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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN**

AMERICAN FALLS RESERVOIR)
DISTRICT #2)

Petitioner,)

vs.)

GARY SPACKMAN, in his capacity as Interim)
Director of the Idaho Department of Water)
Resources, and the Idaho Department of Water)
Resources,)

Respondents.)

-----)
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)

Case No. _____

**NOTICE OF APPEAL AND
PETITION FOR JUDICIAL
REVIEW OF FINAL AGENCY
ACTION
(Methodology Step 5)**

Category Fee: L-3
Fee Amount: \$96.00

NOTICE OF APPEAL AND PETITION FOR JUDICIAL
REVIEW OF FINAL AGENCY ACTION (Methodology Step 5)

IRRIGATION DISTRICT, NORTH)
SIDE CANAL COMPANY, AND)
TWIN FALLS CANAL COMPANY,)
_____)

The undersigned on behalf of Petitioner American Falls Reservoir District #2 (AFRD2) files this Petition seeking judicial review of a final agency action by the Idaho Department of Water Resources (Department).

STATEMENT OF THE CASE

1. This is a civil action pursuant to Idaho Code §§ 67-5270 and 67-5279 seeking judicial review of final orders issued by the Director of the Department, Gary Spackman (Director), on June 17, 2013 and July 18, 2013.

2. On November 26, 2012, the Director issued the *Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9)*, attached as Exhibit A, determining that the carryover storage supply of AFRD2 was materially injured by junior ground water pumping and ordered the Idaho Ground Water Appropriators, Inc. (IGWA) to provide 17,318 acre feet of storage water to AFRD2 or, in the alternative, to inform the Department, within fourteen (14) days of the issuance of the *Order*, of IGWA's intention to implement the Director's Methodology Step 10.

3. On December 21, 2012, pursuant to stipulation between AFRD2 and IGWA, the Director entered an *Order* establishing that IGWA had secured 17,389 acre feet of storage water to mitigate for predicted material injury to AFRD2. *Order Adopting Stipulated Notice of*

Secured Water in Compliance with Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9).

4. On June 17, 2013, the Director issued an *Order* finding that AFRD2 would receive a full storage allocation in American Falls Reservoir and that IGWA was no longer required to provide storage water to AFRD2 for the predicted 2012 reasonable carryover shortfall. *Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)*, attached as Exhibit B.

5. On June 27, 2013, AFRD2 filed a *Request for Reconsideration of Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)*, attached as Exhibit C.

6. On July 18, 2013, the Director issued an *Order Denying AFRD2's Petition for Reconsideration of Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)*, attached as Exhibit D.

JURISDICTION AND VENUE

7. This Petition is authorized by Idaho Code §§ 67-5270 and 67-5279.

8. This Court has jurisdiction over this action pursuant to Idaho Code § 67-5272.

9. Venue lies in this Court pursuant to Idaho Code § 67-5272(c) because AFRD2 operates its principal place of business in Lincoln County.

10. Pursuant to the Idaho Supreme Court's *Administrative Order* issued on December 9, 2009, all petitions for judicial review of any decision regarding administration of water rights

from the Department shall be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District. The SRBA Court's procedures instruct the Clerk of the District Court in which the petition is filed to deliver a *Notice of Reassignment*. Attached as Exhibit E for the convenience of the Clerk is a copy of the SRBA Court's *Notice of Reassignment*.

11. The Director's June 17, 2013 *Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)* and July 18, 2013 *Order Denying AFRD2's Request for Reconsideration of Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)* (collectively referred to as "*Final Orders*") are final agency actions subject to judicial review pursuant to Idaho Code § 67-5270(3).

PARTIES

12. AFRD2 is an irrigation district organized and existing under the laws of the State of Idaho with its principal place of business in Shoshone, Lincoln County, Idaho. AFRD2 delivers water to its landowners located in Jerome, Lincoln, and Gooding Counties.

13. Respondent, Gary Spackman, is the Director of the Department and is a resident of Ada County.

14. Respondent, Department, is the executive department existing under the laws of the State of Idaho pursuant to Idaho Code § 42-1701 *et seq.*, with its state offices located at 322 E. Front Street, Boise, Ada County, Idaho.

