

**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 2013
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*). The Department recently approved an interim CM Rule 43 mitigation plan for Southwest Irrigation District (“SWID”) and Goose Creek Irrigation District (“GCID”). *Final Order Approving Interim Mitigation Plan*, CM-MP-2010-01 (November 25, 2013).

4. The following table summarizes the 2013 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	62,016	40,954
AFRD2	401,186	152,823
BID	249,514	126,391
Milner	52,562	30,333
Minidoka	364,920	196,833
NSSC	1,021,802	345,742
TFCC	1,058,154	410,718

5. The following table summarizes the calculated 2013 irrigation season ending in-season shortfall values. The values in this table are different from those presented in the Final Order Revising April 2013 Forecast Supply (Methodology Steps 6-8) (August 27, 2013) (“August 27 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 August 27 Final Order, the Director predicted 54,000 and 51,200 acre-feet of material injury to American Falls Reservoir District No. 2 (“AFRD2”) and Twin Falls Canal Company (“TFCC”) respectively, or 105,200 acre-feet combined. However, consistent with the Methodology Order,

¹ The “Demand” for each SWC entity is equal to each entity’s 2013 April – October diversions. This order determines there is no reasonable carryover shortfall to any entity other than AFRD2 and TFCC. Consequently, an evaluation of whether the 2013 diversions of the SWC were reasonable is only necessary for AFRD2 and TFCC. AFRD2’s 2013 demand was less than its end of season RISD determined by the methodology and was therefore reasonable. TFCC’s 2013 demand exceeded its end of season RISD by 1,247 acre-feet. An excess volume of 1,247 acre-feet is 0.12% of TFCC’s RISD of 1,056,907 acre-feet, an insignificant departure from its RISD. TFCC’s 2013 demand was reasonable. The Director will continue to monitor the reasonableness of the SWC’s diversions in future years.

“junior ground water users are required to provide the lesser of the two volumes from Step 4 (May 1 secured water) [14,200 acre-feet] and the [DS] volume calculated at the Time of Need [105,200 acre-feet].” *Methodology Order* at 37.² Therefore, the August 27 Final Order ordered the Watermaster of WD01 to allocate the 14,200 acre-feet of mitigation storage water secured by IGWA to AFRD2 and TFCC in the respective amounts of 7,300 and 6,900 acre-feet. Based on data not available in August, the actual in-season shortfall that occurred to AFRD2 and TFCC is shown in the table below. For the 2013 irrigation years, in-season storage adjustments were comprised of values derived from application of the Minidoka Credit³, rental pool water supplied to AFRD2 and TFCC by IGWA to meet the in-season shortfall, and rental pool water purchased by the SWC members impacted by 2012 common pool rentals. The natural flow adjustments include water delivered for recharge⁴ and natural flow delivered to SWID. See “Attachment A” attached hereto for further information. Since the 2013 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	-	-	107,791	9,470	117,261	63,972	-
AFRD2	23,066	(2,633)	383,334	8,300	412,067	403,754	-
BID	82,954	(3,714)	213,604	8,555	301,400	293,518	-
Milner	4,418	(3,011)	78,597	3,888	83,891	50,228	-
Minidoka	117,363	-	306,026	8,370	431,759	420,257	-
NSCC	332,931	-	808,260	15,750	1,156,941	1,005,718	-
TFCC	884,777	-	239,546	3,700	1,128,023	1,056,907	-

6. The following table summarizes end of season 2013 carryover shortfall calculation values. The table contains the actual fall 2013 carryover storage and the reasonable carryover quantities from the Methodology Order for each member of the SWC. The storage adjustments in the following table incorporate the in-season adjustments identified in the above table plus all other adjustments that have occurred. See “Attachment A” attached hereto for further information.

Entity	Preliminary Storage Allocation	Storage Adjustment	Storage Use	Storage Use Adjustments (+ to alloc.)	Reasonable Carryover	Actual Carryover	Carryover Shortfall
A&B	107,791	9,470	62,016	0	17,000	55,245	0
AFRD2	383,334	8,300	386,947	5,960	56,000	10,647	45,354
BID	213,604	8,555	181,080	9,028	-	50,107	0
Milner	78,597	3,888	56,833	8,690	4,800	34,342	0
Minidoka	306,026	8,370	256,191	10,200	-	68,405	0
NSCC	808,260	15,750	706,111	15,000	57,200	132,899	0
TFCC	239,546	3,700	223,557	4,261	29,700	23,949	5,751
							51,105

² As stated in the August 27 Final Order, the Director has determined the reference in Methodology Order Step 8 to “RISD” is incorrect and should instead reference “DS.” As such, the Director has removed RISD from the above quotation and replaced it with DS.

