

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)	Docket No. CM-DC-2010-001
THE BENEFIT OF A&B IRRIGATION DISTRICT,)	
AMERICAN FALLS RESERVOIR DISTRICT #2,)	AMENDED FINAL ORDER
BURLEY IRRIGATION DISTRICT, MILNER)	ESTABLISHING 2014
IRRIGATION DISTRICT, MINIDOKA IRRIGATION)	REASONABLE CARRYOVER
DISTRICT, NORTH SIDE CANAL COMPANY,)	
AND TWIN FALLS CANAL COMPANY)	(METHODOLOGY STEP 9)
_____)	

FINDINGS OF FACT

1. On June 23, 2010, the Director of the Idaho Department of Water Resources (“Director” or “Department”) issued his *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”).¹ The Methodology Order established 10 steps for determining material injury to members of the Surface Water Coalition (“SWC”).

2. The Methodology Order described Step 9 as follows:

Step 9: Following the end of the irrigation season (on or before November 30), the Department will determine the total actual volumetric demand and total actual crop water need for the entire irrigation season. This information will be used for the analysis of reasonable carryover shortfall, selection of future baseline years, and for the refinement and continuing improvement of the method for future use.

On or before November 30, the Department will publish estimates of actual carryover and reasonable carryover shortfall volumes for all members of SWC. These estimates will be based on but not limited to the consideration of the best available water diversion and storage data from Water District 01, return flow monitoring, comparative years, and RISD. These estimates will establish the obligation of junior ground water users in providing water to the SWC for reasonable carryover shortfall. Fourteen (14) days following the publication by the Department of reasonable carryover short fall obligations, junior ground water users will be required to establish, to the satisfaction of the Director, their ability

¹ The Methodology Order is currently on appeal in Gooding County Case No. CV-2010-382. District Judge Eric J. Wildman issued his *Memorandum Decision and Order on Petitions for Judicial Review* on September 26, 2014, affirming the Director’s process for determining reasonable carryover.

to provide a volume of storage water or to conduct other approved mitigation activities that will provide water to the injured members of the SWC equal to the reasonable carryover shortfall for all injured members of the SWC. If junior ground water users cannot provide this information, the Director will issue an order curtailing junior ground water rights.

Methodology Order at 37-38.

3. The following table summarizes end of season 2014 carryover shortfall calculation values. The table contains the actual fall 2014 carryover storage and the reasonable carryover quantities from the Methodology Order for each member of the SWC. The storage adjustments in the following table incorporate the in-season adjustments identified in the above table plus all other adjustments that have occurred. See “Attachment A” attached hereto for further information.

Entity	Preliminary Storage Allocation	Storage Allocation Adjustment	Storage Use	Storage Use Adjustments (+ to alloc.)	Reasonable Carryover	Actual Carryover	Carryover Shortfall
A&B	124,206	3,830	49,972	0	17,000	78,065	-
AFRD2	382,753	1,000	300,191	8,670	56,000	92,232	-
BID	220,273	5,130	82,473	7,000	-	149,930	-
Milner	86,997	0	38,138	7,343	4,800	56,202	-
Minidoka	332,075	9,846	118,207	200	-	223,914	-
NSCC	836,306	(7,750)	406,606	20,000	57,200	441,951	-
TFCC	239,183	(6,750)	103,623	4,981	29,700	133,790	-

4. The above determinations of “Actual Carryover” are based on the water diversion and storage data from Water District 01. These are necessarily preliminary numbers that are subject to revision after taking into account adjustments of water measurement gages maintained by the USGS. Final numbers will only be published after the issuance of this order. The above determination of “Reasonable Carryover” is carried forward from the Methodology Order and takes into account comparative water years. *Methodology Order* at 36-37.

5. Details of adjustments to quantities in the above tables are set forth in “Attachment A” attached to this order.

CONCLUSIONS OF LAW

1. The Methodology Order states that, on or before November 30, the Director will project the SWC’s reasonable carryover shortfall, if any, for 2014. *Methodology Order* at 37-38 (Steps 9 and 10). If the Director projects a reasonable carryover shortfall, IGWA shall have fourteen days to establish, to the satisfaction of the Director, its “ability to provide a volume of storage water or to conduct other approved mitigation activities that will provide water to the injured members of the SWC equal to the reasonable carryover shortfall for all injured members of the SWC.” *Id.* at 38.

2. The evidentiary standard to apply in conjunctive administration of hydraulically connected water rights is clear and convincing. *A&B Irr. Dist. v. Idaho Dept. of Water Resources*, 153 Idaho 500, 524, 284 P.3d 225, 249 (2012).

3. “Clear and convincing evidence refers to a degree of proof greater than a mere preponderance.” *Idaho State Bar v. Topp*, 129 Idaho 414, 416, 925 P.2d 1113, 1115 (1996) (internal quotations removed). “Clear and convincing evidence is generally understood to be ‘[e]vidence indicating that the thing to be proved is highly probable or reasonably certain.’” *State v. Kimball*, 145 Idaho 542, 546, 181 P.3d 468, 472 (2008) citing *In re Adoption of Doe*, 143 Idaho 188, 191, 141 P.3d 1057, 1060 (2006); see also *Idaho Dept. of Health & Welfare v. Doe*, 150 Idaho 36, 41, 244 P.3d 180, 185 (2010).

4. Regarding projected shortfalls to reasonable carryover, the Director concludes by clear and convincing evidence that no member of the SWC is owed reasonable carryover storage in 2014 for use in 2015. CM Rule 42.01.g.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that no member of the SWC is owed reasonable carryover storage in 2014 for use in 2015.

