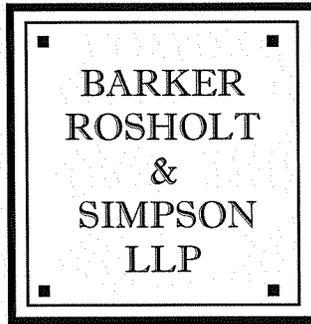


John A. Rosholt  
Albert P. Barker  
John K. Simpson  
Travis L. Thompson  
Shelley M. Davis  
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March 25, 2014

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RECEIVED

MAR 27 2014

DEPARTMENT OF  
WATER RESOURCES

**VIA EMAIL & U.S. MAIL**

Director Gary Spackman  
Idaho Dept. of Water Resources  
322 E. Front St.  
Boise, Idaho 83720-0098

**Re: 2014 Conjunctive Administration (Step 1 Methodology Order)**

Dear Director Spackman:

We are writing on behalf of our clients A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

Based upon letters to ground water users (January 28<sup>th</sup> and March 4<sup>th</sup>) it appears you will rely upon the *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* ("Methodology Order") for purposes of conjunctive administration this year.<sup>1</sup> If so, our clients contest any orders or administration that does not comply with the Idaho Supreme Court's recent decision *A&B Irr. Dist. et al. v. Spackman*, 315 P.3d 828 (2013). We have yet to receive any information confirming how you intend to proceed this year.

However, with respect to the prior methodology and the Step 1 requirement to confirm irrigated acreage for the year, our clients adopt and resubmit the letter that was delivered to you last year for purposes of 2014 administration. *See Attachment.*

As noted last year, all of our clients' decreed natural flow water rights identify the number of authorized acres to irrigate within their respective project boundaries. Accordingly, the Director is required to use the elements of the partial decrees for purposes of water right administration. I.C. §§ 42-607; 1417.

---

<sup>1</sup> Our clients contest the Methodology Order and its application and reserve all rights to challenge that decision and its application. The Methodology Order and other orders concerning its implementation in prior years are currently on appeal to the Gooding County District Court (Consolidated Case No. CV-2010-382).

Director Gary Spackman  
March 25, 2014  
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Moreover, all clients have confirmed that the expected irrigated area within each project this year has not varied by more than 5% from the existing information (electronic shape files) that were submitted to you and referenced last year. The number of irrigated acres identified by existing shape files on file with the SRBA Court or as submitted to you last year is as follows: A&B – 15,924; BID – 46,083; Milner – 13,335; NSCC – 154,067; TFCC – 194,778.

If you have any questions please contact me at (208) 733-0700.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



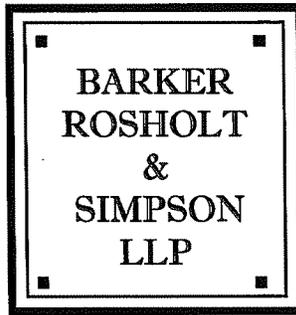
Travis L. Thompson

Enc.

cc: (by email only)  
Garrick Baxter, IDWR  
Dan Temple, A&B  
John Lind, BID  
Walt Mullins, Milner  
Alan Hansten, NSCC  
Brian Olmstead, TFCC  
Kent Fletcher  
Randy Budge / T.J. Budge  
Dean Tranmer / Sarah Klahn / Mitra Pemberton

# Attachment

*John A. Rosholt  
Albert P. Barker  
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Travis L. Thompson  
Shelley M. Davis  
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*Travis L. Thompson*  
tlt@idahowaters.com

March 29, 2013

**VIA HAND DELIVERY**

Director Gary Spackman  
Idaho Dept. of Water Resources  
322 E. Front St.  
Boise, Idaho 83720-0098

**Re: Response to February 21, 2013 Letter (Step 1 Methodology Order)**

Dear Director Spackman:

This letter responds to your February 21, 2013 to our clients, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

Based upon a review of the information used with *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* ("Methodology Order"), it is our understanding IDWR used the following acreage amounts for the Crop Water Need calculation last year.<sup>1</sup>

A&B	15,924	(Director's Report)
BID	44,715	(Ex. 4300)
Milner	13,335	(Director's Report)
NSCC	154,067	(Director's Report)
TFCC	183,589	(Ex. 4310)

<sup>1</sup> Our clients contest the Methodology Order and its application and reserve all rights as to its legal basis and application. District Court cases on judicial review are currently stayed pending a final decision from the Idaho Supreme Court in the Surface Water Coalition Delivery Call case (Consolidated Docket No. 38191-2010).

