

**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,)	FINAL ORDER
BURLEY IRRIGATION DISTRICT, MILNER)	ESTABLISHING 2010
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”). The Methodology Order established 10 steps for determining material injury to members of the Surface Water Coalition (“SWC”).

2. The Methodology Order describes 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 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.

3. The Department approved CM Rule 43 mitigation plans for the Idaho Ground Water Appropriators, Inc. (“IGWA”) to mitigate for material injury to in-season demand and reasonable carryover. *Final Order Approving Mitigation Credits Regarding SWC Delivery Call*, CM-MP-2009-006 (July 19, 2010); *Order Approving Mitigation Plan*, CM-MP-2009-007 (June 3, 2010).

4. The following table summarizes the 2010 irrigation season diversions and crop water need volumes for each entity. These values are used in determining the entity specific season ending RISD values.

Season Totals Summary

Entity	Demand ¹ (AF)	Crop Water Need (AF)
A&B	54,352	31,281
AFRD2	440,838	138,841
BID	228,612	86,482
Milner	59,031	27,192
Minidoka	342,918	134,420
NSCC	1,000,699	335,582
TFCC	1,048,927	374,483

5. The following table summarizes the calculated 2010 irrigation season ending in season shortfall values. The values in the table are different from those presented in the Final Order Revising April 2010 Forecast Supply (Methodology Step 7). These differences are due to changes in total supply and RISD that reflect diversion and ET data not available at the time the previous order was issued. Since the 2010 irrigation season is now complete, calculation of in season shortfall will not be subject to future revisions. For the 2010 irrigation year, in-season storage adjustments were comprised exclusively of values derived from the application of the Minidoka Credit².

¹ The Final Order Revising April 2010 Forecast Supply (Methodology Step 7) determined there was no in-season demand shortfall. This order determines there is no reasonable carryover shortfall. Consequently, there is no need to evaluate whether the 2010 diversions by the SWC were reasonable. The 2010 demand for each SWC entity is equal to each entity’s 2010 diversion.

² The Minidoka Credit is a long existing exchange of stored water among AFRD2, BID, MID, NSCC, and TFCC that has been incorporated into an agreement of those entities and recommended by a Special Master of the SRBA Court.

In Season Shortfall Calculation

	Natural Flow Diverted through 10/31	Natural Flow Adjustment	Preliminary Storage Allocation	In-Season Storage Adjustment	Total Supply	RISD	Shortfall
A&B	17,046	-	135,382	-	152,428	49,605	-
AFRD2	151,815	-	387,132	1,000	539,947	390,143	-
BID	89,092	(3,714)	222,794	5,130	313,302	210,085	-
Milner	19,339	(3,011)	87,992	-	104,320	45,792	-
Minidoka	145,360	-	360,576	8,370	514,306	306,872	-
NSCC	509,912	-	845,875	(7,750)	1,348,037	997,628	-
TFCC	829,272	-	241,919	(6,750)	1,064,441	1,013,237	-
						Total	0

6. The following table summarizes end of season 2010 carryover shortfall calculation values. The table contains the actual fall 2010 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 (Minidoka Credits) identified in the above table plus all other adjustments that have occurred. See the table labeled Attachment A for further information.

Carryover Shortfall

	Preliminary Storage Allocation	Post-Season Storage Adjustment	Storage Use	Reasonable Carryover*	Actual Carryover	Carryover Shortfall
A&B	135,382		39,778	17,000	95,604	-
AFRD2	387,132	6,000	289,860	56,000	103,272	-
BID	222,794	10,130	119,662	-	113,262	-
Milner	87,992	10,550	39,788	4,800	58,754	-
Minidoka	360,576	8,670	195,237	-	174,009	-
NSCC	845,875	2,250	534,784	57,200	313,341	-
TFCC	241,919	(146)	210,784	29,700	30,989	-
						0

*Reasonable carryover numbers from the Methodology Order.

7. The above determinations of actual carryover are based on the water diversion and storage data from Water District 01, which incorporates return flows and RISD. These are necessarily preliminary numbers that are subject to revision after taking into account adjustments of water measurement gages maintained by the USGS. The above determination of reasonable carryover is carried forward from the Methodology Order and takes into account comparative water years.

