BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF A&B IRRIGATION DISTRICT AND FALLS IRRIGATION DISTRICT Complainants vs. RONALD D. CARLSON, WATER MASTER WATER DISTRICT 01, STATE OF IDAHO Respondent	)	ORDER

This matter is brought before the Director of the Department of Water Resources ("Director" or "Department") through a complaint filed by A&B Irrigation District and Falls Irrigation District. The Department has investigated the matter as provided for under Idaho Code § 42-605 and enters the following Findings of Fact, Conclusions of Law, and Preliminary Order.

FINDINGS OF FACT

1. A&B Irrigation District ("A&B") and Falls Irrigation District ("Falls") hold rights to the use of storage water in the American Falls Reservoir ("American Falls") and Palisades Reservoir ("Palisades") through contracts entered into with the United States Bureau of Reclamation.

2. The diversion of storage water by A&B and Falls is under the control of the watermaster for the State of Idaho who was duly elected and appointed for Water District 1 ("water district") pursuant to Idaho Code § 42-605(3).

3. Ronald D. Carlson ("watermaster") is the watermaster for the water district and is responsible for the distribution of water within the water district, under the supervision of the Director, pursuant to Idaho Code § 42-605.

4. A&B has a storage entitlement of up to 46,826 acre feet ("AF") of water accruing to a March 31, 1921, water right in American Falls and up to 90,800 AF of water accruing to a July 28, 1939, water right in Palisades.

5. Falls is entitled to an allocation of up to 22,924 AF of water accruing in American Falls and up to 40,900 AF of water accruing in Palisades under the same respective water right priorities listed in Finding of Fact No. 4.

6. Water is stored in the reservoirs in the water district according to the priority of the storage water rights. In order to accrue new storage credit in a particular reservoir, there must be

new water available for storage in the system under the priority of the storage right for that reservoir, and the water must be physically available in the system for storage at the location of that reservoir.

7. The practice of the water district is to hold stored water in reservoir system space farthest upstream regardless of the priority date under which the water is stored in order to provide the greatest practicable conservation and flexibility in water use. Once water has been stored in the system under a particular reservoir allocation and priority date, the water retains the same reservoir allocation and priority date even though the water may be physically moved to a downstream storage facility.

8. The watermaster uses a computer program known as "Snake Store" to determine the amount of storage water remaining at the end of the irrigation season and the water right to which the water is allocated. In the case of A&B and Falls, Snake Store will leave all Palisades storage water carried over, up to the amount allocated to Palisades, under the Palisades water right. The program used to determine the storage carried over at the end of the season operates in a manner that maximizes the refill potential for each spaceholder without changing the storage right to which the water was allocated at the time of storage.

9. Based on the priority of the storage right and the physical location of the reservoir, storage water (if available) is evacuated in the order of the easiest space to refill as set forth below:

i. Lake Walcott
ii. Palisades Winter Water
iii. American Falls
iv. Jackson
v. Palisades (1939)

10. In the years 2001 and 2002, the Director designated drought emergency areas that included lands served by A&B, Falls, Twin Falls Canal Company ("Twin Falls") Northside Canal Company ("Northside") and Aberdeen-Springfield Canal Company ("Aberdeen").

11. In 2001, A&B had a combined storage allocation in American Falls and in Palisades of 122,028 AF. Falls had a combined storage allocation in these reservoirs of 49,436 AF. In 2001, A&B entered into temporary exchange agreements which made the following volumes of storage water allocated to A&B available as follows: 24,000 AF to Twin Falls, 19,200 AF to Northside, and 7,000 AF to Aberdeen. Under the terms of the exchange agreements, equal amounts of storage water were to be returned to A&B in 2002. The exchange agreements specified that the water returned to A&B would be the first water used by A&B in 2002. A similar exchange agreement was entered into between Falls and Aberdeen for 15,000 AF of storage water allocated to Falls to be returned to Falls in 2002. In 2002, A&B and Falls entered into exchange agreements with Aberdeen for 13,000 AF and 12,000 AF, respectively. Using the computer program Snake Store, the watermaster determined storage allocations and carryover for A&B and Falls as shown on attached Exhibits 1 through 6.