STATEMENT OF INITIAL ISSUES

15. AFRD2 intends to assert the following issues on judicial review:

15.1. Are the Director's *Final Orders* supported by substantial evidence?

15.2. Does the Director's application of his methodology in the *Final Orders* violate Idaho law?

15.3. Are the Director's action arbitrary and capricious or otherwise not in accordance with the law?

15.4. Pursuant to I.R.C.P. 84(d)(5), AFRD2 reserves the right to assert additional issues and/or clarify or further specify the issues for judicial review stated herein which become later discovered.

AGENCY RECORD

16. Judicial review is sought of the Director's June 27, 2013 *Final Order*.

17. The only documents in the record, to AFRD2's knowledge, consist of the following:

17.1. *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-season Demand and Reasonable Carryover* dated June 23, 2010.

17.2. *Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9)* dated November 26, 2012.

17.3. *Stipulated Notice of Secured Water in Compliance With Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9)* dated December 10, 2012.

17.4. *Order Adopting Stipulated Notice of Secured Water in Compliance With Final Order Establishing 2012 Reasonable Carryover* dated December 21, 2012.

17.5. *Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)* dated June 17, 2013.

17.6. *Request for Reconsideration of Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)* dated June 27, 2013.

17.7. *Order Denying AFRD2's Petition for Reconsideration of Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)* dated July 18, 2013.

18. AFRD2 anticipates it can reach a stipulation regarding the agency record with the Respondents and other parties, and will pay its necessary share of the fee for preparation of the record at such time.

19. Service of this Petition for Judicial Review of Agency Action has been made on the Respondents at the time of the filing of this Petition.

DATED this 9 day of August, 2013.

FLETCHER LAW OFFICE



W. Kent Fletcher

CERTIFICATE OF SERVICE

I hereby certify that on the 9 day of August, 2013, I served a copy of the foregoing NOTICE OF APPEAL AND PETITION FOR JUDICIAL REVIEW OF FINAL AGENCY ACTION (METHODOLOGY STEP 5) upon the following:

Original to:

Clerk of the Court
Lincoln County Court
111 West B Street, Suite C
Shoshone, Idaho 83352

Copies to:

Snake River Basin Adjudication
P.O. Box 126
Twin Falls, Idaho 83301

Travis L. Thompson
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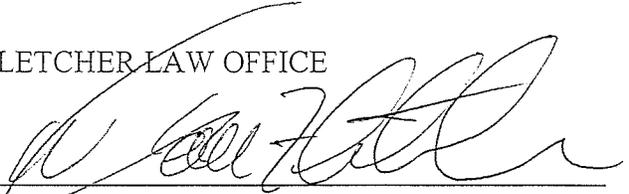
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Twin Falls, Idaho 83301-3033

FLETCHER LAW OFFICE



W. Kent Fletcher

EXHIBIT A

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 2012
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 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 ¹ (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

¹ 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 Credit² and the 20,000 acre-feet of storage water rented by TFCC. The natural flow adjustments include water delivered for recharge³ 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 Allocation 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.

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 accepted by the SRBA district court.

³ 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 RISD 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 26th day of November, 2012.


GARY SPACKMAN
Director

Attachment A
2012 SWC Adjustment

	Adjustments	Description	Included in Total	Included in Total	Wheeled	Total
			Supply Natural Flow	Supply Storage	Storage Water	Carryover
			Adjustment	Adjustment	Adjustment	Adjustment
A&B	1088.0	WMC	No	No	Yes	Yes
		Total A&B	0	0	1088	1088
AFRD2	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	No
		Total AFRD	(9,114)	1,000	5,833	6,833
BID	5130.0	Minidoka Credit	No	Yes	No	Yes
	637.5	WMC	No	No	Yes	Yes
	2000.0	SWID	No	No	Yes	Yes
	2000.0	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
		Total BID	(3713.5)	5130	12665	17795
Milner	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
		Total Milner	(3,011.5)	0.0	17,149.8	17,149.8
MID	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
		Total MID	0	8,370	1,228.5	9,598.5
NSCC	(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	No
		Total NSCC	(35,229)	(7,750)	17,065.5	9,316
TFCC	(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
		Total TFCC	0	13,250	3,608.8	21,858.8

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th 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 & SIMPSON, LLP 195 RIVER VISTA PL 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>C. Thomas Arkoosh ARKOOSH EIGUREN LLC P.O. Box 2900 Boise, ID 83701 tom.arkoosh@aetawlobby.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 Candice M. McHugh Thomas J. Budge RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 rcb@racinelaw.net cnmm@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 US 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 St. South Terrace, Ste 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>