8. Details of adjustments to quantities in the above tables are set forth in "Attachment A" attached to this order.

9. Actual carryover for each member of the SWC exceeds the reasonable carryover set forth in the Methodology Order.

CONCLUSIONS OF LAW

1. The Methodology Order states that, on or before November 30, the Director will project IGWA's reasonable carryover shortfall, if any, for 2011. *Methodology Order* at 37-38 (Steps 9 and 10). If the Director projects a reasonable carryover shortfall, IGWA shall have fourteen days to establish its ability to secure "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 Director previously concluded that, for the 2010 irrigation season, no member of the SWC was materially injured. *Final Order Revising April 2010 Forecast Supply (Methodology Step 7)* (September 17, 2010).

3. Regarding projected shortfalls to reasonable carryover, the Director concludes that no member of the SWC is owed reasonable carryover storage in 2010 for use in 2011. CM Rule 42.01.g.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that no member of the SWC was materially injured during the 2010 irrigation season. The determination of no material injury applies both to reasonable in-season demand and reasonable carryover storage in 2010 for use during the 2011 irrigation season.

IT IS FURTHER ORDERED that this final order concludes the application of the Methodology Order to the climatic, hydrologic, and agronomic facts of the 2010 irrigation season.

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 30th day of November, 2010.



GARY SPACKMAN
Interim Director

Attachment A

2010 SWC Adjustment

	Adjustments	Description	Included as Total Supply Natural Flow Adjustment	Included as Total Supply Storage Adjustment	Included in Carryover Adjustment
A&B	None				
AFRD2	1000 AF	Minidoka Credit	No	Yes	Yes
	5000 AF	IGWA (for conversions)	No	No	Yes
		Total AFRD	0 AF	1000 AF	6000 AF
BID	(3714) AF	SWID Natural Flow	Yes	No	No
	5130 AF	Minidoka Credit	Yes	Yes	Yes
	5000 AF	SWID	No	No	Yes
		Total BID	(3714) AF	5130 AF	10130 AF
Milner	(3011) AF	SWID Natural Flow	Yes	No	No
	5000 AF	SWID	No	No	Yes
	1223 AF	Artesian	No	No	Yes
	500 AF	Glen Breeding	No	No	Yes
	3827 AF	PWUI	No	No	Yes
		Total Milner	(3011) AF	0 AF	10550 AF
MID	8370 AF	Minidoka Credit	No	Yes	Yes
	(300) AF	Ardel Wickel	No	No	No
	300 AF	Ardel Wickel	No	No	Yes
	(10000) AF	Water Mitig Coalition	No	No	No
		Total MID	0 AF	8370 AF	8670 AF
NSCC	(7750) AF	Minidoka Credit	No	Yes	Yes
	10000 AF	IGWA (conversion acres)	No	No	Yes
		Total NSCC	0 AF	(7750) AF	2250 AF
TFCC	(6750) AF	Minidoka Credit	No	Yes	Yes
	1584 AF	Artesian	No	No	Yes
	5000 AF	SWID	No	No	Yes
	20 AF	Tessengerlo Kerley Inc	No	No	Yes
		Total TFCC	0 AF	(6750) AF	(146) AF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of November, 2010, 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 P.O. Box 485 Twin Falls, ID 83303 jks@idahowaters.com ilt@idahowaters.com pla@idahowaters.com</p>	<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>
<p>C. Thomas Arkoosh CAPITOL LAW GROUP, PLLC P.O. Box 32 Gooding, ID 83339 tarkoosh@capitollawgroup.net</p>	<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>
<p>W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318 wkf@pmt.org</p>	<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>
<p>Randall C. Budge Candice M. McHugh Thomas J. Budge RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 rcb@racinelaw.net cmm@racinelaw.net tjb@racinelaw.net</p>	<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>
<p>Kathleen M. Carr US Dept. Interior 960 Broadway Ste 400 Boise, ID 83706 kathleenmarion.carr@sol.doi.gov</p>	<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>
<p>David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th St., South Terrace, Ste 370 Denver, CO 80202-2413 david.gehlert@usdoj.gov</p>	<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>

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Deborah Gibson
Administrative Assistant, IDWR

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 740.02)

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

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

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 of: a) 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.