12. The accounting for 2001, 2002, and 2003 shows the following allocations for A&B:

2001 (See Exhibit 1)

75,969 AF	Palisades allocation (77,225 fill - evaporation)
46,059	American Falls allocation (46,826 minus evaporation)
122,028	Total allocation
-7,000	Exchange to Aberdeen
-19,200	Exchange to NSCC
-24,000	Exchange to TFCC
-61,926	Storage use by A&B
9,902 AF	Total carryover
9,902	Palisades carryover
0	American Falls carryover

2002 (See Exhibit 2)

9,703 AF	Palisades allocation (9,902 carryover - evaporation + zero fill)
45,802	American Falls allocation (100% fill minus evaporation)
55,505	Total allocation
7,000	Return from Aberdeen
19,200	Return from NSCC
24,000	Return from TFCC
-13,000	Exchange to Aberdeen
-15	To Boy Scout pump
-3,000	Rental to ground water districts
-58,501	Storage use by A&B
-997	Milner adjustment
30,192 AF	Total carryover
9,703	Palisades carryover
20,489	American Falls carryover

2003 (See Exhibit 3)

9,491 AF	Palisades allocation (9,703 carryover - evaporation + zero fill)
45,391	American Falls allocation (100% fill minus evaporation)
54,882	Total allocation
13,000 AF	Return from Aberdeen
17	Ground water mitigation

-58,497	Storage use by A&B
9,402 AF	Total carryover
9,402	Palisades carryover
0	American Falls carryover

13. The accounting program shows the following for Falls for the 2001, 2002, and 2003 allocations:

2001 (See Exhibit 4)

26,887 AF	Palisades allocation (27,335 - evaporation)
22,549	American Falls allocation (22,925 minus evaporation)
49,436	Total allocation
-15,000	Exchange to Aberdeen
-25,521	Storage use by Falls
8,915 AF	Total carryover
8,915	Palisades carryover
0	American Falls carryover

2002 (See Exhibit 5)

8,736 AF	Palisades allocation (8,915 carryover - evaporation + zero fill))
22,423	American Falls allocation (100% fill minus evaporation)
31,159	Total allocation
15,000	Return from Aberdeen
-12,000	Exchange to Aberdeen
-4,000	Rental to ground water districts
-24,939	Storage use by Falls
-167	Milner adjustment
5,053 AF	Total carryover
5,053	Palisades carryover
0	American Falls carryover

2003 (See Exhibit 6)

4,937 AF	Palisades allocation (5,053 carryover - evaporation + zero fill)
22,222	American Falls allocation (100% fill minus evaporation)
27,159	Total allocation
12,000	Return from Aberdeen
17	Ground water mitigation
-25,317	Storage use by Falls
-3,000	Rental to ground water districts
10,859 AF	Total carryover
4,937	Palisades carryover (5,053 - evaporation)
5,922	American Falls carryover

14. On June 7, 2004, A&B and Falls filed a Complaint and Request for Formal Hearing on Complaint and For Discovery in the above captioned matter. On June 10, 2004, A&B and Falls filed an Amended Complaint and Amended Motion for Formal Hearing on Complaint and For Discovery ("complaint"). The complaint alleged incorrect storage allocation and carryover calculations by the watermaster and sought increased allocations for A&B and Falls. More specifically, the complaint sought to have the water that A&B and Falls exchanged during 2001 and 2002 credited to Palisades when the exchanged water was returned to A&B and Falls. In addition, the complaint sought removal of the watermaster to insure proper administration and distribution of stored water within the water district.

15. The AF volume amounts used by A&B and Falls in their complaint do not agree with the volume amounts computed by the watermaster and appear to be based on preliminary volume estimates. The volumes used by the watermaster are from final accounting of volume amounts and are correct.

16. The A&B and Falls exchange water that Aberdeen, Northside, and Twin Falls returned in 2002 came directly from the storage allocation of those entities and was the first water used by A&B and Falls in 2002. The storage water returned to A&B and Falls in 2002 was equal to the amount of water that A&B and Falls provided to Aberdeen, Northside, and Twin Falls in 2001. The accounting program does not change the allocation of water from one reservoir to another reservoir. Any new accrual to Palisades would be based on the amount of water actually stored under the 1939 priority right in a given year. Artificially moving water from one reservoir water right to another after the initial carryover has been computed would in effect distribute water to water rights out of priority.

