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Company*

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE MITIGATION)
COMPUTATIONS IN WATER DISTRICT 120) **SURFACE WATER COALITION'S**
FOR THE SURFACE WATER COALITION) **COMMENTS AND FIRST**
) **QUESTIONS ON DIRECTOR'S 2009**
) **PROTOCOL**
)
)
_____)

COMES NOW, A&B Irrigation District ("A&B"), American Falls Reservoir District #2
("AFRD#2"), Burley Irrigation District ("BID"), Milner Irrigation District ("Milner"), Minidoka

Irrigation District (“MID”), North Side Canal Company (“NSCC”), and Twin Falls Canal Company (“TFCC”) (collectively hereafter referred to as the “Surface Water Coalition”, “Coalition”, or “SWC”), by and through their undersigned counsel, and hereby files this *Comments and First Questions on Director’s 2009 Protocol* pursuant to the Director’s May 15, 2009 letter.

INTRODUCTION

The Surface Water Coalition appreciates the opportunity to provide comments on the 2009 Replacement Water Protocol. We also appreciate the Director’s efforts to arrange and conduct the meetings with technical experts to facilitate our review of the proposal. However, concerns continue about the purpose and affect of the Protocol, the technical procedure used in the Protocol, and IDWR’s responses to questions posed about the proposal. In addition, we continue to participate in this “process” under protest and do not waive any legal rights or defenses by submitting these comments herein. As stated before, we object to this process and the effort to create another “final order” despite the pending appeal before the Gooding County District Court (*A&B Irr. Dist. et al. v. Tuthill et al.*, Fifth Jud. Dist., Case No. CV-2008-551).

COMMENTS

A. General Comments and Questions about the Protocol:

1. What is the underlying authority for adopting a Protocol, and what is the appropriate procedure for adopting it? It is our understanding the Director has initiated a separate contested case entitled *In the Matter of the Mitigation Computations in Water District 120 for the Surface Water Coalition*. Consequently, Minidoka Irrigation District is filing, concurrent with these comments, a *Petition for Review of Director’s Interlocutory Orders and Request for Hearing*. Therefore, we presume that IDWR’s “Rules of Procedure” (IDAPA 37.01.01 *et seq.*) now apply to this matter. If the Director believes a different procedure is being employed please advise. In addition, because the Protocol seeks to establish IDWR policy for rather broad issues that affect or may affect a significant population of citizens, should the Protocol be adopted as a rule?

2. The Protocol continues the myth that conjunctive administration can be successfully implemented on a single year basis. The impacts of groundwater pumping are multi-year and need to be administered as such. Continuing single year water replacement plans will not lead to a stable environment for either the surface or groundwater users, particularly when these plans are not even submitted or approved until well into the irrigation season. The Director's Final Order (Conclusion of Law 14) found that water replacement plans can be used only for the short-term, but once a hearing record is available, a mitigation plan must be filed and processed in accordance with Rule 43 of the CMRs. The ground water users are now under obligation to submit a mitigation plan that fully complies with CM Rule 43, including assuring that long-term injury is fully mitigated. The Protocol and the replacement plans offered since 2005 have attempted to only address year-to-year shortages, at best, and cannot fully satisfy CM Rule 43. Does IDWR anticipate that the Protocol will have continuing relevance beyond this year and as a tool to be used with the required mitigation plan?
3. The Protocol does not adequately set forth the complete process that must be made to determine the amount and timing of providing the required replacement water and carryover storage water. The Protocol should include a description of the overall process to aid in understanding how each step of the Protocol fits. Just reading the "powerpoint slides" describing the Protocol, it seems that the SWC entities are assured the reasonable in-season demand (RISD) and that replacement water will be provided to meet the demand shortfall (DS). Elsewhere (for example the answer to Question 29 in "IGWA's First Questions"), IDWR clarifies that the replacement water amount will also depend upon the estimated depletion in reach gains caused by ground water withdrawals. Details are not offered concerning the determination of reach gain depletions and how these will be integrated into the computation of required demand and available water supply.
4. One of the basic tenants of the law of prior appropriation is that junior priority water users will be held to their rights in times of shortage. This Protocol turns the priority system on its head and places an extraordinary burden on the senior users while the use by juniors is unchecked and authorized to their maximum rights. If IDWR is serious about managing the resource shouldn't RISD and actual irrigated acres first be applied to juniors? The Conjunctive Management Rules specifically require the Director to "consider whether the respondent junior-priority water right holder is using water efficiently and without waste". CM Rule 40.03. To date the Director has failed to take any action to implement this rule. Moreover, if senior surface water right holders are held to a "reasonable in season demand" that is an amount of water less than their decreed right, the same standard should apply to all junior ground water users.
5. The Protocol sets forth a procedure that takes essential management decisions away from the SWC entities concerning use of their real property and wrongfully gives this decision making authority to IDWR and the ground water users. Failure to quantify prior to the end of the irrigation season the amount of water that must be provided to assure the SWC entities have adequate carryover storage for the following year and the failure to require the ground water users to procure and assign the required carryover storage to the senior users misplaces the risk of replacement water not being available on the senior surface