<p>Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@pn.usbr.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
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<p>Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83205 dtranmer@pocatello.us</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>William A. Parsons PARSONS SMITH & STONE 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@givenspurslev.com jcf@givenspurslev.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
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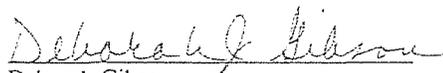

Deborah Gibson
Administrative Assistant, IDWR

EXHIBIT B

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,) ORDER RELEASING IGWA
BURLEY IRRIGATION DISTRICT, MILNER) FROM 2012 REASONABLE
IRRIGATION DISTRICT, MINIDOKA IRRIGATION) CARRYOVER SHORTFALL
DISTRICT, NORTH SIDE CANAL COMPANY,) OBLIGATION
AND TWIN FALLS CANAL COMPANY)
) (METHODOLOGY STEP 5)
_____)

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. On November 26, 2012, the Director issued an order predicting a 17,318 acre-feet reasonable carryover shortfall to American Falls Reservoir District No. 2 ("AFRD2"). *Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9)* ("2012 Step 9 Order"). On December 21, 2012, and pursuant to stipulation between AFRD2 and the Idaho Ground Water Appropriators, Inc. ("IGWA"), the Director entered an order establishing that IGWA had secured 17,389 acre-feet of storage water to mitigate for predicted material injury to AFRD2. *Order Adopting Stipulated Notice of Secured Water in Compliance with Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9)*.

3. IGWA is authorized to mitigate material injury to the SWC by providing storage water. *Order Approving Mitigation Plan*, CM-MP-2009-007 (June 3, 2010); *Memorandum Decision and Order on Petition for Judicial Review*, CV-2010-3075 (Fifth Jud. Dist., Jan. 25, 2011).

4. In order to establish that it had secured the required volume of storage water to mitigate for the predicted shortfall to AFRD2's reasonable carryover, IGWA presented the following leases to the Department, which are summarized as follows in acre-feet:

Lessor	Volume
Aberdeen Springfield Canal Co.	8,939
Enterprise Canal Co.	3,750
Palisades Water Users	1,250
Peoples Canal	3,750
TOTAL	17,689

Stipulated Notice of Secured Water in Compliance with Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9) (December 10, 2012) at 2.

5. The 17,318 acre-feet reasonable carryover shortfall was based on preliminary Water District 01 accounting. *Final Order Regarding April 2013 Forecast Supply (Methodology Steps 1-4)* at 5. Based on final Water District 01 accounting, the reasonable carryover shortfall to AFRD2 is 14,605 acre-feet. *Id.*

6. Step 5 from the Methodology Order states as follows:

Step 5: If the storage allocations held by members of the SWC fill, there is no reasonable carryover shortfall. If the storage allocations held by members of the SWC do not fill, within fourteen (14) days following the publication of Water District 01's initial storage report, which typically occurs soon after the Day of Allocation, the volume of water secured by junior ground water users to fulfill the reasonable carryover shortfall shall be made available to injured members of the SWC. The amount of reasonable carryover to be provided shall not exceed the empty storage space on the Day of Allocation for that entity. If water is owed in addition to the reasonable carryover shortfall volume, this water shall be provided to members of the SWC at the Time of Need, described below. The Time of Need will be no earlier than the Day of Allocation.

Methodology Order at 36.

7. The Day of Allocation in Water District 01 occurred on or about June 5, 2013. On or about June 11, 2013, the watermaster for Water District 01 released the storage allocations for storage space holders. AFRD2 will receive its full storage allocation this season—393,550 acre-feet in American Falls Reservoir—less evaporation.

CONCLUSIONS OF LAW

1. In the 2012 Step 9 Order, the Director predicted AFRD2 would suffer a reasonable carryover shortfall of 17,318 acre-feet. Based on a stipulation entered into between

AFRD2 and IGWA, the Director found that IGWA secured 17,689 acre-feet of storage water to mitigate for the predicted reasonable carryover shortfall.

