dated March 21, 2005 and the *Surface Water Coalition's Protest Against Approval of Proposed Mitigation Plan* dated March 21, 2005.[2] Similar to the treatment of the protests and motions to dismiss IGWA's "replacement water plan", the Director has yet to acknowledge or take any action on the protests and motions to dismiss the mitigation plan filed by several ground water districts on February 8, 2005.[3]

[2] Reclamation and Idaho Power also filed protests and motions to dismiss the Ground Water Districts' mitigation plan on March 21, 2005. In addition, the City of Pocatello, Basic American Foods, and ConAgra/Lamb Weston filed a joint protest to the mitigation plan.

[3] Although the application was originally filed by the American Falls-Aberdeen Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, North Snake Ground Water District, and South West Irrigation District, it was IGWA, not these referenced ground water districts that filed the "replacement water plan" with the Director. There is no basis

II. The Director's "Replacement Water Plan" Process is Contrary to Idaho Law.

Idaho law requires the watermasters of the respective water districts to "distribute the waters of the public stream, streams or water supply, comprising a water district, . . . according to the prior rights . . . and to shut or fasten, . . . other facilities for diversion of water from such stream, streams or water supply, when in times of scarcity of water it is necessary so to do in order to supply the prior rights of others . . ." I.C. § 42-607. Even Rule 40 of the Department's conjunctive management rules demands the Director, through the watermasters, to "regulate the diversion and use of water in accordance with the priority of rights of the various surface or ground water users . . ." IDAPA 37.03.11.40.01.a. Continued diversion of junior priority ground water rights is allowed only when a "mitigation plan", not a "replacement water plan" has been approved by the Director. IDAPA 37.03.11.40.01.b.

As set forth above, the Director's *May 2, 2005 Order* allowed affected ground water right holders to provide a "replacement water plan" in order to escape curtailment for 2005. No provision was made for objections, protests, or comments on the submitted plans or the "replacement water plan" process for that matter. More importantly, the Director made no provision for notice or hearing or the factors that he would consider in determining whether or not the "replacement water plans" will prevent injury to senior surface water rights. Effectively, the Director's "replacement water plan" procedure eliminated the right of the Coalition and other affected water right holders to address the plans in any meaningful manner whatsoever.

The Director's "replacement water plan" process finds no support in Idaho's water code, Chapter 6, Title 42, Idaho Code. Similarly, there is nothing in the Department's own conjunctive management rules that allows the Director to create a new mitigation procedure or to consider

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to assume that IGWA can adopt and incorporate a separate mitigation plan filed by the ground water districts listed above in order to provide "mitigation" for any of IGWA's members that are not members of the referenced ground water districts.

something other than the mitigation plans described in Rule 43. The Director has no legal right or ability to unilaterally create new conjunctive management rules nor do those proposing mitigation have any legal authority to proceed other than as set forth in the conjunctive management rules.

Since the Director has ignored the applicable statutes and rules governing water right administration, it is clear that proper conjunctive administration of water rights within Water District Nos. 120 and 130 has been effectively prevented for 2005 given the irrigation season is now half over. Accordingly, the Director's new "replacement water plan" procedure, and its failure to provide affected senior surface water right holders with a meaningful opportunity to challenge that process and the so called "mitigation" being provided, leaves the Coalition without any administrative remedies or other adequate remedies at law.

III. The Director's June 24, 2005 Order is Contrary to His Own May 6, 2005 "Replacement Water Plan" Order and is Contrary to the Watermasters' Directives to Affected Ground Water Right Holders in Water District Nos. 120 and 130.

