

**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, )	<b>FINAL ORDER</b>
BURLEY IRRIGATION DISTRICT, MILNER )	<b>ESTABLISHING 2012</b>
IRRIGATION DISTRICT, MINIDOKA IRRIGATION )	<b>REASONABLE CARRYOVER</b>
DISTRICT, NORTH SIDE CANAL COMPANY, )	
AND TWIN FALLS CANAL COMPANY )	<b>(METHODOLOGY STEP 9)</b>
_____ )	

**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 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 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 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). These final orders of the Department were affirmed on judicial review. *Memorandum Decision and Order on Petition for Judicial Review*, Case No. CV 2010-3822 (Fifth Jud. Dist. April 22, 2011) (affirming the Director’s *Final Order Approving Mitigation Credits Regarding SWC Delivery Call*); *Memorandum Decision and Order on Petition for Judicial Review*, Case No. CV 2010-3075 (Fifth Jud. Dist. January 25, 2011) (affirming the Director’s *Order Approving Mitigation Plan*).

4. The following table summarizes the 2012 irrigation season diversions and crop water need volumes for each entity. These values are used in determining the entity specific season ending reasonable in-season demand (“RISD”) values.

Entity	Demand <sup>1</sup> (AF)	Crop Water Need (AF)
A&B	62,993	42,048
AFRD2	451,557	191,097
BID	252,638	130,633
Milner	48,742	36,965
Minidoka	382,708	201,071
NSCC	1,006,520	409,278
TFCC	1,089,269	497,714

5. The following table summarizes the calculated 2012 irrigation season ending in-season shortfall values, if any. The values in this table are different from those presented in the *Final Order Regarding April 2012 Forecast Supply (Methodology Steps 1-8)* (April 13, 2012) (“April 2012 Final Order”). 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. In the April 2012 Final Order, the Director predicted no material injury to members of the SWC. *April 2012 Final Order* at 5. Based on data not available in April, and as shown in the table below, an in-season shortfall occurred to American Falls Reservoir District No. 2 (“AFRD2”) and Twin Falls Canal Company (“TFCC”). The Methodology Order does not require junior ground water users provide this in-season shortfall to AFRD2 or TFCC. *Methodology Order* at 31. For the 2012

<sup>1</sup> The “Demand” for each SWC entity is equal to each entity’s 2012 April – October diversions. The *Final Order Regarding April 2012 Forecast Supply (Methodology Steps 1-8)* (April 13, 2012) determined there was no in-season demand shortfall. This order determines there is no reasonable carryover shortfall to any entity other than AFRD2. Consequently, an evaluation of whether the 2012 diversions of the SWC were reasonable is only necessary for AFRD2. AFRD2’s 2012 demand was less than the end of season RISD determined by the methodology and is therefore reasonable.

irrigation year, in-season storage adjustments were comprised of values derived from application of the Minidoka Credit<sup>2</sup> and the 20,000 acre-feet of storage water rented by TFCC. The natural flow adjustments include water delivered for recharge<sup>3</sup> and natural flow delivered to SWID. See “Attachment A” attached hereto for further information. Since the 2012 irrigation season is now complete, calculation of in-season shortfall will not be subject to revision. *Id.* at 36.

Entity	Natural Flow Diverted through 10/31	Natural Flow Adjustment	Preliminary Storage Allocation	In-Season Storage Adjustment	Total Supply	RISD	Shortfall
A&B	12,716	-	118,664	-	131,380	61,709	-
AFRD2	113,655	(9,114)	384,627	1,000	490,168	504,854	14,686
BID	125,661	(3,714)	214,513	5,130	341,590	271,913	-
Milner	17,514	(3,011)	79,659	-	94,162	55,287	-
Minidoka	176,264	-	334,804	8,370	519,438	394,855	-
NSCC	469,100	(35,229)	790,988	(7,750)	1,217,109	1,176,544	-
TFCC	928,864	-	231,299	13,250	1,173,413	1,209,713	36,300