IT IS FURTHER ORDERED that this is a final order of the agency. Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law pursuant to Idaho Code § 67-5246.

IT IS FURTHER ORDERED that judicial review of any final order of the Director issued following the hearing may be had pursuant to Idaho Code § 42-1701A(4).

IT IS FURTHER ORDERED that pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by the final order or orders previously issued by the Director in this matter may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which a hearing was held, the final agency action was taken, the party seeking review of the order resides, or the real property or personal property that was the subject of the agency action is located. The appeal must be filed within twenty-eight (28) days: (a) of the service date of the final order; (b) of an order denying petition for reconsideration; or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Idaho Code § 67-5273. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Dated this 26th day of December 2014.


GARY SPACKMAN
Director

**Attachment A
2014 SWC Adjustments**

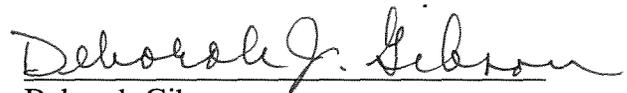
	Adjustments	Description	Included in Total Supply Natural Flow Adjustment	Included in Total Supply Storage Adjustment	Wheeled Storage Water Adjustment	Total Wheeled (not recharge)
A&B	3829.9	Impacts from the 2013 Common Pool	No	Yes	No	No
		Total A&B	0	3830	0	0
AFRD2	2500.0	IGWA rental (7/15/14)	No	No	Yes	Yes
	3200.0	Lower Little Wood River Users	No	No	Yes	Yes
	100.0	Rober Meyers Rental (7/15/14)	No	No	Yes	Yes
	1000.0	Minidoka Credit	No	Yes	No	No
	2500.0	IGWA Rental (7/22/14)	No	No	Yes	Yes
	220.0	Rober Meyers Rental (7/29/14)	No	No	Yes	Yes
	150.0	J&K Farms	No	No	Yes	Yes
	7267.5	Recharge	Yes	No	No	No
		Total AFRD	7,268	1,000	8,670	8,670
BID	2000.0	SWID rental (7/15/14)	No	No	Yes	Yes
	5130.0	Minidoka Credit	No	Yes	No	No
	3714.0	SWID Natural Flow	Yes	No	No	Yes
	5000.0	SWID Rental (7/29/14)	No	No	Yes	Yes
		Total BID	3714.0	5130	7000	10,714
Milner	1000.0	SWID Rental (7/15/14)	No	No	Yes	Yes
	3714.0	SWID Natural Flow	Yes	No	No	Yes
	200.0	Scott Breeding Rental	No	No	Yes	Yes
	5000.0	SWID Rental (7/29/14)	No	No	Yes	Yes
	1142.8	Artesian Irrigation	No	No	Yes	Yes
		Total Milner	3,714.0	0	7,343	11,057
MID	1476.2	Impacts from the 2013 Common Pool	No	Yes	No	No
	(15000.0)	Leased to SWID	No	No	No	No
	(200.0)	Leased to Ardel Wickel	No	No	No	No
	200.0	Ardel Wickel rental assigned to MID	No	No	Yes	Yes
	8370.0	Minidoka Credit	No	Yes	No	No
	(8500.0)	SWID	No	No	No	No
	(1500.0)	Clear Springs	No	No	No	No
		Total MID	0	9,846	200	200
NSCC	7500.0	IGWA Rental (7/15/14)	No	No	Yes	Yes
	(7750.0)	Minidoka Credit	No	Yes	No	No
	7500.0	IGWA Rental (7/22/14)	No	No	Yes	Yes
	5000.0	IGWA Rental (8/12/14)	No	No	Yes	Yes
		Total NSCC	0	(7,750)	20,000	20,000
TFCC	3000.0	SWID rental	No	No	Yes	Yes
	(6750.0)	Minidoka Credit	No	Yes	No	No
	1600.3	Artesian Irrigation	No	No	Yes	Yes
	198.4	Recharge (Natural Flow)	Yes	No	No	No
	380.2	Recharge (Storage)	No	No	Yes	No
		Total TFCC	198	(6,750)	4,981	4,600

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of December 2014, the above and foregoing, was served by the method indicated below, and addressed to the following:

<p>John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON, LLP 195 River Vista Place, Ste. 204 Twin Falls, ID 83301-3029 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318 wkf@pmt.org</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Randall C. Budge Thomas J. Budge RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 rcb@racinelaw.net tjb@racinelaw.net</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Kathleen M. Carr U.S. Dept. Interior 960 Broadway, Ste 400 Boise, ID 83706 kathleenmarion.carr@sol.doi.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th Street South Terrace, Suite 370 Denver, CO 80202 david.gehlert@usdoj.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
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<p>William A. Parsons Parsons, Smith & Stone, LLP P.O. Box 910 Burley, ID 83318 wparsons@pmt.org</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Michael C. Creamer Jeffrey C. Fereday GIVENS PURSLEY, LLP P.O. Box 2720 Boise, ID 83701-2720 mcc@givenspursley.com jcf@givenspursley.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Lyle Swank IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 lyle.swank@idwr.idaho.gov</p>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Allen Merritt Cindy Yenter IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033 allen.merritt@idwr.idaho.gov cindy.yenter@idwr.idaho.gov</p>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email



Deborah Gibson
Administrative Assistant for the Director

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
 - (a) The petition for reconsideration is disposed of; or
 - (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days: a) of the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.