In the May 6, 2005 *Order Regarding IGWA Replacement Water Plan*, the Director identified numerous "deficiencies" with IGWA's Plan. *See IGWA May 6, 2005 Order* at ¶¶ 32, 35, 38-42, 45, 47, 49, 50. Despite the identified "deficiencies", the Director believed the plan would contribute sufficient water to meet the 27,700 acre-feet minimum requirement, provided "additional information and commitments" were submitted to the Department. *Id.* at 11, ¶ 5. In order to cure the plan's "deficiencies", and in order "for the ground water users in Water Districts No. 120 and 130 to avoid curtailment", the Director ***ordered*** IGWA to submit the additional information "on or before May 23, 2005." *Id.* at 13, ¶ 4. The Director further ordered that a "failure to submit the information curing deficiencies for 27,700 acre-feet of replacement water on or before the due date [May 23, 2005] ***will result in immediate curtailment*** consistent

with the Director's Amended Order issued on May 2, 2005." *Id.* at 13, ¶ 4 (emphasis added). IGWA proceeded to provide information on May 23rd and June 3rd, the latter date being eleven days past the Director's ordered deadline. In addition to filing information past the deadline, IGWA also failed to cure all of the identified "deficiencies" in its "replacement water plan", such as providing documentation of "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." *Id.* at 12-13, ¶ 2.d. The Director's *June 24, 2005 Order* expressly recognizes this requirement: "IGWA was required to submit copies of . . . an exchange approved by the Department . . ." *See June 24, 2005 Order* at 5, ¶ 15.

Despite IGWA's failure to comply with the *May 6, 2005 Order*, the Director excused IGWA's violation and did not order "immediate curtailment" of junior priority ground water rights in the respective water districts on May 23, 2005. Instead, the Director provided IGWA with another month to cure the identified "deficiencies" and then proceeded to approve IGWA's Plan by his *June 24, 2005 Order*. Even with the additional time, not all of the identified "deficiencies" in IGWA's Plan were cured. For example, the Director expressly admits the following with regard to the required "exchange" documentation:

> 18. IGWA has not yet submitted agreements with the USBR to exchange the Snake River natural flow water rights leased with storage water held or leased by the USBR in the reservoirs above Milner Dam. The Department has not yet received an application for exchange.
>
> 19. Because of ongoing negotiations with the USBR, ***IGWA is unable to execute a contract with the USBR until additional verification confirms how much water is available for lease and exchange with storage water***. The Department understands that USBR will reduce the storage exchanged with the natural flow leased from the Water Supply Bank by 80.65 percent. Multiplying 79,692 acre-feet by 0.8065 results in 64,272 acre-feet. This is the approximate

amount of Snake River storage water that will be available to IGWA for replacement water.

June 24, 2005 Order at 5.

Clearly, IGWA did not comply with the *May 6, 2005 Order* and provide the information and documentation required by the Director.[4] Although IGWA failed to supply the required information and documentation, even with a month extension, the Director again excused compliance with his *May 6, 2005 Order* and did not follow through and order "immediate curtailment" of junior priority ground water rights as indicated he would. Pursuant to the Director's *May 6, 2005 Order* it was readily apparent to all affected water right holders that immediate curtailment of junior priority ground water rights in Water District Nos. 120 and 130 should have occurred. The Director's failure to follow through and execute the prior order is further reason to question the new "replacement water plan" process that has been created. Whereas the Director stated "immediate curtailment" would occur on May 23, 2005, he has effectively ignored this prior directive and apparently will not order curtailment this irrigation season, even though IGWA has not met the Director's own stated requirements.

Even assuming for argument's sake that the other identified deficiencies have been cured, without an approved exchange, as required by the Director's *May 6, 2005 Order*, as of June 24th, IGWA only had 26,459 acre-feet (Peoples/New Sweden lease of 20,000 acre-feet, plus FMC lease of 6,024 acre-feet, plus dry-year lease of 435 acre-feet) available for replacement water in 2005. Therefore, IGWA's Plan did not meet the Director's required replacement water number for the 2005 irrigation season, 27,700 acre-feet. Under both the *May 2, 2005 Order* and the *May 6, 2005 Order*, the Director should have ordered curtailment of junior priority ground water

[4] Reclamation confirms the fact that no "exchange" has been completed or approved as required by the Director's May 6, 2005 Order. *See Reclamation's Order for Clarification of Order Approving IGWA's Replacement Water Plan for 2005* at 3 ("Reclamation and IGWA have not yet agreed on a firm exchange and cannot do so until after IDWR provides the information described in Section 2 above.").

rights. Instead, to the detriment of the Coalition members, the Director has excused compliance with his own orders in order to prevent curtailment of junior priority ground water rights in 2005.