water users while allowing the ground water users to operate unfettered for at least another year. If carryover storage is not required to be provided until after the next season storage allocation, how is carryover storage different than the replacement water required to meet the DS?

6. IDWR currently employs procedures within Water District 01 that can be used to properly distribute available natural flow and monitor allocation and use of stored water to those having the right to its use (Ref. Tony Olenichak's procedure for accounting for mitigation water posted by IDWR last year seeking public input on transfer and mitigation procedures). Using the procedure documented by Mr. Olenichak will make adoption of the Protocol unnecessary and assure the SWC entities (and all others affected by depletions in reach gains) are properly distributed their lawful water supplies without worrying about issues addressed in the Protocol.

B. Comments on Procedure to Determine SWC Irrigation Requirements:

1. **The IDWR mitigation protocol continues to incorrectly rely on single-year administration and replacement water plans.**

The IDWR mitigation protocol ("Protocol") essentially implements single-year administration. An evaluation of long-term impacts, aquifer management and mitigation that address the long-term impacts is missing from the proposed protocol. The impacts from ground water pumping on natural flow and storage can occur over multiple years. Single-year administration does not properly account for these impacts or prevent injury to senior surface water rights.

2. **The information provided regarding the proposed Mitigation Protocol is incomplete.**

Information regarding some of the components has not been provided or is incomplete (details noted in comments below). Other components and calculations have only been provided for TFCC and have not been provided for the other seven SWC members. It is not possible to provide complete comments on the Protocol or finish a technical review without all of the information. The SWC requests that IDWR make this information available and allow for additional comments regarding IDWR's calculations for each SWC member.

3. **The Protocol does not provide mitigation water in-season when the crop demand occurs.**

The IDWR Protocol contemplates the following schedule to provide water if shortages are determined. *"Two weeks after the day of allocation, IGWA is required to provide evidence to the satisfaction of the Director, establishing their ability to secure a volume of storage water equal to the entire amount of the predicted demand shortfall. At that time, the portion of the demand shortfall equal to the reasonable carryover deficit shall be made available to the SWC. The remainder of the demand shortfall (demand*

shortage-reasonable carryover deficit) shall be provided to the SWC at the time of need-typically in September. If IGWA can not meet these requirements by the established due date, IDWR will issue a curtailment order to IGWA for the remainder of the season”.

This Protocol does not provide the water needed to mitigate shortages in-season when the water is needed to meet crop demand. In other words, the injured SWC members will not have the water to provide to their landowners and shareholders to prevent shortages. If a water shortage in excess of the carryover deficit occurs prior to September, then that shortage will not be mitigated until later in the season. We are concerned that the length of time it would take to review and analyze data, determine that shortages are occurring and issue an Order for the release of water would result in water being released late in the season and well after the shortage has occurred. The result would be that the crop water demand would not be met or that the canal company would be forced to secure additional water supply by independent negotiations as has been done in the past. A curtailment order issued late in the irrigation season would do nothing to remedy injury that occurred earlier in the irrigation season and would have little if any benefit to the SWC water supply for the remainder of that season. In essence, the Protocol ensures no administration by allowing juniors to pump until the end of the irrigation season before the possibility of a curtailment order would be issued.

IDWR’s Protocol shows that some years will have a large demand shortfall (and a carryover deficit) greater than the storage water available for lease or purchase. In this case, if ground water use is curtailed, there is no benefit to SWC members in the same year shortages are occurring. Moreover, some ground water users may have finished their irrigation for the year by the time a curtailment order would be issued in mid to late September. The protocol would result in untimely administration with respect to crop needs during the irrigation season.