2. The 2013 Forecast Supply Order concluded that AFRD2's predicted reasonable carryover shortfall was 14,605 acre-feet.

3. The Day of Allocation in Water District 01 occurred on or about June 5, 2013. On or about June 11, 2013, the watermaster for Water District 01 released the storage allocations for storage space holders. AFRD2 will receive a full storage allocation this season, less evaporation.

4. Methodology Step 5 states in pertinent part: "If the storage allocations held by members of the SWC fill, there is no reasonable carryover shortfall." *Methodology Order* at 36. Because AFRD2 will receive a full storage allocation, there is no reasonable carryover shortfall.

5. Because there is no reasonable carryover shortfall, the Director releases IGWA from its 2012 reasonable carryover obligation. The watermaster for Water District 01 is instructed to allow IGWA access to the volume of water that was previously secured for the predicted reasonable carryover shortfall.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED as follows:

Because AFRD2 will receive a full storage allocation, IGWA is no longer required to provide storage water to AFRD2 for its predicted 2012 reasonable carryover shortfall. The watermaster for Water District 01 is hereby instructed to allow IGWA access to the volume of water it secured to meet the 2012 predicted reasonable carryover shortfall to AFRD2.

IT IS FURTHER ORDERED that pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by the final order may appeal the final order 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 17th day of June, 2013.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June, 2013, 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 lt@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>C. Thomas Arkoosh ARKOOSH LAW OFFICES P.O. Box 2900 Boise, ID 83701 tom.arkoosh@arkoosh.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 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 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 US 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 13th 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>

<p>Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@usbr.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>Sarah A. Klahn Mitra Pemberton WHITE JANKOWSKI 511 16th St., Ste. 500 Denver, CO 80202 sarahk@white-jankowski.com mitrap@white-jankowski.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>Dean A. Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83205 dtranmer@pocatello.us</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>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@givenspurslev.com jcf@givenspurslev.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

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.

EXHIBIT C

RECEIVED

JUN 27 2013

DEPARTMENT OF
WATER RESOURCES

C. Tom Arkoosh, ISB# 2253
ARKOOSH LAW OFFICES
802 W. Bannock Street, 9th Floor
P.O. Box 2900
Boise, ID 83701
Phone: (208) 343-5105
Facsimile: (208) 343-5456

Attorneys for Petitioner 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
REQUEST FOR
RECONSIDERATION OF ORDER
RELEASING IGWA FROM 2012
REASONABLE CARRYOVER
SHORTFALL OBLIGATION
(METHODOLOGY STEP 5)

COMES NOW American Falls Reservoir District #2 by and through its counsel of record, C. Tom Arkoosh of Arkoosh Law Offices, and hereby requests reconsideration of the *Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)*.

This request is made for the following reasons:

1. On or about April 7, 2010, the Director, then Interim Director, signed the *Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*, which contained the following provisions:

As stated by the Hearing Officer, "There must be adjustments as conditions develop if any baseline supply concept is to be used." R. Vol. 37 at 7093.

¶ 57 at p. 20.

In early to mid-July, the Forecast Supply will be adjusted. The reservoirs will typically have filled to their peak capacity for the season and the storage water will have been allocated. The Department's water rights accounting model will be used to compute the natural flow diverted by each member of the SWC as of the new forecast date. The natural flow diversion for the remainder of the irrigation season will be estimated based on a historical year with similar gains in the Blackfoot to Milner reach. Reach gains are graphed below, using 2004 as an example. In this case, 2003 had similar reach gains and is appropriately conservative. Therefore, the natural flow diverted in 2003 would be used to predict the natural flow diversions for the remainder of the 2004 season. The adjusted Forecast Supply in the sum of the actual natural flow diversions, the predicted natural flow diversions, and the storage allocation.

¶ 60 at p. 20.

Step 6: Approximately halfway through the irrigation season, but following the events described in Step 5, the Director will, for each member of the SWC: (1) evaluate the actual crop water needs up to that point in the irrigation season; (2) estimate the Time of Need date; and (3) issue a revised Forecast Supply.

This information will be used to recalculate RISD and adjust the projected DS for each member of the SWC. RISD will be calculated utilizing the project efficiency, projected demand, and the cumulative actual crop water need determined up to that point in the irrigation season. The Director will then issue RISD and revised DS values.

¶ 7-8 at p. 35.