17. The watermaster facilitates exchange agreements under a drought emergency designation in a manner approved by the Director and by the Idaho Water Resource Board for deliveries of rentals from the rental pool. The exchange is a water for water exchange. The space from which the water was to be taken or returned was not part of the exchange agreement. Such a

provision could only have been recognized by the watermaster if it would not result in an adverse impact(s) on other spaceholders.

18. The storage space in Palisades filled for the last time in 2000. In 2001, A&B carried over 9,902 AF of water, all in Palisades. In 2002 and 2003, there was no new accrual of water under the 1939 Palisades water right. Hence, the allocation of A&B and Falls in Palisades at the end of 2003 is the carry over from 2000 less evaporation from the storage space.

19. In 2002, A&B and Falls received all of the water that was due them under the exchange agreements with Twin Falls, Northside, and Aberdeen. The exchange agreements between A&B, Falls, Twin Falls, Northside, and Aberdeen include the following or similar provision:

> this agreement relates to actual water stored, ... which stored water shall be the first storage water used by A&B in 2002.

The water returned to A&B and Falls from the storage allocated to Twin Falls, Northside, and Aberdeen in 2002 was, pursuant to the agreement, delivered to A&B before any of the storage accruing to their space in 2002 was delivered.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222A provides that upon declaration of a drought emergency, the Director of the Department of Water Resources is authorized to allow temporary changes in the point of diversion, the place of use, and the purpose of use for valid existing water rights or temporary exchanges of water authorized under water rights when the Director determines that such changes can be accomplished in accordance with the provisions of Idaho Code § 42-222A.

2. Idaho Code § 42-240 provides as follows:

> (1) Any person holding a right for the use of surface water may make application to the director of the department of water resources to exchange water authorized to be diverted under the right with the same or a different source, or with water authorized to be diverted under one (1) or more other rights from the same source or another surface water source. If the application proposes an exchange with water under another water right, the application shall be accompanied by an agreement in writing described by the person proposing the exchange and each person or organization owning rights to water with whom the exchange is proposed to be made.

3. Idaho Code § 42-605(9) provides among other matters that the Director may remove a watermaster for failure to perform the watermaster's duties.

4. A&B and Falls have not established that the watermaster should credit storage accounts as described in their complaint, have not established that the accounting program should be changed, and have not established that the actions of the watermaster have resulted in legal injury to A&B and Falls.

5. The reallocation of water from American Falls to Palisades sought by A&B and Falls would be at the expense of other space holders in the water district and should not be allowed.

6. A&B and Falls have not shown that storage allotment calculations and allocations by the watermaster were "willfully, wantonly and deliberate and made with the intent to deny A&B and Falls of their full storage supply ..." or incorrect as alleged in the amended complaint.

7. The storage allocation and carryover computations have been reviewed by the Director and determined to have been determined correctly.

8. The Director should decline the request to change the accounting procedures used in the water district to determine the amount of storage used and accrued by A&B and Falls under the exchange agreements A&B and Falls entered into.

9. The Director should decline the requests of the complainants to remove the watermaster from his duties.

ANALYSIS

A&B is entitled to impound up to 46,826 AF of storage water in American Falls and up to 90,800 AF in Palisades. Space does not equal water if the water supply is not sufficient to fill the space. Based upon history, American Falls is expected to fill during most years. The space in American Falls that is held by A&B and Falls filled in 2002 and 2003. Palisades last filled in 2000. The Palisades storage right that allows the space of A&B and Falls to accrue storage has not been in priority since 2000.

In their complaint, A&B and Falls allege that it is the policy of the water district "to account for use from storage by showing water used to have come from the lower reservoirs with the early priorities first, and to provide that all carryover at the end of each year be accounted for in reservoirs that are last to fill by priority." Complaint at p. 4-5, ¶ 9. A&B and Falls further allege that because of this understanding of water district policy:

> no effort was made by the parties in their exchange agreements entered into to identify the space to which the exchanged water returned to complainants would be credited, as all parties understood that the water returned in an exchange would be the first water used by A&B and Falls to fill the space that has the most junior priority for filling in the coming year, which was the same space from which the exchange water was provided by A&B and Falls, and would be accounted for in accordance with the Water Districts' policies. Complaint at p. 6, ¶ 12.