4. The Protocol incorrectly uses annual supply and demand to estimate shortages. The supply remaining during the irrigation season should be used to estimate shortages.

The IDWR protocol uses an annual demand/supply calculation to estimate shortage. This is not appropriate for these reasons:

- a. The IDWR protocol compares the estimated annual supply to the estimated demand to compute shortage. This is incorrect, because water used early in the season cannot be used to meet the demand that occurs later in the season. The shortage calculations should be computed every month and they should be based on the amount of remaining water supply and not the total annual supply.
- b. Under the IDWR protocol, any water that is beneficially used by the SWC under their decreed water rights early or late in the season that is excess of the IDWR calculated demand reduces the amount of water that is available for mitigation of shortages occurring in the middle of the season when demands are high. Weather, crop requirements, irrigation practices, canal delivery operations and other factors may cause an irrigation entity to beneficially divert and use more water than the irrigation requirement computed by IDWR. If this occurs, it should not result in a reduction of the amount of mitigation water available to meet the mid-season demand. This should apply to both storage and natural flow.

- c. There should be no argument that if natural flow is diverted in excess of the computed demand that this should not reduce the amount of water required for mitigation later in the season, when shortages occur. Natural flow diverted in excess of the IDWR protocol demand estimates cannot be “saved” or “banked” and diverted and used later in the season.

5. The IDWR mitigation protocol uses a single-year (2006) to estimate the baseline demand. The irrigation diversions in 2006 were low for some SWC members and should not be used to establish baseline demand.

Please explain how the use of the year with some of the lowest irrigation diversions for the individual SWC members could be representative of the “average-year” demands? We understand that Hearing Officer Schroeder identified that predictions of need should be based on an average year of need and recommended against the use of a single low-demand year (1995) to establish the irrigation requirements. This was adopted by the Director in the Final Order.

The plot of annual natural flow diversions versus Heise natural flow shows the year 2006 is more than one standard deviation below the fitted regression line. The baseline demand is used as the basis for baseline crop water need for each year and, likely could require a different subjective selection of a representative year for each year in the future. Irrigation diversions for 2006 were low for some SWC entities. For example, for TFCC the 2006 diversions were the second lowest since 1990 and are not reflective of average conditions. This data indicates that 2006 is not a representative year upon which to base the baseline demand. The early-season precipitation was also unusually high. We understand that IDWR is considering precipitation as part of the supply to establish baseline demand, but we do not believe this to be appropriate, since much of the precipitation early in the season does not meet actual crop demand and also cannot be used to offset demand during the middle, or peak of the irrigation season. For these reasons, 2006 should not be used to establish baseline demand. We request that IDWR evaluate the monthly and annual diversions for each SWC member and re-examine this issue.

6. The early and late season irrigation efficiency is too high. There may be other problems with the method for computed irrigation efficiency for the other SWC entities.

The computed “Baseline Project Efficiency” shown for TFCC is higher in the beginning and end of the irrigation season. This is likely to be incorrect, since surface water irrigation projects are typically less efficient during early and late in the season when water is being put to beneficial use for purposes other than meeting the crop ET requirement, such as charging delivery systems, early irrigations, or softening the soil for tilling. Irrigation efficiency calculations for all of the SWC entities should be provided for review to identify whether there are potential issues with the Protocol approach, including overestimating efficiency.

7. Use of NVDI approach to estimate crop demand.

IDWR's approach specifies calculating in-season crop ET demand using the NDVI approach which is based on Landsat. Has the protocol for this analytical procedure been documented? Could you please provide the documentation so the SWC members can understand the proposed method. How does it compare to a standard demand calculation method (like Agrimet)? Will the results be available on a real-time basis (like Agrimet) so the irrigator can match water application to the IDWR computed demand?

NDVI is proposed to be used for actual crop ET instead of metric but is reported to have $\pm 10\%$ difference than metric. Assuming an irrigation entity has a 50% system efficiency the difference between NDVI and metric can result in a 20% error in determining actual crop water needs. Please explain how this will be addressed.