2. On or about June 23, 2010, the Director, then Interim Director, signed the *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*, which contained the following provision:

Just as members of the SWC should have certainty at the start of the irrigation season that junior ground water users will be curtailed, in whole or in part, unless they provide the required volume of mitigation water, in whole or in part, junior ground water users should also have certainty entering the irrigation season that the predicted injury determination will not be greater than it is ultimately determined at the Time of Need (defined in footnote 8, *supra*). If it is determined at the time of need that the Director under-predicted the demand shortfall, the Director will not require that junior ground water users make up the difference, either through mitigation or curtailment. This determination is based upon the Director's discretion and his balancing of the principal of priority of right with the principals of optimum utilization and full economic development of the State's water resources. Idaho Const. Art. XV, § 3; Idaho Const. Art. XV § 7; Idaho Code § 42-106; Idaho Code § 42-226. Because the methodology is based upon conservative assumptions and is subject to refinement, the possibility of under-predicting material injury is minimized and should lessen as time progresses. The methodology should provide both the SWC and junior ground water users certainty at the start of the irrigation season.

¶ 18 at p. 31.

3. Ironically, while the Interim Director declined to adapt the estimation upward in the event of senior water shortages, the Director did expressly reserve the opportunity to adjust the demand downward in the event of excess water:

If, at any time prior to the Director's final determination of the April Forecast Supply, the Director can determine with certainty that any member of the SWC has diverted more natural flow than predicted, or has accrued more storage than predicted, the Director will revise his initial, projected demand shortfall determination.

¶ 6 at p. 36.

4. That no explanation was given, or hearing offered, on the change from the adaptability of providing water to seniors from juniors, except as provided in ¶ 18 of the *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*, quoted above.
5. *Clear Springs Foods v. Spackman*, 150 Idaho 790 (2011) was published March 17, 2011, nearly three months prior to the *Second Amended Final Order Regarding*

Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover, and soundly rejected the use of the concepts of optimal utilization and full economic development in conjunctive management. Thus, notwithstanding the statements set forth in ¶ 18 of p. 31 of the *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*, quoted above, there exists no discretion on the part of the Director to abandon the adaptability of the reasonable in-season demand.

6. Although the Director's April estimate predicted American Falls Reservoir District #2 would receive a supply of 441,503 acre-feet to meet a baseline year of 415,730 acre-feet, American Falls Reservoir District #2 will not receive the predicted amount.
7. Constitutionally, therefore, the Director must administer water adaptively as required by both the priority doctrine and conjunctive management rules.
8. In the *Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)*, the Director has determined that the storage allocation held by American Falls Reservoir District #2 filled. Given the operation of the American Falls right, had American Falls Reservoir filled, the storage right of American Falls Reservoir District #2 would have filled. As it was, on the day of allocation, American Falls Reservoir had not filled subsequent to April 30, 2013, and therefore American Falls Reservoir District #2's storage space did not fill, resulting in significantly less water than initially predicted by the Director in Step 4, which prediction was based upon the estimation that American Falls Reservoir would fill subsequent to April 30, 2013.

9. Therefore, American Falls Reservoir District #2 respectfully prays the Director for reconsideration reversal of the release of the water owed to American Falls Reservoir District #2 from junior water right users pursuant to Idaho Code § 42-106.

DATED this 24th day of June, 2013.

ARKOOSH LAW OFFICES



C. Tom Arkoosh
*Attorneys for American Falls Reservoir
District #2*

CERTIFICATE OF MAILING

I hereby certify that on this 21st day of June, 2013, the above and foregoing, was sent to the following in the manner indicated below:

Gary Spackman, Director – Original c/o Deborah Gibson Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720 Deborah.gibson@idwr.idaho.gov Garrick.baxter@idwr.idaho.gov Chris.bromley@idwr.idaho.gov	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, ID 83318 wkf@pmt.org	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
Matt J. Howard U.S. Bureau of Reclamation 1150 N. Curtis Road Boise, ID 83706-1234 mhoward@usbr.gov	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
Michael C. Creamer Jeff C. Fereday Givens Pursley, LLP P.O. Box 2720 Boise, ID 83701-2720 mcc@givenspursley.com jcf@givenspursley.com	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
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 C. Tom Arkoosh

EXHIBIT D

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,) ORDER DENYING
BURLEY IRRIGATION DISTRICT, MILNER) AFRD2's PETITION FOR
IRRIGATION DISTRICT, MINIDOKA IRRIGATION) RECONSIDERATION OF
DISTRICT, NORTH SIDE CANAL COMPANY,) ORDER RELEASING IGWA
AND TWIN FALLS CANAL COMPANY) FROM 2012 REASONABLE
) CARRYOVER SHORTFALL
) OBLIGATION
)
) (METHODOLOGY STEP 5)
)
_____)

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. During 2010, the Director issued multiple orders applying the Methodology Order. Parties to the SWC delivery call filed petitions for judicial review in the Fifth Judicial District, Case No. CV-2010-382 (hereinafter "Consolidated 382").