In addition to ignoring the terms of the *May 6, 2005 Order*, the Director's *June 24, 2005 Order* is contrary to the Watermasters' letters notifying water right holders that curtailment would occur if a "mitigation plan" was not submitted and approved. As set forth in the April 22, 2005 letters to junior priority ground water right holders in Water District Nos. 120 and 130, the respective Watermasters stated that if "replacement water" was not provided in an "***approved mitigation plan***" water rights bearing a priority date of February 27, 1979 or later would be "curtailed for the remainder of the 2005 and/or in future years." *See* Exhibit A. Although the letters correctly note that junior priority ground water rights would have to be curtailed without an approved "mitigation plan" in place, the Coalition is not aware of any "mitigation plans" that have been approved or any junior priority ground water rights that have been curtailed. Again, similar to the Director's prior orders, despite the directives of the Watermasters, the Department has not followed its own procedures and has not implemented conjunctive administration as stated it would in the April 22, 2005 letters. The Director's *June 24, 2005 Order* contradicts the Watermasters' letters and refuses to require approval of a "migration plan" prior to allowing diversions under junior priority ground water rights. Accordingly, the "replacement water plan" process is contrary to the procedures set forth by the Director's own orders and the letters sent by the Watermasters of Water District Nos. 120 and 130. The contradictory orders and actual letter notices sent to affected ground water right holders is yet another example of how the "replacement water plan" process is not in accordance with Idaho law, but is simply an ever-changing procedure tailored to ensure no curtailment of junior ground water rights occurs during

the 2005 irrigation season. Again, pursuing further administrative remedies would be futile to protect the Coalition members' senior surface water rights this year.

IV. The Coalition Objects to the Director's June 24, 2005 Order Requiring Assignment of Storage Water to IDWR and Submits Such Action is Contrary to Idaho Law.

In addition to objecting to the Director creating a new "replacement water plan" process not in accordance with Idaho law, the Coalition also objects to the Director's procedure for distributing the "replacement water." As set forth in the *June 24, 2005 Order*, the Director has apparently "ordered" IGWA to assign its leased storage water to the Department. *June 24, 2005 Order* at 8. The Coalition is not aware of any storage space that the Department owns in Reclamation's Upper Snake River reservoirs where the assigned water could possibly be stored. Without any storage space to hold the leased water, the Department would essentially be "using" the storage space of some spaceholder(s) within the system. Such an action would constitute an unlawful taking of private property prohibited by the United States and Idaho constitutions. Moreover, such an action plainly violates the Department's own conjunctive management rules, since the "delivery, storage and use of water" pursuant to a "mitigation plan" must comply with Idaho law. IDAPA 37.03.11.43.03. Finally, ordering spaceholders and/or their lessees to "assign" to non-spaceholder governmental agencies or other entities stored water for their control and disposition sets a dangerous precedent that threatens all of Idaho's water users that own storage space in Reclamation reservoirs.

Accordingly, the Coalition objects to the Director's requirement and submits that ordering such "assignment" is contrary to Idaho law. Any "replacement water" that IGWA is required to provide for 2005 must be provided in such a manner as to replace the water that was taken by a junior ground water right holder and the Coalition members must be consulted to insure they are made whole. Again, the Director's order requiring IGWA to assign leased water

to the Department is not provided for by statute or even the Department's conjunctive management rules.

V. A New Amended Order Will Moot the Schedule and Hearing on the Director's May 2, 2005 Amended Order.

In the *June 24, 2005 Order*, the Director ordered the following with respect to his prior "injury" determination:

> [T]he Director will review the Snake River water supply available to the Surface Water Coalition members following the allocation of storage in the Snake River reservoirs, and determine whether changes in the water supply also justify changes to the extent of injury predicted to likely occur to members of the Surface Water Coalition.

June 24, 2005 Order at 8.