A&B and Falls' understanding of water district policy alleged in the complaint is not consistent with the current or past practice of the water district in accounting for carryover storage. It is the practice of the water district to physically hold as much storage water as possible in the reservoirs farthest upstream in the storage system regardless of the priority date or storage facility to

which the water is allocated. It is not the current or past practice of the water district, as alleged by A&B and Falls, to change the priority date or storage facility to which stored water is allocated "to provide that all carryover at the end of each year be accounted for in reservoirs that are last to fill by priority." Such a practice would be inappropriate in that it would, for example, have the effect of reallocating 1921 priority water stored under the American Falls right to Palisades which has a 1939 priority date. Because of the limited space available to store water under the more senior American Falls priority date, such a practice would deprive other right holders of the opportunity to accrue storage under reservoir water rights during the succeeding storage season.

New accrual in any reservoir space is added to the water carried over in that space from a prior year. If the A&B and Falls carryover in American Falls were to be reallocated as Palisades space at the end of the irrigation season, it would have the effect of changing the priority of their Palisades space from 1939 to 1921. This would allow storage water that should be allocated to other spaceholders to be reassigned to A&B and Falls.

The exchange agreements specified that the storage water returned by Twin Falls, Northside, and Aberdeen in 2002 would be the first storage used by A&B and Falls in 2002. That is what occurred under the accounting used by the watermaster. As A&B and Falls used storage water in 2002, the water first came directly from the storage allotments of Twin valls, Northside, and Aberdeen until the obligations owed to A&B and Falls as a result of the 2001 exchange were repaid in full. There was no need to identify storage space controlled by A&B and Falls to which the returned water could first be assigned prior to its use by A&B and Falls.

If in 2003, the watermaster had assigned all or a portion of A&B's 2002 carryover of 20,489 AF to Palisades, A&B would have a 2003 allocation of 46,826 AF in American Falls, in addition to the carryover volume of water artificially moved (on paper) from American Falls to Palisades.

ORDER

IT IS THEREFORE HEREBY ORDERED as follows:

1. The relief requested under the Amended Complaint of A&B Irrigation District and Falls Irrigation District is DENIED and will not be further considered by the Department.

2. The duly elected watermaster of Water District 1 is RETAINED as the watermaster of Water District 1.

Dated this 12th day of July, 2004.