3. On September 10, 2010, the Honorable John M. Melanson issued his *Amended Order on Petitions for Rehearing: Order Denying Surface Water Coalition's Motion for Clarification in A&B Irr. Dist. et al. v. IDWR et al.*, Gooding County District Court Case No. 2008-000551. Judge Melanson issued a *Judgment Nunc Pro Tunc* in that case on November 30, 2010. Notice of appeal were filed with the Idaho Supreme Court, Case No. 38193-2010.

4. Because the "issues on appeal in Consolidated 382 relate to the issues raised in the SWC Supreme Court Appeal [Case No. 38193-2010]," all parties to the SWC delivery call filed a *Motion for Stay* with the Fifth Judicial District Court in Consolidated 382: "For purposes of judicial economy, IDWR and the parties to these proceedings request that this Court stay all proceedings in the above-captioned matters until a decision has been entered by the Idaho

Supreme Court in the SWC Supreme Court Appeal.” *Motion for Stay* at 3. The Motion for Stay was filed on December 10, 2010. The Motion for Stay also recited the following: “IDWR and the parties to these proceedings further agree that, in the interim, administration of hydraulically connected ground water and surface water rights shall continue as set forth in the Methodology Order.” *Id.* On December 13, 2010, the Honorable Eric J. Wildman, in and for the Fifth Judicial District Court, entered an *Order Granting Motion for Stay* in Consolidated 382.¹ “Within 30 days of the Idaho Supreme Court’s issuance of its decision in the SWC Supreme Court Appeal, the parties shall contact this Court regarding a status and scheduling conference to resolve any remaining matters” *Order Granting Motion for Stay* at 2.

5. The Director issued orders applying the Methodology Order in 2011 and 2012.

6. On June 13, 2012, oral argument occurred in the SWC delivery call appeal before the Idaho Supreme Court, Case No. 38193-2010. As of the issuance of this order, the Idaho Supreme Court has not yet issued a written decision.

7. On November 26, 2012, the Director issued an order predicting a 17,318 acre-feet reasonable carryover shortfall to American Falls Reservoir District No. 2 (“AFRD2”). *Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9)* (“2012 Step 9 Order”). On December 21, 2012, and pursuant to stipulation between AFRD2 and the Idaho Ground Water Appropriators, Inc. (“IGWA”), the Director entered an order establishing that IGWA had secured 17,389 acre-feet of storage water to mitigate for the predicted material injury to AFRD2’s reasonable carryover. *Order Adopting Stipulated Notice of Secured Water in Compliance with Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9)*.

8. IGWA is authorized to mitigate material injury to members of the SWC by providing storage water. *Order Approving Mitigation Plan*, CM-MP-2009-007 (June 3, 2010); *Memorandum Decision and Order on Petition for Judicial Review*, CV-2010-3075 (Fifth Jud. Dist., Jan. 25, 2011).

9. In order to establish that it had secured the required volume of storage water to mitigate for the predicted shortfall to AFRD2’s reasonable carryover, IGWA presented the following leases to the Department, which are summarized as follows in acre-feet:

Lessor	Volume
Aberdeen Springfield Canal Co.	8,939
Enterprise Canal Co.	3,750
Palisades Water Users	1,250
Peoples Canal	3,750
TOTAL	17,689

Stipulated Notice of Secured Water in Compliance with Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9) (December 10, 2012) at 2.

¹ Following Judge Melanson’s appointment to the Idaho Court of Appeals, Judge Wildman replaced Judge Melanson as presiding judge of the SRBA District Court.