Based on this statement it is evident the Director intends to review and reassess his prior "injury" determinations for the Coalition members as set forth in his *May 2, 2005 Order*. In the event the Director issues a new amended order that changes the "injury" determinations, the present contested case concerning the *May 2, 2005 Order* will be deemed moot. In other words, once the Director issues a new amended order, the clock restarts for "aggrieved persons" to challenge that determination and file a petition requesting a hearing on the order pursuant to I.C. § 42-1701A(3). Whereas the Director previously amended his April 19, 2005 Order on the basis of a miscalculation of numbers relating to certain reach gains accruing from curtailment, and that amended order restarted the process for "aggrieved persons" to request a hearing, there is no question a new "injury" analysis, a substantive determination that would fundamentally change the entire order, would similarly provide a new opportunity to file petitions requesting a hearing. Accordingly, the proceeding that was initiated when the Coalition and others filed petitions requesting a hearing on the Director's *May 2, 2005 Order* would be moot since new petitions could be filed, theoretically by different "aggrieved persons" raising different issues for hearing.

For example, if the Director determined that the Coalition members are not likely to suffer any "injury" in 2005, and no curtailment or mitigation is ordered, it is likely that IGWA's members and other similarly situated junior ground water right holders would not be "aggrieved persons." Accordingly, any further action taken in the proceeding on the petitions requesting a hearing on the Director's *May 2, 2005 Order* will be a waste of the parties' time and resources once the Director reviews the water supply available to the Coalition members for 2005 and issues a new "injury" determination. If the Director can change the "injury" analysis at any time, as indicated in the *June 24, 2005 Order*, which in turn changes the curtailment analysis and mitigation requirements, it is questionable whether the *May 2, 2005 Order* is in effect a "final" agency order.

Regardless, if the Director issues a new amended order that alters the "injury" determination in any fashion, it is clear the *May 2, 2005 Order* will be superseded and the present proceeding on that order will become moot.

REQUESTS FOR RELIEF

1. The Coalition renews its request made on May 4, 2005 that the "replacement water plans" be denied and/or dismissed on the grounds that the entire procedure violates Idaho law and the conjunctive management rules. Junior ground water right holders affected by the Director's *May 2, 2005 Order* desiring to submit mitigation plans should be required to comply with the existing conjunctive management rules pertaining to submittal of those plans.

2. The Coalition requests the Director to "review" his *June 24, 2005 Order* and comply with his *May 6, 2005 Order* regarding IGWA's "replacement water plan" and order "immediate curtailment" since the identified "deficiencies" in the plan have not been cured.

3. The Coalition requests the Director to order the Watermasters to comply with their April 22, 2005 letters to junior ground water right holders in Water District Nos. 120 and 130 which required submittal of a "mitigation plan" or curtailment of junior ground water diversions.

4. The Coalition hereby renews its request of April 15, 2005 for a list of all ground water rights within Water District No. 120, along with the total volume of water pumped out of the aquifer to date. The Director has yet to respond to this request.

5. The Coalition also renews its request of April 15, 2005 that the Department conduct ESPA-wide aquifer water level measurements in 2005 since this data has not been updated for three years. The Director has yet to respond to this request.

6. The Coalition requests oral argument and a responsive order to this petition and motion. To date, the Director has refused to acknowledge the Coalition's filings on the newly created "replacement water plan" process as well as those plans that have been filed by IGWA and others.

DATED this 6th day of July 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on this 07 day of July, 2005, I served a true and correct copy of the foregoing *Surface Water Coalition's Petition for Review of Director's June 24, 2005 Order Approving IGWA's Replacement Water Plan / Renewed Motion to Dismiss* on the following by the method indicated:

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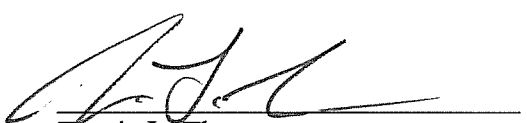

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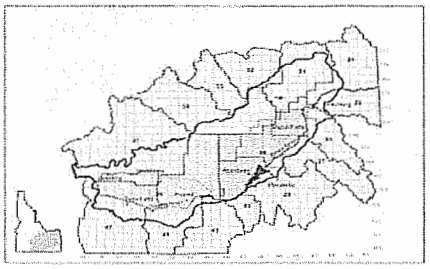
EXHIBIT "A"



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State of Idaho

Water District 120

900 N. Skyline Dr., Suite A
Idaho Falls, Idaho 83402

April 22, 2005

RE: Curtailment of Ground Water Rights with Priority Dates of February 27, 1979 or Later, Located in Water District No. 120