KARL J. DREHER
Director

2001 - A & B Storage Allocation and Carryover

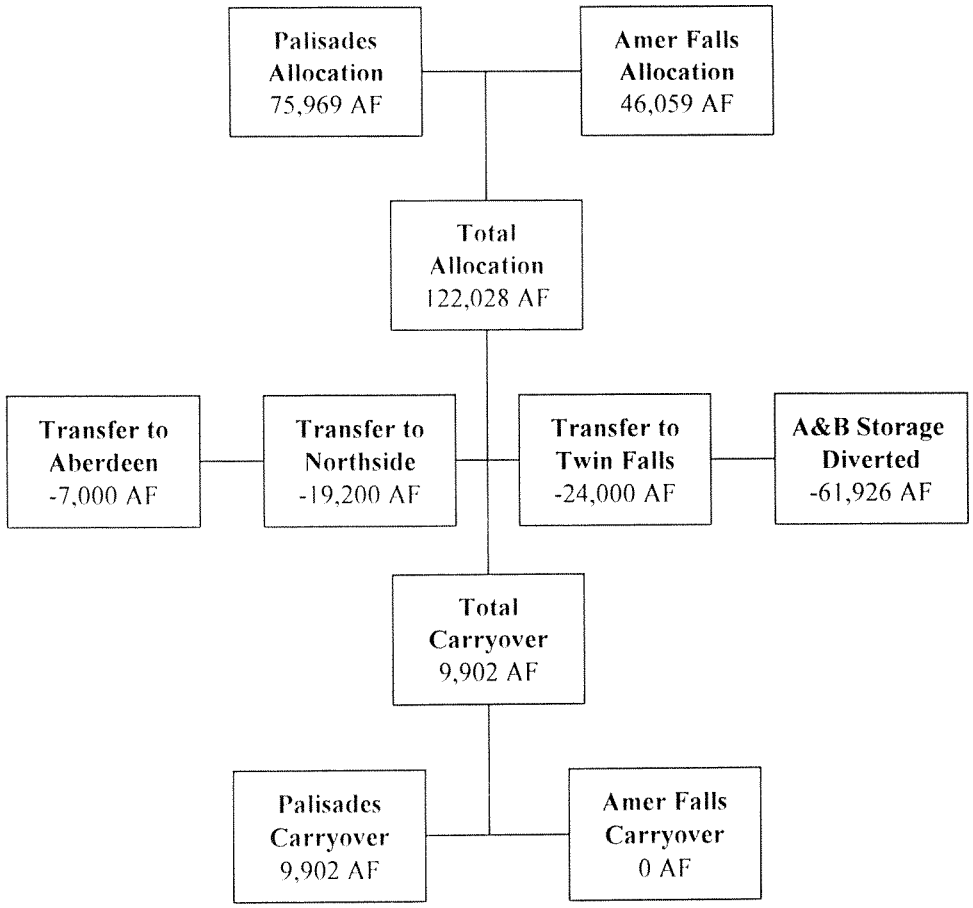

Exhibit 1

2002 - A & B Storage Allocation and Carryover