³ The Minidoka Credit is a long existing exchange of stored water among AFRD2, BID, MID, NSCC, and TFF that has been incorporated into an agreement of those entities and accepted by the SRBA district court.

⁴ Recharge values represent accomplished recharge as of March 30, 2013.

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.

8. The above determination of “Carryover Shortfall” includes ground water pumping effects from irrigation with ground water occurring in the SWID and GCID service areas. With the acceptance of the SWID and GCID mitigation plan, material injury to the SWC in association with ground water pumping by SWID and GCID is being mitigated for this year. The Carryover Shortfall obligation for IGWA has been proportionately reduced⁵ in recognition of the SWID and GCID mitigation plan. The following table summarizes the unadjusted Carryover Shortfall, proportionate reductions, and the adjusted Carryover Shortfall for each entity of the SWC. AFRD2 and TFCC are the only SWC entities with a reasonable carryover shortfall for 2013, their final 2013 adjusted Carryover Shortfall values are 40,819 acre-feet and 5,176 acre-feet respectively.

SWC Entity	Unadjusted Carryover Shortfall	Proportionate Reduction	Adjusted Carryover Shortfall
A&B	0	0	0
AFRD2	45,354	4,535	40,819
BID	0	0	0
Milner	0	0	0
Minidoka	0	0	0
NSCC	0	0	0
TFCC	5,751	575	5,176
	51,105	5,111	45,995

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 2013. *Methodology Order* at 37-38 (Steps 9 and 10). If the Director projects a reasonable carryover shortfall, IGWA shall have fourteen days to establish, to the satisfaction of the Director, its “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.” *Id.* at 38.

⁵ Proportionate reduction is based on the ratio of the impact from ground water irrigated lands within the SWID and GCID service areas to the total impact from ground water irrigated lands for which IGWA was obligated to mitigate prior to the acceptance of the SWID and GCID mitigation plan. The ratio is 10% or 0.10. The unadjusted Carryover Shortfall obligation is equal to Reasonable Carryover less Actual Carryover. The adjusted Carryover Shortfall is equal to the unadjusted Carryover Shortfall less 10% of the unadjusted Carryover Shortfall.

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, 524, 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. Regarding projected shortfalls to reasonable carryover, the Director concludes by clear and convincing evidence that AFRD2 will have an adjusted carryover shortfall in the amount of 40,819 acre-feet and TFCC will have an adjusted carryover shortfall in the amount of 5,176 acre-feet, a combined obligation of 45,995 acre-feet.

5. 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 37-38.

6. 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.

7. Therefore, junior ground water users, represented by IGWA have fourteen days to: (1) to establish, to the satisfaction of the Director that IGWA has the ability to provide 40,819 acre-feet of storage water to AFRD2 and 5,176 acre-feet to TFCC 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 establish, to the satisfaction of the Director, IGWA’s ability to provide 40,819 acre-feet of storage water to AFRD2 and 5,176 acre-feet of storage water to TFCC during the 2014 irrigation season. 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 2013 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 27th day of November, 2013.