6. The following table summarizes end of season 2012 carryover shortfall calculation values. The table contains the actual fall 2012 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 Adjustment	Storage Use	Storage Use Adjustments	Reasonable Carryover	Actual Carryover	Carryover Shortfall
A&B	118,664	-	51,396	(1,088)	17,000	68,356	-
AFRD2	384,627	1,000	352,778	(5,833)	56,000	38,682	17,318
BID	214,513	5,130	146,130	(12,665)	-	86,178	-
Milner	79,659	-	51,685	(17,150)	4,800	45,124	-
Minidoka	334,804	8,370	204,976	(1,229)	-	139,426	-
NSCC	790,988	(7,750)	606,049	(17,066)	57,200	194,255	-
TFCC	231,299	13,250	176,580	(8,609)	29,700	76,578	-

7. 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. AFRD2 is the only SWC entity with a reasonable carryover shortfall for 2012.

<sup>2</sup> 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 accepted by the SRBA district court.

<sup>3</sup> Recharge values represent accomplished recharge as of October 31, 2012. Recharge occurring after October 31, 2012 is not included in the adjustments.

8. 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 2012. *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 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, \_\_\_, 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. Because no in-season shortfall was predicted in the April 2012 Final Order, junior ground water users are not required to provide the calculated in-season RISK shortfall shown in the table associated with Finding of Fact 5. *Methodology Order* at 31.

5. Regarding projected shortfalls to reasonable carryover, the Director concludes by clear and convincing evidence that AFRD2 will have a carryover shortfall in the amount of 17,318 acre-feet.

6. According to the Methodology Order, “Fourteen (14) days following the publication by the Department of reasonable carryover shortfall 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. If junior ground water users cannot provide this information, the Director will issue an order curtailing junior ground water rights.” *Methodology Order* at 36-37.

7. The Methodology Order goes on to explain, “As an alternative to providing the full volume of reasonable carryover shortfall established in Step 9, junior ground water users can request that the Department model the transient impacts of the proposed curtailment based on the Department’s water rights data base and the ESPA Model.” *Id.* at 37.

8. Therefore, junior ground water users, represented by the Idaho Ground Water Appropriators, Inc. ("IGWA") have fourteen days to: (1) notify the Department that they have provided 17,318 acre-feet of storage water to AFRD2 to satisfy Methodology Step 9; or (2) inform the Department of their intent to implement Methodology Step 10. If IGWA does not inform the Department of its intent, the Department will issue an order curtailing junior-priority ground water rights.

### ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the IGWA has fourteen days from the issuance of this order to notify the Department that it has provided 17,318 acre-feet of storage water to AFRD2. Alternatively, IGWA may inform the Department, within fourteen days of the issuance of this order, of its intention to implement Methodology Step 10. If IGWA does not respond to the Department within fourteen days, the Director will issue an order curtailing junior-priority ground water rights.

IT IS FURTHER ORDERED that this final order concludes the application of the Methodology Order to the climatic, hydrologic, and agronomic facts of the 2012 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 26<sup>th</sup> day of November, 2012.