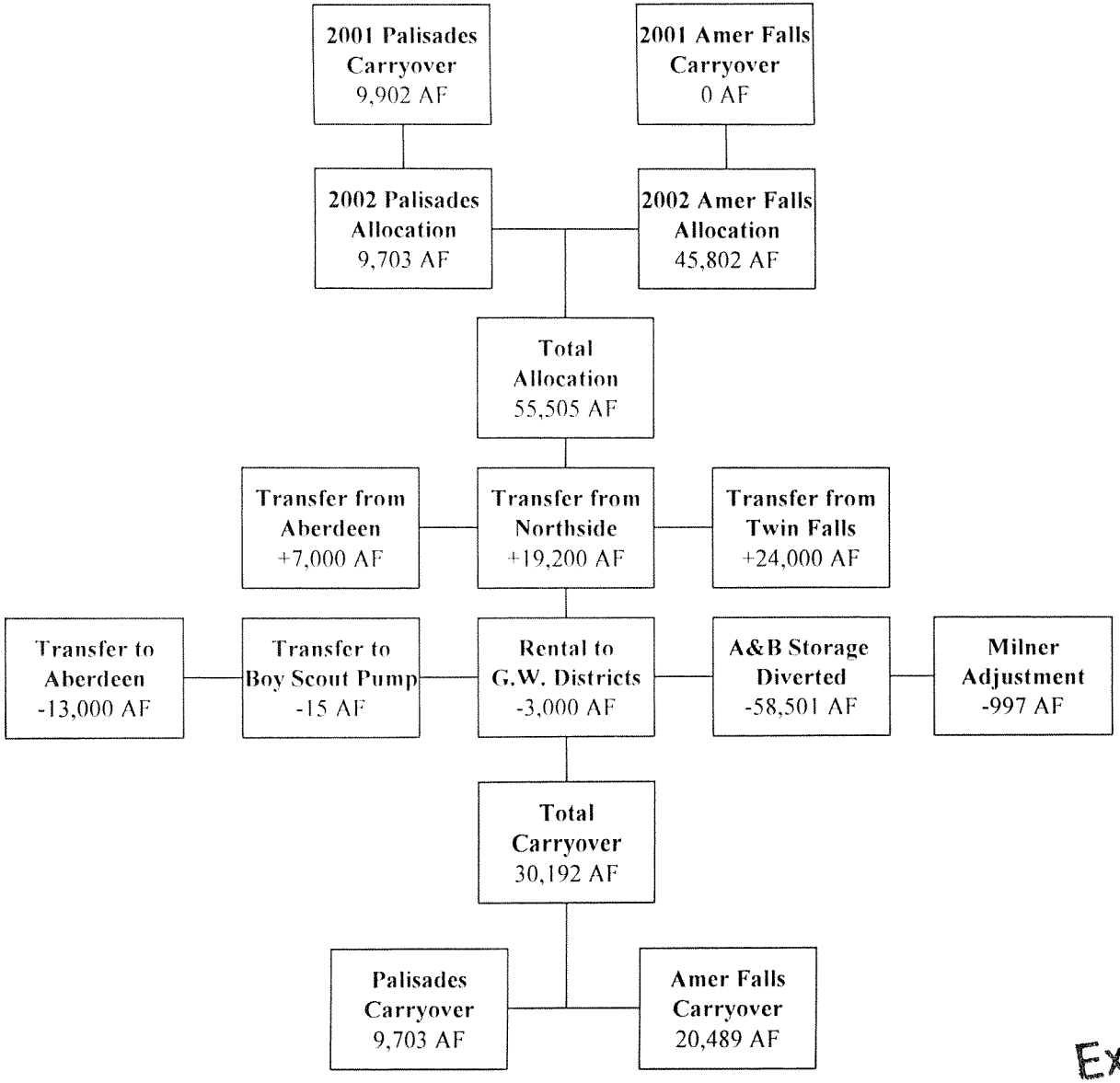

Exhibit 2

2003 - A & B Storage Allocation and Carryover

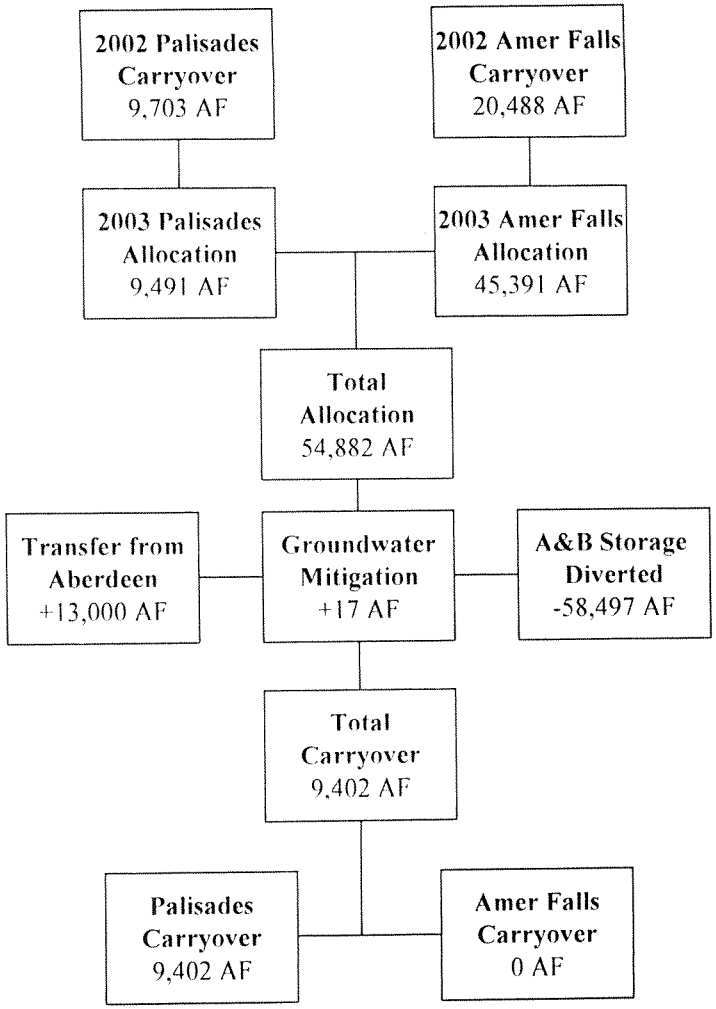

Exhibit 3