The water demand estimates have only been provided for 2006 and only for TFCC. Please provide the water demand estimates that are proposed to be used for the protocol for all of the SWC entities and for all of the years back to 1990 so we can complete a technical review of the applicability of the method and results as compared with standard irrigation demand calculations and historic diversions.

8. Use of County-wide crop data.

The protocol contemplates using County-wide crop data to forecast and evaluate the demand during the irrigation season. County-wide census data will not reflect the unique distribution of crops grown at each irrigation district or canal company. IDWR is requesting irrigated acreage data from the irrigation entities. If a crop ET calculation is to be prepared it should be based on the most-accurate data from the irrigation entities on the actual crops grown, not the County-wide crop data.

9. Lands served by supplemental ground water rights should not be removed from total SWC irrigated acreage.

Supplemental ground water rights are held by private individuals and should not be considered to be a source of supply by the SWC entities. An irrigator that is a member of a surface water irrigation company or district that pays assessments to receive surface water should not also have to also pay to develop and pump ground water when others are injuring his primary surface water supply. Also, to our knowledge, there is little data to determine whether the infrastructure needed to put these rights into use (wells, pumps, pipelines, electricity) has even been developed.

10. Issues with forecasting supply.

The NATURAL FLOW SUPPLY for the beginning of the season is based on the regression of historical natural flow diversions vs. Heise and the STORGE (predicted fill + carryover) is based on a 'similar year' selection (2006 in the example for the 2002 irrigation season for TFCC) and the DEMAND SHORTFALL calculated as the difference between the BASLINE DEMAND and the sum of the NATURAL FLOW SUPPLY and STORAGE. IGWA must assure the Director that this DEMAND

SHORTFALL is or will be available during the irrigation season. However, the stated protocol is not clear on what form of assurances are required.

The regression of historical natural flow diversions for TFCC vs. Heise April through July flow used in the protocol is not a good estimate of TFCC water supply for average and dry years. **Attachment 1** shows this same regression for the period 1990 through 2007 with the 20% exceedance (high flow) years removed. The resulting R^2 value of 0.21 should not be used to estimate the TFCC natural flow water supply.

The proposed July and September updates to the REASONABLE IN-SEASON DEMAND are to be based on the water use to date for each irrigation entity, estimated CROP WATER NEED (adjusted for monthly effective precipitation and a monthly estimated project efficiency). Again, additional NATURAL FLOW diversions for the remainder of the season are estimated by selecting historical data from a year with similar reach gains for the season. Apparently a selection of the similar year is made for each irrigation entity based on the near Blackfoot to Milner historical plot of reach gains for select years. This procedure of selecting a 'representative year' is subjective and depends on the analysts judgment without knowledge of the effect of cultural practice changes, manager and board of directors risk evaluations and weather patterns for the 'similar year' compared to the year to be estimated.

11. Inappropriate assumption that soil moisture is part of the total supply.

We understand that early-season soil moisture is computed and counted as part of the irrigation season supply under the IDWR protocol. As part of the protocol, the use of soil moisture to meet crop ET is not limited to the weeks or months when the soil moisture occurs, instead, it is used to compute the total irrigation supply and demand across the entire irrigation season. This is incorrect for two reasons.

- a. The early season excess precipitation as calculated from NRCS estimates is used as a surrogate for antecedent moisture. The apparent assumption that any early season soil moisture can be utilized in its entirety by the crop over the full period of the growing season is incorrect. Irrigators typically depend on the soil moisture reservoir to hold water between irrigation sets and it is not used as a long-term water supply reservoir. Between June and September the soil moisture is often drawn down to the maximum allowable depletion between irrigation sets for many crops. There isn't sufficient soil moisture available within the effective rooting depth of many crops to provide a long-term water bank as contemplated by the IDWR procedure.
- b. If soil moisture is going to be included it is critical to perform daily soil moisture accounting evaluating daily supply and demand and incorporating analysis of actual shallow-rooted crops (like potatoes, beans, sugar beets, and some grains) under actual ET demands occurring on a daily to weekly basis. Otherwise, IDWR will not really know how much soil moisture is actually available to meet crop demand.

- c. The Protocol describes the use of antecedent soil moisture conditions but the discussion on June 1 indicated effective precipitation was considered and not soil moisture. If either or both are going to be considered the Protocol needs to be specific and clear on how the factors will be considered and where the data will be obtained for the Protocol.

C. Comments on Procedure to Determine SWC Reasonable Carryover

- 12. The IDWR procedure does not comply with Hearing Officer Schroeder's recommendations. The amount of reasonable carryover in a current year should be based on the risk of shortage occurring in the next year.**

On page 62 of *Opinion Constituting Findings of Fact*, the Hearing Officer states "... *the amount (of carryover) should be sufficient to assure that if the following year is a year of water shortage there will be sufficient water in storage ... to fully meet crop needs.*" The IDWR protocol does not meet this objective.

The Protocol should include two components. The first should include a determination of what carryover had historically been provided to the SWC members (assuming current demand) and establish the reduction in carryover that is now occurring. This can be done using a reservoir operations analysis. The next component should provide an analysis of the impacts to storage caused by ground water pumping. This can be done using the ESPAM model. The impacts to carryover storage from ground water pumping should be mitigated and enough carryover storage should be provided as mitigation to, "fully meet crop needs" every year.

- 13. The IDWR procedure does not provide reasonable carryover in-season or in a timely manner. The potential method of administration does not address the shortage if the injury is not mitigated.**

The Protocol stipulates that carryover will only be provided in the following year- and only after the date of allocation, and only if the irrigation demands show shortage in the middle of the following season. Curtailment is the only form of administration contemplated in the Protocol if the water is not provided and it only occurs after September in the next irrigation season, which is not in-season administration. Moreover, it is obvious that curtailment the following September does nothing to remedy a carryover shortage from the prior year. Yet that is the scenario created by the Protocol. Curtailment would still not provide water to remedy the shortage.

- 14. The assumption that ground water depletions to reach gains were insignificant prior to 1987 is incorrect.**

Ground water pumping started in earnest in the 1940s to 1950s and the rate of pumping in the 1980s was very significant. The ESPAM model can be used to show that the reach gain depletions occurring within the 1964 to 1987 period were significant.

15. **It is statistically incorrect to correlate between the two periods (1964-1986 and 1987-2008) used in the analysis to determine similar carryover because the first period was relatively wet and the second period was relatively dry.**

We understand that IDWR performed multiple linear regression to compare the water supply between two periods (1964-1986 and 1987-2008) to evaluate current versus historic carryover. This type of analysis requires that the two periods have similar population distributions. Either the period of record must be long enough to be representative of the hydrologic record or the populations must include enough wet, dry and average years to be similar. Are these assumptions true for the years selected by IDWR? If not, there is a significant potential for error. A simple analogy may help to prove this point. If you have a group of 100 tall people and 100 short people, a statistical comparison between the two populations would result in incorrect assumptions. For example, the 90th percentile exceedance height for the two groups would likely be very different. The same is true for two groups of dissimilar water supply years.

16. **The IDWR method of comparing the 1964-1987 to 1988 to 2008 period does not account for recent conservative operations by the SWC members due to shortages.**

The IDWR's correlation analyses for carryover (based on data from the 1970s and 1980s) do not incorporate the effects of the more uncertain water supply situation that currently exists. TFCC had full reservoir space in 21 out of 23 years (in what period?). Their carryover storage in this period was provided due to a greater and more reliable natural flow supply, as opposed to water intentionally being held to protect future supplies. When reservoir water users are operating in more uncertain hydrologic conditions, they will tend to operate more conservatively and as a result will operate to hold relatively more water in carryover storage. In the period after 1986, TFCC only had full reservoir space in 13 out of 22 years. Therefore, these more recent conditions and the decisions SWC entities have been forced to make regarding carryover storage (which likely will continue in the future) are hardly comparable to those from 20 or 30 years ago.

17. **If SWC uses more water more than the reasonable in-season demand calculated by IDWR, it loses any carryover deficit it might be due.**

If the SWC uses less water than the IDWR calculated demand, they will have likely have more water in carryover than the historically-based regression indicates that they would have had, and this will reduce the amount of potential mitigation next year.

The use of a historically based regression to calculate reasonable carryover forces SWC members to continue to operate for carryover as they did in that historical period. They are punished for operating more frugally (i.e., to protect more carryover).

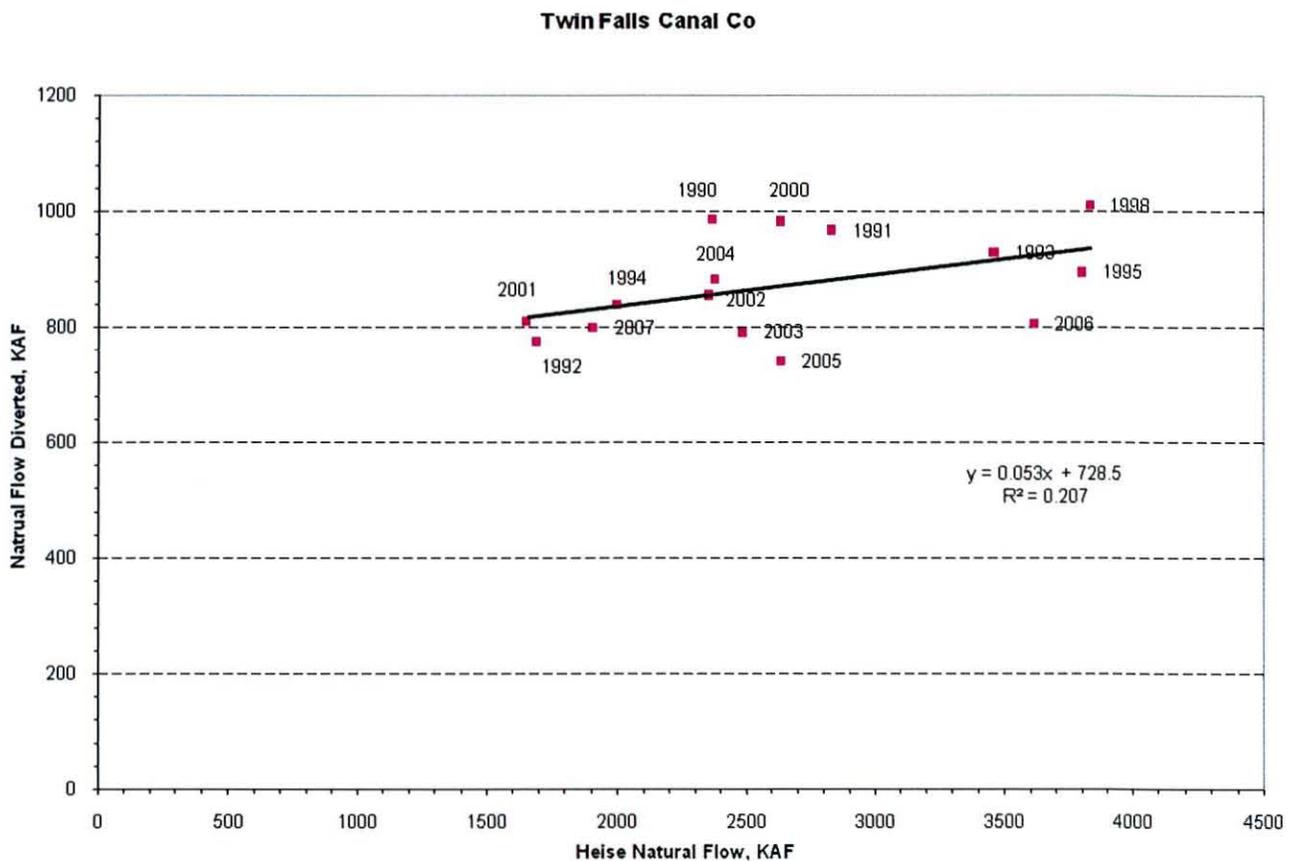
18. **The regression analysis performed by Dr. Van Kirk is deficient in several ways.**

The assumption that the differences in hydrology, water use patterns, and effect of junior pumping during the regression prediction period are reasonably accounted for by the variables utilized in the calibration period is not substantiated. Dr. Van Kirk admitted that no one unique equation was possible utilizing the same predictive variables which he

believed would be more justifiable. The variability in the predictive variables during the calibration period is significantly lower than in the prediction period. Dr Kirk also admitted that social or cultural factors, including canal company managerial and board decisions, influencing the prediction variables and ultimately the predicted carryover was not considered in his analysis. Decisions on diversions and allocation within the districts based on perceived or documented risk to the water supply can account for large differences in diversions and carryover.

Several other drought or drought related indices are available that could have been evaluated and may have accounted for more variability in the carryover analysis other than the Palmer Drought Severity Index, PDSI. These indices were not evaluated. It was not clear which region the September PDSI index which was used in the regression represented.

Attachment 1



The chart above shows the relationship of Twin Falls Canal Company natural flow diversions compared to the April – July natural flow discharge of the Snake River at Heise. IDWR continues to rely upon the Heise gage to predict water supply for the members of the Surface Water Coalition but the relationship is not suitable in the case of TFCC. This chart is for the period 1990 – 2007 but excludes high flow (20% exceedance) years.

D. Comments and Questions about IDWR's Responses to "IGWA's First Questions":

1. IDWR's answer to IGWA's Question 1 of "IGWA's First Questions", indicates that storage deliveries were adjusted for various reasons. Attached Table 1 indicates the adjustments were made for "spills past Milner." Is this appropriate? How could the SWC entity be responsible? Adjustments also appear to have been made for water provided by IGWA as replacement water. Is this appropriate? Does the process penalize SWC entities for stored water obtained to "self mitigate" shortages caused by IGWA depletions?
2. The answer to Question 10 indicates that the "more conservative year will be selected." Conservative in what way and from whose viewpoint?
3. The answer to Question 12 indicates that *"Any carryover replacement water delivered by ground water users will be included in the total mitigation (sic) requirement..."* Not sure how carryover water can be carried over if it has been delivered. Also not sure the limits of "any." Does this include water supplied to the spring users or others requiring mitigation? (Note: Because the requirements and parameters of "mitigation" are specifically defined in the CMR's, the Protocol does not pretend to comply, and the Protocol is associated with plans for annually supplying replacement water, the Protocol and discussions of the Protocol should consistently avoid using the term mitigation.)
4. The answer to Question 13 is confusing within itself and with other related information on the issue of irrigated acreage within the SWC entities. What will be required from SWC entities and how often? The explanation that IDWR's SRBA recommendations would be the basis for the water right is troublesome because the prior decrees and licenses held by the SWC entities continue to legally define the water right until partial decrees are entered or interim administration is ordered by the SRBA court. How can the acreage count exceed the "water right" unless the recommendation was simply less than the area the entity has been serving under its rights? Also, the open-ended threat that "an assessment must be made of the impact of this reduction in use of the water right on the mitigation (sic) requirement" is not comforting. Taken to the extreme, users in a SWC entity reducing irrigated area to be sure water demand is met on a very dry year, will be faced with a snowball effect: the more they consolidate short water supplies on fewer acres, the less their supply.
5. Additional clarification is needed for Answer 18 which concludes with the following sentence: *"As before, any volume of water less than the reasonable carryover deficit amount owed to the SWC must be provided immediately and any volume of water in excess of the reasonable carryover deficit may be provided to the SWC at the time of need."*
6. The answer to Question 25 indicates that project efficiency is "best achievable." The hearing officer has acknowledged that a water user is not required to meet that extreme standard for water use. Rather, the standard is based upon not wasting water.

7. The answer to Question 33 indicates that changes implemented under the CAMP process “will be reflected in the criteria that are used to select the baseline year.” Additional explanation is requested of why CAMP and other factors that alter the surface water/ground water relationships influence the "baseline year" rather than the detailed procedures for determining injury and for determining RISD, Demand Shortfall (DS) and reasonable carryover storage. Because CAMP is funded from sources other than IGWA, the benefits should not be automatically and arbitrarily assigned to junior priority ground water users.

8. The answer to Question 34 indicates conditions under which the mitigation computation for the SWC “would be adjusted” but does not explain what that adjustment would be. Is this answer consistent with the answer to Question 35 from IGWA and Question 11 from the City of Pocatello? If the answer to either part of this question is “No” please explain.

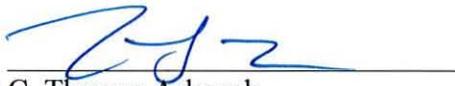
9. In the answer to Question 40 c) should the word “sufficient” in the second line be “insufficient”? If not, please explain the meaning of this answer.

CONCLUSION

Additional information will be provided at your request to clarify any of the above comments and questions.

DATED this 12th day of June, 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of June, 2009, I served true and correct copies of the *Surface Water Coalition's Comments and First Questions on 2009 Protocol* upon the following by the method indicated:

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