  
GARY SPACKMAN  
Director

**Attachment A**  
**2012 SWC Adjustment**

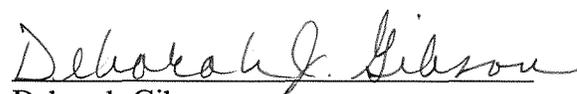
	Adjustments	Description	Included in Total Supply Natural Flow Adjustment	Included in Total Supply Storage Adjustment	Wheeled Storage Water Adjustment	Total Carryover Adjustment
<b>A&amp;B</b>	1088.0	WMC	No	No	Yes	Yes
		<b>Total A&amp;B</b>	<b>0</b>	<b>0</b>	<b>1088</b>	<b>1088</b>
<b>AFRD2</b>	1000.0	Minidoka Credit	No	Yes	No	Yes
	1250.0	IGWA from Enterprise	No	No	Yes	Yes
	3750.0	IGWA from Idaho Irr	No	No	Yes	Yes
	833.0	WMC	No	No	Yes	Yes
	(9114.0)	Recharge	Yes	NO	No	
		<b>Total AFRD</b>	<b>(9,114)</b>	<b>1,000</b>	<b>5,833</b>	<b>6,833</b>
<b>BID</b>	5130.0	Minidoka Credit	No	Yes	No	Yes
	637.5	WMC	No	No	Yes	Yes
	2000.0	SWID	No	No	Yes	Yes
	3000.0	SWID	No	No	Yes	Yes
	5000.0	SWID	No	No	Yes	Yes
	2000.0	SWID	No	No	Yes	Yes
	27.5	Paul Baumgartner	No	No	Yes	Yes
	(3713.5)	SWID Natural Flow	Yes	No	No	No
		<b>Total BID</b>	<b>(3713.5)</b>	<b>5130</b>	<b>12665</b>	<b>17795</b>
<b>Milner</b>	170.0	WMC	No	No	Yes	Yes
	7000.0	SWID	No	No	Yes	Yes
	5000.0	SWID	No	No	Yes	Yes
	500.0	Glen Breeding	No	No	Yes	Yes
	1210.3	Artesian	No	No	Yes	Yes
	146.3	Artesian	No	No	Yes	Yes
	3123.2	Palisades Water Users	No	No	Yes	Yes
	(3011.5)	SWID Natural Flow	Yes	No	No	No
		<b>Total Milner</b>	<b>(3,011.5)</b>	<b>0.0</b>	<b>17,149.8</b>	<b>17,149.8</b>
<b>MID</b>	8370.0	Minidoka Credit	No	Yes	No	Yes
	(200.0)	Ardel Wickel	No	No	No	No
	200.0	Ardel Wickel	No	No	Yes	Yes
	(1500.0)	To WMC	No	No	No	No
	(833.0)	To WMC	No	No	No	No
	(170.0)	To WMC	No	No	No	No
	(1088.0)	To WMC	No	No	No	No
	(637.5)	To WMC	No	No	No	No
	(1028.5)	To WMC	No	No	No	No
	1028.5	WMC	No	No	Yes	Yes
	(2065.5)	To WMC	No	No	No	No
	(2677.5)	To WMC	No	No	No	No
	(2000.0)	To SWID	No	No	No	No
	(3000.0)	To SWID	No	No	No	No
		<b>Total MID</b>	<b>0</b>	<b>8,370</b>	<b>1,228.5</b>	<b>9,598.5</b>
<b>NSCC</b>	(7750.0)	Minidoka Credit	No	Yes	No	Yes
	12500.0	IGWA from Aberdeen	No	No	Yes	Yes
	2500.0	IGWA from Enterprise	No	No	Yes	Yes
	2065.5	WMC	No	No	Yes	Yes
	(35229.0)	Recharge	Yes	No	No	
		<b>Total NSCC</b>	<b>(35,229)</b>	<b>(7,750)</b>	<b>17,065.5</b>	<b>9,316</b>
<b>TFCC</b>	(6750.0)	Minidoka Credit	No	Yes	No	Yes
	1500.0	WMC	No	No	Yes	Yes
	2677.5	WMC	No	No	Yes	Yes
	3000.0	SWID	No	No	Yes	Yes
	20000.0	TFCC	No	Yes	Yes	yes
	799.1	Artesian	No	No	Yes	Yes
	632.2	Artesian	No	No	Yes	Yes
		<b>Total TFCC</b>	<b>0</b>	<b>13,250</b>	<b>8,608.8</b>	<b>21,858.8</b>

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<sup>th</sup> day of November, 2012, 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 &amp; SIMPSON, LLP          195 RIVER VISTA PL STE 204          Twin Falls, ID 83301-3029  <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a>  <a href="mailto:ltt@idahowaters.com">ltt@idahowaters.com</a>  <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a></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>W. Kent Fletcher          FLETCHER LAW OFFICE          P.O. Box 248          Burley, ID 83318  <a href="mailto:wkf@pmt.org">wkf@pmt.org</a></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          Candice M. McHugh          Thomas J. Budge          RACINE OLSON          P.O. Box 1391          Pocatello, ID 83204-1391  <a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a>  <a href="mailto:cmm@racinelaw.net">cmm@racinelaw.net</a>  <a href="mailto:tjb@racinelaw.net">tjb@racinelaw.net</a></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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Deborah Gibson  
Administrative Assistant, IDWR