2001 - Falls Irrigation Storage Allocation and Carryover

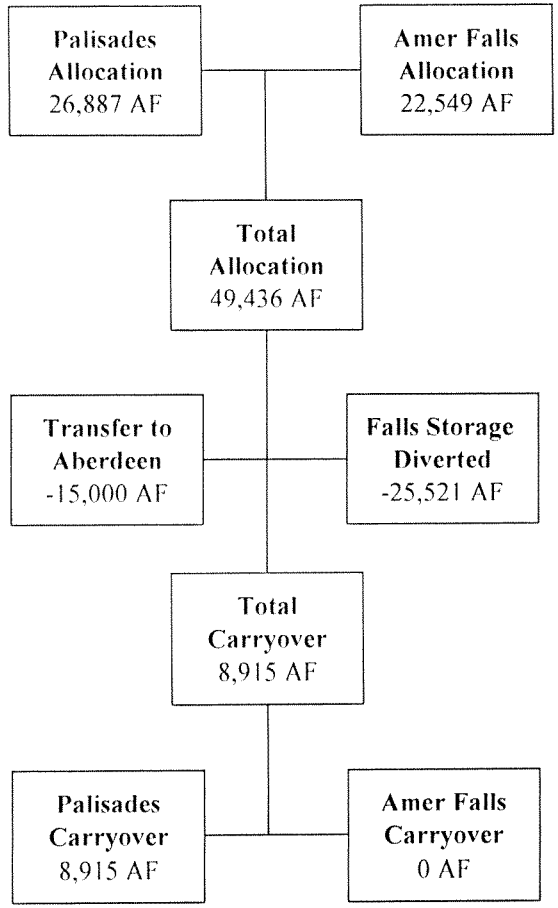

Exhibit 4

2002 - Falls Irrigation Storage Allocation and Carryover