All of the natural flow water rights for the above entities that identify the number of authorized acres to irrigate within their respective project boundaries have been decreed since the issuance of the Methodology Order in June 2010. Accordingly, the Director is required to use the elements of the partial decrees instead of the Director's Reports for purposes of water right administration. I.C. §§ 42-607; 1417. For A&B, Milner, and NSCC, the total irrigated acreage number is the same. Dave Shaw has conferred with the managers for A&B, Milner, and NSCC, and has reviewed the shape files underlying the partial decrees. Based upon a review of the shape files with the most recent aerial imagery (2011), and confirming a review of the expected irrigated area within each project with the managers, the decreed irrigated acreage has not varied by more than 5% from the existing electronic shape file used last year.

For BID, the Methodology Order relies upon Ex. 4300 (SPF Engineering Report, 12/29/05). That report alleged that 40% of the "miscellaneous" lands within BID were "non-irrigated" based upon a review of 1987 and 2004 imagery. Dave Shaw performed a field verification of these areas in 2007 showing the errors in this calculation. Ex. 8190 (Table 4, pp. 10-11). The Director should correct this error for purposes of the 2013 irrigated acreage ("These amounts may, of course, change as acreage is removed from irrigation or possibly added back in."). R. 7000; Methodology Order at 4. These are just some of the examples that were found to be in error. BID further prepared a GIS shapefile based upon 2011 aerial imagery. Based upon a review of that information by BID's manager and Dave Shaw, the decreed irrigated acreage has not varied by more than 5% from the decreed acreage.

For TFCC, the Methodology Order relies upon Ex. 4310 (SPF Engineering Report, 3/20/07). That report alleged various areas were "non-irrigated" based upon a review of 1987 and 2004 imagery, and site visits to 11 parcels in Aug/Sept. 2006. Brockway Engineering consulted TFCC personnel and performed field verifications in January 2006 and identified errors in the SPF Engineering Report analysis. Ex. 8190 (Table 1, pp. 3-4). Accordingly, the areas delineated as "non-irrigated" in Ex. 4310 are not accurate. The Hearing Officer accepted Brockway Engineering's rebuttal to the SPF Report and concluded that only "6,600 acres claimed by TFCC are not irrigated." R. 7100. TFCC claimed 201,560.4 acres in its water right claims in the SRBA. TFCC's partial decrees authorize the irrigation of 196,162 acres. Accordingly, there is no basis for the Director to use the 183,589 acres alleged in the SPF Engineering Report. Moreover, Dave Shaw has completed a review of IDWR's SRBA shapefile for TFCC, compared to aerial imagery from 2011 and found the acreage variation was less than 5% of the decreed acreage. That information is included herein on the attached CD and should be used for 2013.

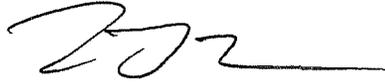
Finally, the Director's Crop Water Need relies upon NASS crop data (average 1990-2008). Dave Shaw has compiled current NASS data from the various counties from 2011. Since that review the 2012 NASS data have become available. Based upon this review and confirmation with the managers, the cropping pattern in 2013 is expected to be similar to that experienced last year and in 2011. The Director should use the most current NASS data available from the NASS "CropScape" website, <http://nassgeodata.gmu.edu/CropScape/>.

Director Gary Spackman  
March 29, 2013  
Page - 3

If you have any questions please contact me at (208) 733-0700.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

Enc.

cc: Dan Temple, A&B  
Randy Bingham, BID  
Walt Mullins, Milner  
Alan Hansten, NSCC  
Brian Olmstead, TFCC  
Randy Budge / Candice McHugh  
Tom Arkoosh  
Kent Fletcher  
Sarah Klahn / Dean Tranmer