

American Falls Reservoir District No. 2
112 South Apple St.
Shoshone, Idaho 83352
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June 5, 2007

Dave Tuthill, Director
Idaho Department of Water Resources

Re: 2007 Water Supply AFRD# 2

Dear Director Tuthill,

I am writing you in reference to providing full headgate deliveries to American Falls Reservoir District # 2 during the 2007 irrigation season.

The May 2, 2005 Amended Order indicated that each senior water user was entitled to "the minimum amount of combined natural flow and storage releases diverted recently that provided for full headgate deliveries, recognizing that climatic growing conditions do affect the minimum amount of water needed and such *effects can be significant.*" Paragraph 91, page 20 [Emphasis supplied].

The Amended Order continued at paragraph 92 to discuss a year comparable to 2005 in order to make a prediction for 2005:

For American Falls Reservoir District # 2 and the North Side Canal Company, the total diversions of natural flow and storage releases were the lowest while maintaining full headgate deliveries most recently in 1995. The total quantity of water diverted during the irrigation year ending October 31, 1995, by the American Falls Reservoir District # 2 was 405,600 acre-feet and by the North Side Canal Company was 988,200 acre-feet.

And again, at page 25, paragraph 115:

To predict the shortages in surface water supplies that are reasonably likely for members of the Surface Water Coalition in 2005, the amounts of water diverted in 1995 are deemed to be the minimum amounts needed for full deliveries to land owners and shareholders. *If crop evapotranspiration is greater in 2005 than in 1995, the amounts of water diverted in 1995 may be less than what is needed for a full supply in 2005. If crop evapotranspiration is less in 2005 than in 1995, the amounts of water diverted in 1995 may be more than what is needed for a full supply in 2005.* [Emphasis supplied.]

And summarized again at paragraph 50, page 44:

The amounts of water diverted in 1995 are deemed to be the minimum amounts needed for full deliveries to land owners and shareholders served by the members of the Surface Water Coalition. The Director has used 1995 diversions *to predict the shortages in surface water supplies that are reasonably likely for Coalition members in 2005*. See Findings of Fact 116. [Emphasis added].

Finally, at page 47, paragraph 10, the Amended Order provided what action was to be taken in the event that the prediction that 2005 would be like 1995 turned out to be wrong:

The Director will monitor water supply requirements and the water supplies available throughout the irrigation season and may issue additional orders or instructions to the water masters as *conditions warrant*. [Emphasis added.]

Thus, the Amended Order made clear that using the amount of water supplied in 1995 as the minimum full supply for 2005 was only a prediction; that the Director would monitor influences and outcomes during the irrigation season; and, that the Director would timely respond with additional orders in the event that the *prediction* proved incorrect.

At paragraph 8 at page 18 of the current Fifth Amended Order of May 23, 2007, this entire process is recounted and summarized.

8. The Director will continue to monitor water supply and climatic conditions through the 2007 irrigation season and issued additional orders regarding replacement water needs in 2007 or further instructions to the water masters for Water Districts No. 34, 110, 120 and 130 should material injury be predicted to occur to rights held by or for the benefit of the members of the Surface Water Coalition.

The May 2, 2005, Amended Order, in the above call indicates that material injury occurs absent "full headgate deliveries" which, in the instance of AFRD# 2, the Amended Order indicated amounted to 5/8 inches. See Amended Order at paragraph 89.

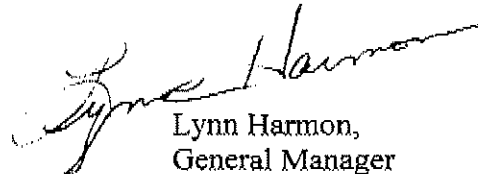
AFRD# 2 has to date this irrigation season limped along with delivery of only 80% of full headgate deliveries, or ½ inch per acre, in consideration of the amount of carryover with which we began the season, as well as the past and anticipated very hot and dry conditions of this year. As a consequence, we have arrived at the date of allocation (May 28, 2007), the last day upon which water will accrue to storage, with approximately 318,000 acre feet of usable storage for the remainder of the year, taking into account expected evaporation acting upon the stored water.

We wish to make full headgate deliveries for the remainder of the irrigation season until October 1, 2007, and therefore ask that you review whether the prediction that the amount of water supplied in the 1995 year provided for an accurate prediction of the minimum full supply for full headgate deliveries in 2007, given the climatic conditions and the evapotranspiration that are occurring and have occurred during this irrigation season. Our historical experience with this system shows that in wet to normal years we require 2700 to 2800 acre feet per day on average to deliver 5/8 inches. In dry years, as we expect now, we could require more. Therefore, the 122 days remaining until October 1 will require at least 341,600 acre feet, or 19,600 acre feet more than we now have, anticipating that our storage will be empty at the conclusion of the irrigation season. In short, the prediction that the amount of water that sufficed as a minimum full supply in 1995 will suffice in 2007 is proving inaccurate because of increased needs caused by hot conditions. We ask to be immediately provided the necessary water under the provisions of the above call so that we may commence full headgate deliveries as we enter the months of June, July, August and September.

This letter is not intended to suggest acquiescence to the methods of administration the Department has thus far adopted under the above call, or otherwise, but is instead to merely seek enough water to allow full headgate deliveries between now and October 1 so that further shortages may be avoided during the remainder of this irrigation season, and to hopefully invoke the promised benefit of paragraph 8 set above. We especially disagree with commencing the season with a calculation based on the 1995 year rather than our decree and more realistic conditions. We do concur that the Director does administer water, and can do so as the season progresses based upon review of conditions and changing conditions. We also are not intending to accede to management that is premised on an empty reservoir at the end of the irrigation season, a practice we perceive to be a guarantee for disaster.

We look forward to your cooperation in helping to resolve the shortages for this year.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Harmon", is written over the typed name and title.

Lynn Harmon,
General Manager