10. The 17,318 acre-feet reasonable carryover shortfall was based on preliminary Water District 01 accounting. *Final Order Regarding April 2013 Forecast Supply (Methodology Steps 1-4)* at 5. Based on final Water District 01 accounting, the reasonable carryover shortfall to AFRD2 was computed as 14,605 acre-feet. *Id.*

11. Step 5 from the Methodology Order states as follows:

Step 5: If the storage allocations held by members of the SWC fill, there is no reasonable carryover shortfall. If the storage allocations held by members of the SWC do not fill, within fourteen (14) days following the publication of Water District 01's initial storage report, which typically occurs soon after the Day of Allocation, the volume of water secured by junior ground water users to fulfill the reasonable carryover shortfall shall be made available to injured members of the SWC. The amount of reasonable carryover to be provided shall not exceed the empty storage space on the Day of Allocation for that entity. If water is owed in addition to the reasonable carryover shortfall volume, this water shall be provided to members of the SWC at the Time of Need, described below. The Time of Need will be no earlier than the Day of Allocation.

Methodology Order at 36.

12. The Day of Allocation in Water District 01 occurred on or about June 5, 2013. On or about June 11, 2013, the watermaster for Water District 01 released the storage allocations for storage space holders in the Upper Snake. While American Falls Reservoir did not fill to 100%, AFRD2 received its full storage allocation this season: 393,550 acre-feet, less evaporation. Therefore, on the Day of Allocation, AFRD2 had no empty storage space.

13. On June 17, 2013, the Director issued an *Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)* ("Step 5 Order"). Because AFRD2's storage allocation in American Falls Reservoir filled, the Step 5 Order released IGWA from its 2012 reasonable carryover obligation to AFRD2.

14. On June 27, 2013, the Department received AFRD2's *Request for Reconsideration of Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)* ("Petition for Reconsideration"). Asserting, among other things,² that its "storage space did not fill," AFRD2's Petition for Reconsideration asks the

² AFRD2 states that the Idaho Supreme Court's decision in *Clear Springs Foods v. Spackman*, 150 Idaho 790 (2011) was issued "nearly three months prior" to the Methodology Order. *Petition for Reconsideration* at 3. AFRD2 is incorrect. The *Clear Springs* decision was issued on March 17, 2011. The Methodology Order was issued on June 23, 2010, or approximately nine months before *Clear Springs*. It also appears AFRD2 may be asking for the Director to alter some of the procedures set forth in the Methodology Order. As stated above, the parties to the SWC delivery call agreed to follow the Methodology Order, until a decision was issued by the Idaho Supreme Court in the appeal of Consolidated 382. *Motion for Stay; Order Granting Motion for Stay*. The Idaho Supreme Court has not yet issued a written decision in the Consolidated 382 appeal.

Director to reconsider his decision releasing IGWA from its 2012 reasonable carryover obligation. *Petition for Reconsideration* at 4.

CONCLUSIONS OF LAW

1. According to the Department's Rules of Procedure, the Department must "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." IDAPA 37.01.01.740.02.a. *See also* Idaho Code § 67-5246(4); *A&B Irr. Dist. v. Idaho Dept. of Water Resources*, 154 Idaho 652, 301 P.3d 1270 (2012). The Department received the Petition for Reconsideration on June 27, 2013. This order is issued before the expiration of the twenty-one (21) day time period.

2. In the 2012 Step 9 Order, the Director predicted AFRD2 would suffer a reasonable carryover shortfall of 17,318 acre-feet. Based on a stipulation entered into between AFRD2 and IGWA, the Director found that IGWA secured 17,689 acre-feet of storage water to mitigate for the predicted reasonable carryover shortfall.

3. The 2013 Forecast Supply Order concluded that, based on final Water District 01 accounting, AFRD2's predicted reasonable carryover shortfall was 14,605 acre-feet.

15. The Day of Allocation in Water District 01 occurred on or about June 5, 2013. On or about June 11, 2013, the watermaster for Water District 01 released the storage allocations for storage space holders. Even though American Falls Reservoir did not fill to 100%, AFRD2 received a full storage allocation.

4. Methodology Step 5 states in pertinent part: "If the storage allocations held by members of the SWC fill, there is no reasonable carryover shortfall. . . . The amount of reasonable carryover to be provided shall not exceed the empty storage space on the Day of Allocation for that entity." *Methodology Order* at 36. Because AFRD2 received a full storage allocation, it has no empty storage space; thus, there is no reasonable carryover shortfall.

