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May 12, 2008

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*Attorney and Designated Representative for the
U.S. Department of the Interior, Bureau of Reclamation*

**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)

**RECLAMATION'S PETITION
FOR RECONSIDERATION**

The U. S. Bureau of Reclamation, by and through its attorney and duly authorized representative, Kathleen Marion Carr, Office of the Field Solicitor, pursuant to IDAPA 37.01.01.720.02(a), hereby petitions for reconsideration of the *Opinion Constituting Findings of Fact, Conclusions of Law and Recommendation* (hereafter *Opinion*) in the above-captioned contested case proceeding. