

John K. Simpson, ISB #4242
 Travis L. Thompson, ISB #6168
 Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
 113 Main Ave. West, Suite 303
 Twin Falls, Idaho 83303-0485
 Telephone: (208) 733-0700
 Facsimile: (208) 735-2444

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
 P.O. Box 248
 Burley, Idaho 83318
 Telephone: (208) 678-3250
 Facsimile: (208) 878-2548

Attorneys for Minidoka Irrigation District

*Attorneys for A&B Irrigation District,
 Burley Irrigation District, Milner Irrigation District,
 North Side Canal Company, and Twin Falls Canal Company*

C. Tom Arkoosh, ISB #2253
CAPITOL LAW GROUP PLLC
 P.O. Box 32
 Gooding, Idaho 83330
 Telephone: (208) 934-8872
 Facsimile: (208) 934-8873

Attorneys for American Falls Reservoir District #2

**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)
 _____)

Docket No. CM-DC-2010-001

**SURFACE WATER COALITION'S
 PETITION FOR RECONSIDERATION
 AND CLARIFICATION OF
 FINAL ORDER REVISING APRIL 2010
 FORECAST SUPPLY (METHODOLOGY
 STEP 7)**

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 Company (collectively hereafter referred to as the "Surface Water

Coalition”, “Coalition”, or “SWC”), by and through counsel of record, and hereby submit their *Petition for Reconsideration and Clarification* of the Interim Director’s September 17, 2010 *Final Order* pursuant to Idaho’s Administrative Procedures Act, I.C. § 67-5201 *et seq.*, and the Department’s Rules of Procedure (IDAPA 37.01.01. *et seq.*).

PETITION FOR RECONSIDERATION / CLARIFICATION

The Coalition incorporates by reference its April 21, 2010 *Petition for Reconsideration and Clarification of April 7, 2010 Final Order*. The Director’s Step 7 Order continues the same errors identified in the Coalition’s prior petition and should be reconsidered.

In addition, the Director’s Step 7 Order does not reflect actual events that occurred during the 2010 irrigation season and contains misstatements regarding IGWA’s failure to comply with the *Final Order Regarding April 2010 Forecast Supply (Methodology Steps 3 & 4); Order on Reconsideration* issued on June 24, 2010 (“*As Applied Order*”). In the *As Applied Order*, the Director ordered the following:

38. Junior ground water users must establish, to the satisfaction of the Director, their ability to secure 56,600 acre-feet. The Director will review the executed storage water leases and options to lease storage water and combine sufficient leases together to provide the 56,600 acre-feet obligation. These leases should be committed to the Watermaster of Water District 01 by instruction of the Director solely for the SWC mitigation.

* * *

IT IS FURTHER ORDERED that the Watermaster of Water District 01 shall not deliver water rented under the above contracts to any other entity other than the SWC, including the lessor, until further notice by the Director.

As Applied Order at 9-10.

Based upon the above directive, storage water leased by IGWA was to be “committed to the Watermaster of Water District 01” to be used “solely for the SWC mitigation”. Based upon weekly reports issued by Water District 01, none of the storage water identified in the *As Applied*

Order was ever submitted to Water District 01 rental pool to be available for assignment by the Watermaster. Accordingly, this storage water apparently remained in the lessor's storage accounts during the entire irrigation season and was not precluded from being delivered to the lessor or others as ordered by the Director.

Accordingly, the following findings and conclusions in the Step 7 Order should be clarified or reconsidered:

3. . . . IGWA secured in excess of 57,000 acre-feet of storage water to mitigate for 2010 in-season injury, as well as projected 2011 reasonable carryover shortfalls (Methodology Steps 9 and 10), if any. The Director instructed the watermaster for Water District 01 to not deliver storage water leased by IGWA under specific contracts for SWC mitigation to any entity other than the SWC, including the lessor, until further notice by the Director. The Director ordered dedication of IGWA's secured water to the SWC mitigation until he could determine the SWC's in-season injury.

* * *

4. Because there will be no 2010 in-season shortfalls, the Director notifies the watermaster for Water District 01 to release IGWA's 57,000 acre-feet of secured water.

* * *

IT IS FURHTER ORDERED that the watermaster for Water District 01 shall release IGWA's 57,000 acre-feet of secured storage water.

Step 7 Order at 1, 7.

The above findings wrongly imply that IGWA secured 57,000 acre-feet that was then committed to the Watermaster of Water District 01 through the rental pool, and the rental fees were paid, both of which are required for private leases by the Water District 1 rental pool rules. The findings also wrongly imply that the water was in the control of the Watermaster and was available for assignment by the Watermaster to the SWC "solely" for use as mitigation water. No such assignment to the control of the Watermaster or payment of fees ever took place, therefore the Watermaster did not have control of the storage water for mitigation purposes

during the 2010 irrigation season. In short, the Watermaster never had control over any mitigation water to “not deliver” or “release” as was directed by the Director’s orders.

In addition, the Director’s Step 7 Order lacks any information or accounting as to whether this “secured” storage water was actually used by any of the lessors during the 2010 irrigation season. Had “secured” water actually been used by a lessor, or committed to some other entity, it is obvious it would not have been available to deliver to SWC “solely” for mitigation as ordered. Since the water was never assigned pursuant to the rental pool rules, the Watermaster had no control over the “assigned” water. The factual inaccuracies stated in the Step 7 Order demonstrate a misunderstanding of the procedural requirements of the rental pool rules and the inability of IDWR to control the delivery of mitigation water, control that is lawfully required and mandated by the Orders of the Director if a junior ground water user wants to divert out-of-priority following a finding of material injury.

Since the storage water was not committed to the control of the Watermaster, the water remained in the control of and was available for use by the lessor during the entire irrigation season. The order should be reconsidered or clarified to identify IGWA’s failure to comply with the *As Applied Order* by failing to submit its private leases to the rental pool and pay fees as required by the Water District 01 rental pool rules. These failures resulted in a lack of control of the mitigation water by the Watermaster and IDWR, as required by law and the Orders of the Director.

DATED this 15th day of October, 2010.

BARKER ROSHOLT & SIMPSON LLP

FLETCHER LAW OFFICE



Travis L. Thompson



W. Kent Fletcher

*Attorneys for A&B Irrigation District,
Burley Irrigation District, Twin Falls Canal Company,
North Side Canal Company, and Milner Irrigation District*

*Attorneys for Minidoka Irrigation
District*

CAPITOL LAW GROUP PLLC



C. Thomas Arkoosh

Attorneys for American Falls Reservoir District #2

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of October, 2010, I served a true and correct copy of the foregoing *Surface Water Coalition's Petition for Reconsideration and Clarification of Final Order Revising April Forecast Supply (Methodology Step 7)* on the following by the method indicated:

<p>Interim Director Gary Spackman c/o Victoria Wigle State of Idaho Dept of Water Resources 322 E Front St Boise ID 83720-0098 *** service by electronic mail and U.S. Mail</p> <p>gary.spackman@idwr.idaho.gov victoria.wigle@idwr.idaho.gov</p>	<p>Matt Howard USBR 1150 N. Curtis Rd. Boise ID 83706-1234 mhoward@pn.usbr.gov</p> <p>IDWR – Eastern Region 900 N. Skyline Dr., Suite A Idaho Falls, ID 83402-1718</p> <p>IDWR – Southern Region 1341 Fillmore St., Suite 200 Twin Falls, ID 83301-3380</p>	<p>Josephine P. Beeman, Esq. Beeman & Associates 409 W Jefferson Boise ID 83702 *** service by electronic mail only</p> <p>facsimile – 208-331-0954 jo.beeman@beemanlaw.com</p>
<p>Randy Budge Candice McHugh Racine Olson PO Box 1391 Pocatello ID 83204-1391 *** service by electronic mail only</p> <p>rcb@racinelaw.net cmm@racinelaw.net</p>	<p>Sarah A. Klahn Mitra Pemberton White & Jankowski, LLP 511 Sixteenth Street, Suite 500 Denver, CO 80202 *** service by electronic mail only</p> <p>sarahk@white-jankowski.com mitrap@white-jankowski.com</p>	<p>Michael Gilmore Deputy Attorney General Statehouse, Room 210 PO Box 83720 Boise ID 83720-0010 *** service by electronic mail only</p> <p>facsimile – 208-334-2830 mike.gilmore@ag.idaho.gov</p>
<p>A. Dean Tranmer City of Pocatello PO Box 4169 Pocatello ID 83201 *** service by electronic mail only</p> <p>facsimile – 208-234-6297 dtranmer@pocatello.us</p>	<p>Terry T. Uhling J.R. Simplot Company 999 Main St. P.O. Box 27 Boise ID 83707</p> <p>Facsimile – 208.389.7464 tuhling@simplot.com</p>	<p>William A. Parsons Parsons Smith & Stone P.O. Box 910 Burley, Idaho 83318 *** service by electronic mail only</p> <p>wparsons@pmt.org</p>
<p>Michael C Creamer Jeffrey C. Fereday Givens Pursley 601 W Bannock St Ste 200 PO Box 2720 Boise ID 83701-2720 *** service by electronic mail only mcc@givenspursley.com jcf@givenspursley.com</p>	<p>Kathleen Carr US Dept Interior, Office of Solicitor Pacific Northwest Region, Boise Field Office 960 Broadway Ste 400 Boise ID 83706 *** service by electronic mail only facsimile – 208-334-1918 kmarioncarr@yahoo.com</p>	<p>James Tucker Idaho Power Co 1221 W Idaho St Boise ID 83702 *** service by electronic mail only jamestucker@idahopower.com</p>


 Travis L. Thompson