5. In its Petition for Reconsideration, AFRD2 argues "the Director's April estimate predicted American Falls Reservoir District #2 would receive a supply of 441,503 acre-feet to meet a baseline year of 415,730 acre-feet, American Falls Reservoir District #2 will not receive the predicted amount." *Petition for Reconsideration* at 4. AFRD2 goes on to say it will receive "significantly less water than initially predicted by the Director in [Methodology] Step 4" *Id.*

6. AFRD2's concerns are not germane to the current administrative order. The acre-foot figures AFRD2 cites in its *Petition for Reconsideration* are its 2013 in-season volumes. The Director previously issued an order applying Methodology Order Steps 1-4 to the 2013 irrigation season. *Final Order Regarding April 2013 Forecast Supply (Methodology Steps 1-4)* (April 17, 2013) ("April Forecast Supply Order"). The SWC filed a petition for judicial review regarding the April Forecast Supply Order in the Fifth Judicial District. *Notice of Appeal and Petition for Judicial Review of Final Agency Action (April 2013 Forecast Supply Order)*, CV-2013-2305

(Fifth Jud. Dist., June 4, 2013). By agreement of the parties, including AFRD2, the April Forecast Supply Order is stayed on judicial review, pending a decision from the Idaho Supreme Court in Case No. 38193-2010. *Order Staying Proceeding Pursuant to Stipulation*, CV-2013-2305 (Fifth Jud. Dist., June 28, 2013). Issues concerning the April Forecast Supply Order may be addressed on judicial review. Moreover, the SWC's 2013 in-season volumes will be addressed by the Department in subsequent 2013 Methodology orders applying steps 6, 7, and 8.

7. The purpose of the Step 5 Order was to establish whether IGWA was required to provide the volume of water it secured in 2012 to meet AFRD2's predicted reasonable carryover shortfall of 14,605 acre-feet.

8. While American Falls Reservoir did not fill to 100%, AFRD2's storage allocation did fill. Because AFRD2's storage allocation filled, it has no empty storage space; thus, there is no reasonable carryover shortfall. *Methodology Order* at 36. Since AFRD2 received a full storage allocation, it was proper for the Director to release IGWA from its 2012 reasonable carryover obligation.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED as follows:

AFRD2's *Petition for Reconsideration* is DENIED. Because AFRD2 received a full storage allocation, it had no empty reservoir space, and IGWA is not required to provide storage water to AFRD2 for its predicted 2012 reasonable carryover shortfall.

IT IS FURTHER ORDERED that pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by the final order may appeal the final order 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 18th day of July, 2013.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of July, 2013, the above and foregoing, was served by the method indicated below, and addressed to the following:

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<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
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Deborah J. Gibson

Deborah Gibson
Administrative Asst. to the Director

EXHIBIT E

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF _____.

RE: PETITIONS FOR JUDICIAL)
REVIEW OR ACTIONS FOR)
DECLARATORY RELIEF OF) CASE NO. _____
DECISIONS FROM THE IDAHO) NOTICE OF REASSIGNMENT
DEPARTMENT OF WATER)
RESOURCES)

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, declares that all petitions for judicial review made pursuant to I.C. § 42-1701A of any decision from the Department of Water Resources be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District, and

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, vests in the Snake River Basin Adjudication District Court the authority to adopt procedural rules necessary to implement said Order, and

WHEREAS on July 1, 2010, the Snake River Basin Adjudication District Court issued an Administrative Order regarding the Rule of Procedure Governing Petitions for Judicial Review or Actions for Declaratory Relief of Decisions from the Idaho Department of Water Resources.

THEREFORE THE FOLLOWING ARE HEREBY ORDERED:

1. The above-matter is hereby assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District for disposition and further proceedings.
2. All further documents filed or otherwise submitted in this matter, and all further filing fees filed or otherwise submitted in this matter, shall be filed with the Snake River Basin Adjudication District Court of the Fifth Judicial District at P.O. Box 2707, Twin Falls, Idaho

83303-2707, provided that checks representing further filing fees shall be made payable to the county where the original petition for judicial review or action for declaratory judgment was filed.

DATED this ___ day of _____, 2010.

CLERK OF THE DISTRICT COURT

By: _____
Deputy Clerk