Affected Right Nos:

Dear Water Right Holder:

The records of the Idaho Department of Water Resources (IDWR) and Water District 120 indicate that you are the holder of one or more consumptive ground water rights with a priority date of February 27, 1979 or later than February 27, 1979. On April 19, 2005, the Director of IDWR issued an order directing the watermaster of Water District 120 to notify holders of consumptive ground water rights with priority dates of February 27, 1979 or later that they will be required to provide replacement water as mitigation for depletions to flows of the Snake River caused by their ground water pumping. (*See* Order issued 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).* **If you do not provide replacement water in an approved mitigation plan as set forth below, diversions of ground water authorized by your water right(s) bearing a priority date of February 27, 1979 or later will be curtailed for the remainder of 2005 and/or in future years.**

The order affects consumptive ground water rights bearing priority dates of February 27, 1979 or later, including ground water rights for irrigation, commercial, industrial, municipal, non-exempt domestic use, and other consumptive uses. Culinary in-house uses of water are not subject to curtailment, however.

The order also affects certain irrigation rights bearing priority dates senior to February 27, 1979, if those rights were decreed as "enlargement" rights containing a condition of use that subordinates the right to all rights with priority dates earlier than April 12, 1994 that were not decreed as enlargements.

If you are the holder of a ground water irrigation water right(s) describing a point(s) of diversion within the boundaries of either the Aberdeen-American Falls Ground Water District, Bingham Ground Water District, or the Bonneville-Jefferson Ground Water District, you must participate in the mitigation plan of the district in which your ground water point(s) of diversion is located. If your ground water point(s) of diversion is located outside the boundaries of a ground water district, you are required to participate in mitigation provided by the ground water district nearest your ground water point(s) of diversion.

If you are a holder of a water right authorizing commercial, industrial, municipal, or non-exempt

domestic use, you may provide the replacement water: (1) As a member of a ground water district; or (2) As a non-member participant for mitigation provided by a ground water district. Under limited circumstances, IDWR will entertain proposals to provide individual replacement water from large commercial, industrial, or municipal entities. IDWR encourages other non-irrigation ground water users to participate in the ground water districts' mitigation plans.

Ground water districts must submit a mitigation plan to IDWR no later than April 29, 2005, on behalf of its members and other participants in its mitigation plan. Large commercial, industrial, or municipal water users who elect not to participate in a ground water district's plan must submit an alternative mitigation plan to IDWR no later than April 29, 2005.

The above referenced order was issued in response to a call for delivery of water rights held or used by 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, collectively known as the Surface Water Coalition (Coalition). These water rights authorize the diversion of natural flows or stored water from the Upper Snake River system above Milner Dam, to be used for irrigation purposes within Gooding, Jerome, Lincoln, Minidoka, Twin Falls and Cassia Counties in southern Idaho. The Director of IDWR determined that ground water withdrawals from certain areas of the Eastern Snake Plain Aquifer (ESPA) cause depletions to the flow of the Snake River within those reaches of the Snake River from near Blackfoot, Idaho to Minidoka Dam, including the American Falls Reservoir. The Director further determined that diversion and use of ground water within Water District 120 under water rights that bear priority dates of February 27, 1979 or later would materially injure the Coalition water rights during 2005.

A copy of the order signed by the Director dated April 19, 2005 can be found on the main page of IDWR's website at: www.idwr.idaho.gov. At the website, you can also review maps showing boundaries of ground water districts, find address and phone numbers for the districts, and find answers to specific questions about the order, including answers about how much replacement water is required. If you have questions concerning the order and this correspondence, please contact the Water District 120 office in Idaho Falls at 208-525-7161, or contact the IDWR state office in Boise at 208-287-4800.