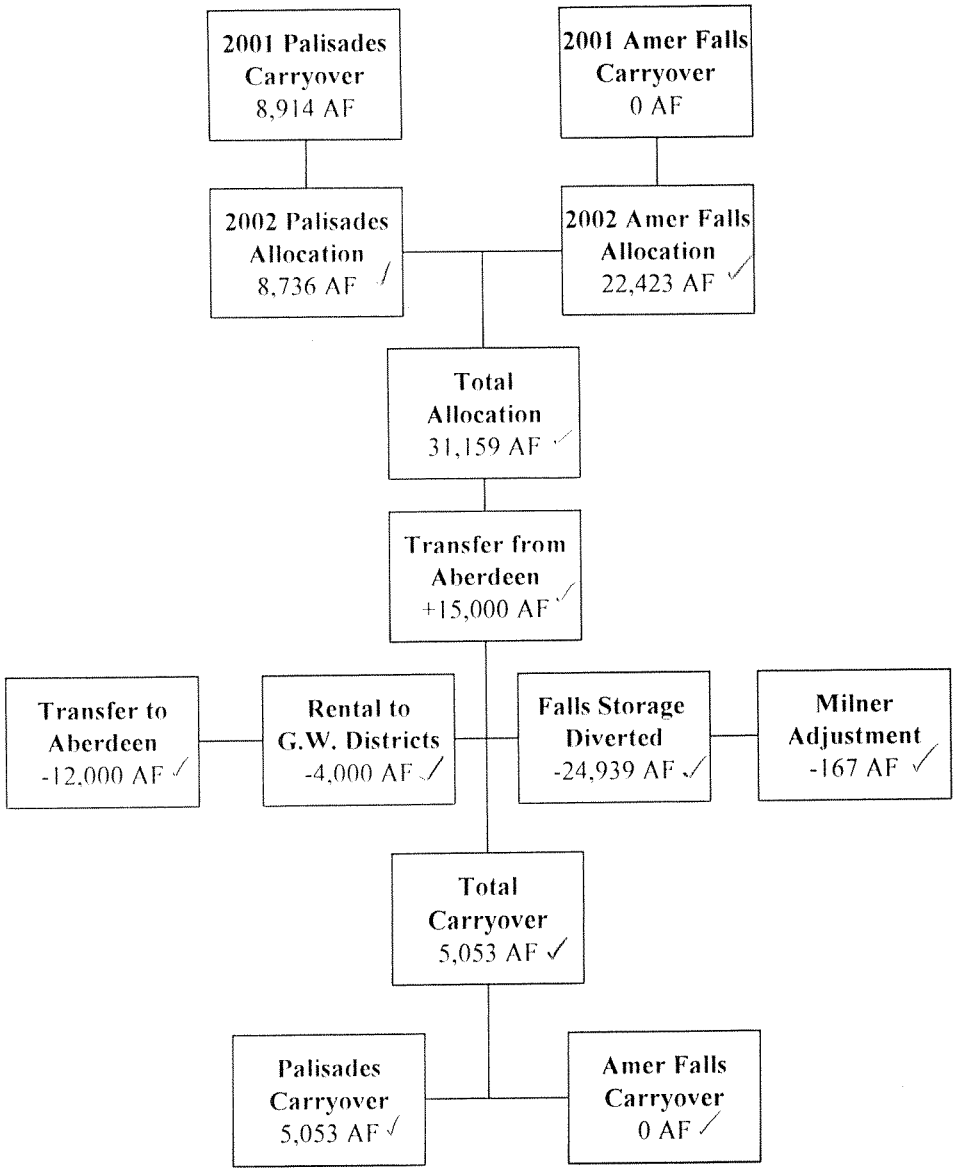

Exhibit 5

2003 - Falls Irrigation Storage Allocation and Carryover

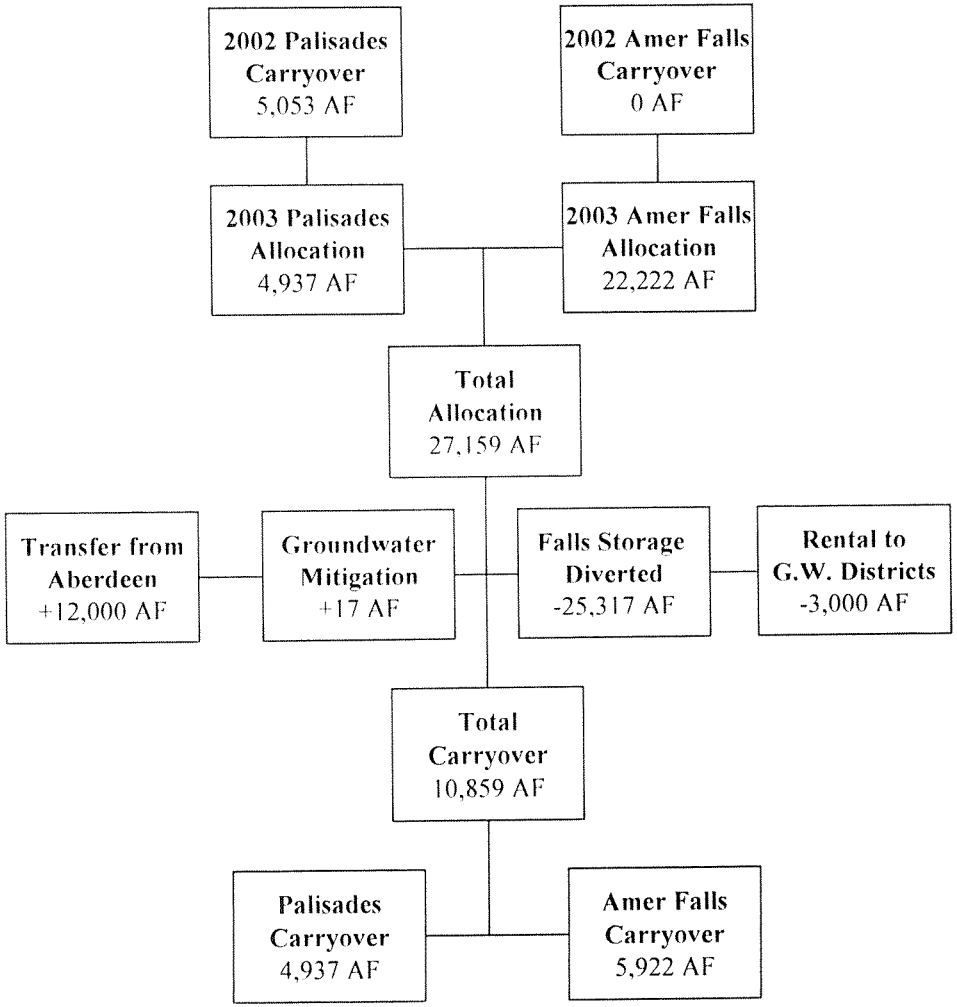

Exhibit 6