GARY SPACKMAN
Director

Attachment A

2013 SWC Adjustment

Entity	Adjustments	Description	Included in Total Supply Natural Flow Adjustment	Included in Total Supply Storage Adjustment	Wheeled Storage Water Adjustment	Total Wheeled (not recharge)
A&B	9470.0	Rental Pool	No	Yes	No	No
		Total A&B	0	9,470	0	0
AFRD2	1000.0	Minidoka Credit	No	Yes	No	No
	(2632.9)	Recharge	Yes	No	No	Yes
	2500.0	IGWA private lease assignment	No	No	Yes	Yes
	2500.0	IGWA private lease assignment	No	No	Yes	Yes
	100.0	Fred Brossy from Common Pool	No	No	Yes	Yes
	100.0	James Ritchie from Common Pool	No	No	Yes	Yes
	7300.0	IGWA assigned to AFRD2	No	Yes	No	No
	760.0	IGWA conversion water	No	No	Yes	Yes
		Total AFRD	(2,633)	8,300	5,960	5,960
BID	5130.0	Minidoka Credit	No	Yes	No	No
	27.5	Paul Baumgartner Private Lease -	No	No	Yes	Yes
	9000.0	SWID	No	No	Yes	Yes
	(3713.5)	SWID Natural Flow	Yes	No	No	Yes
	3424.9	Rental Pool	No	Yes	No	No
		Total BID	(3713.5)	8,555	9,028	12,741
Milner	5000.0	SWID	No	No	Yes	Yes
	131.6	PWUI	No	No	Yes	Yes
	500.0	PWUI	No	No	Yes	Yes
	87.7	PWUI	No	No	Yes	Yes
	43.9	PWUI	No	No	Yes	Yes
	186.4	PWUI	No	No	Yes	Yes
	15.4	PWUI	No	No	Yes	Yes
	114.0	PWUI	No	No	Yes	Yes
	460.5	PWUI	No	No	Yes	Yes
	166.7	PWUI	No	No	Yes	Yes
	288.0	Agreement	No	No	Yes	Yes

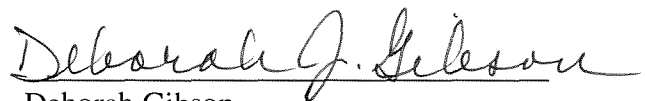
	200.0	Rental Pool (Glen Breeding)	No	No	Yes	Yes
	3887.9	Rental Pool	No	Yes	No	No
	78.3	PWUI	No	No	Yes	Yes
	31.7	PWUI	No	No	Yes	Yes
	22.4	PWUI	No	No	Yes	Yes
	28.3	PWUI	No	No	Yes	Yes
	2.6	PWUI	No	No	Yes	Yes
	19.4	PWUI	No	No	Yes	Yes
	14.9	PWUI	No	No	Yes	Yes
	85.0	PWUI	No	No	Yes	Yes
	7.5	PWUI	No	No	Yes	Yes
	17.6	PWUI	No	No	Yes	Yes
	1188.0	Artesian	No	No	Yes	Yes
	-	SWID Natural Flow	Yes	No	No	Yes
	(3011.5)					
		Total Milner	(3,011.5)	3,888	8,690	11,701
MID	8370.0	Minidoka Credit	No	Yes	No	No
	(200.0)	Ardel Wickel	No	No	No	No
	200.0	Ardel Wickel	No	No	Yes	Yes
	(10000.0)	WMC	No	No	No	No
	10000.0	WMC	No	No	Yes	Yes
	-	To SWID	No	No	No	No
	(5000.0)					
		Total MID	0	8,370	10,200	10,200
NSCC	(7750.0)	Minidoka Credit	No	Yes	No	No
	7500.0	IGWA private lease assignment	No	No	Yes	Yes
	7500.0	IGWA private lease assignment	No	No	Yes	Yes
	23500.0	Rental Pool	No	Yes	No	No
		Total NSCC	0	15,750	15,000	15,000
TFCC	(6750.0)	Minidoka Credit	No	Yes	No	No
	10450.0	IGWA assigned to TFCC	No	Yes	No	No
	3000.0	SWID	No	No	Yes	Yes
	8.7	Artesian	No	No	Yes	Yes
	640.0	Artesian	No	No	Yes	Yes
	612.0	Artesian	No	No	Yes	Yes
		Total TFCC	0	3,700	4,261	4,261

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of November, 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 tlr@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>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 Thomas J. Budge RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 rcb@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 U.S. 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 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 U.S. Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@usbr.gov</p>	<p><input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>

<p>Sarah A. Klahn Mitra Pemberton WHITE JANKOWSKI 511 16th St., Ste. 500 Denver, CO 80202 sarahk@white-jankowski.com mitrap@white-jankowski.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>A. Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83205 dtranmer@pocatello.us</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>William A. Parsons Parsons, Smith & Stone, LLP P.O. Box 910 Burley, ID 83318 wparsons@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>Michael C. Creamer Jeffrey C. Fereday GIVENS PURSLEY, LLP P.O. Box 2720 Boise, ID 83701-2720 mcc@givenspursley.com jcf@givenspursley.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>Lyle Swank IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 lyle.swank@idwr.idaho.gov</p>	<p><input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>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>	<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>



Deborah Gibson
Administrative Assistant for the Director

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.