Regards,

Lewis Rounds

Lewis Rounds
Watermaster
Water District 120

cc: Karl J. Dreher, Director, IDWR

STATE OF IDAHO
WATER DISTRICT 130
C/O IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE ST., STE. 200
TWIN FALLS, ID 83301-3380
TELEPHONE NUMBER (208) 736-3033
FACSIMILE NUMBER (208) 736-3037

IDWR DIRECTOR
KARL J. DREHER

WATERMASTER
CINDY YENTER
Cindy.Yenter@idwr.idaho.gov

April 22, 2005

RE: Curtailment of Ground Water Rights with Priority Dates of February 27, 1979 or Later, Located in Water District No. 130, Thousand Springs Area

Affected Right Nos:

Dear Water Right Holder:

The records of the Idaho Department of Water Resources (IDWR) and Water District 130 indicate that you are the holder of one or more consumptive ground water rights with a priority date of February 27, 1979 or later than February 27, 1979. On April 19, 2005, the Director of IDWR issued an order directing the watermaster of Water District 130 to notify holders of consumptive ground water rights with priority dates of February 27, 1979 or later that they will be required to provide replacement water as mitigation for depletions to flows of the Snake River caused by their ground water pumping. (*See* Order issued 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).* **If you do not provide replacement water in an approved mitigation plan as set forth below, diversions of ground water authorized by your water right(s) bearing a priority date of February 27, 1979 or later will be curtailed for the remainder of 2005 and/or in future years.**

The order affects consumptive ground water rights bearing priority dates of February 27, 1979 or later, including ground water rights for irrigation, commercial, industrial, municipal, non-exempt domestic use, and other consumptive uses. Culinary in-house uses of water are not subject to curtailment, however.

The order also affects certain irrigation rights bearing priority dates senior to February 27, 1979, if those rights were decreed as "enlargement" rights containing a condition of use that subordinates the right to all rights with priority dates earlier than April 12, 1994 that were not decreed as enlargements.

If you are the holder of a ground water irrigation water right(s) describing a point(s) of diversion within the boundaries of either the North Snake Ground Water District or the Magic Valley Ground Water District, you must participate in the mitigation plan of the district in which your ground water point(s) of diversion is located. If your ground water point(s) of diversion are located outside the boundaries of a ground water district, you are required to participate in mitigation provided by the ground water district nearest your ground water point(s) of diversion.

If you are a holder of a water right authorizing commercial, industrial, municipal, or non-

exempt domestic use, you may provide the replacement water: (1) As a member of a ground water district; or (2) As a non-member participant for mitigation provided by a ground water district. Under limited circumstances, IDWR will entertain proposals to provide individual replacement water from large commercial, industrial, or municipal entities. IDWR encourages other non-irrigation ground water users to participate in the ground water districts' mitigation plans.

Ground water districts must submit a mitigation plan to IDWR no later than April 29, 2005, on behalf of its members and other participants in its mitigation plan. Large commercial, industrial, or municipal water users who elect not to participate in a ground water district's plan must submit an alternative mitigation plan to IDWR no later than April 29, 2005.

The above referenced order was issued in response to a call for delivery of water rights held or used byA&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, collectively known as the Surface Water Coalition (Coalition). These water rights authorize the diversion of natural flows or stored water from the Upper Snake River system above Milner Dam, to be used for irrigation purposes within Gooding, Jerome, Lincoln, Minidoka, Twin Falls and Cassia Counties in southern Idaho. The Director of IDWR determined that ground water withdrawals from certain areas of the Eastern Snake Plain Aquifer (ESPA) cause depletions to the flow of the Snake River within those reaches of the Snake River from near Blackfoot, Idaho to Minidoka Dam, including the American Falls Reservoir. The Director further determined that diversion and use of ground water within Water District 130 under water rights that bear priority dates of February 27, 1979 or later would materially injure the Coalition water rights during 2005.

A copy of the order signed by the Director dated April 19, 2005 can be found on the main page of IDWR's website at: www.idwr.idaho.gov. At the website, you can also review maps showing boundaries of ground water districts, find address and phone numbers for the districts, and find answers to specific questions about the order, including answers about how much replacement water is required. If you have questions concerning the order and this correspondence, please contact the Water District 130 office in Twin Falls at 208-736-3033, or contact the IDWR state office in Boise at 208-287-4800.

Regards,

Cindy Yenter

Cindy Yenter
Watermaster
Water District 130

cc: Karl J. Dreher, Director, IDWR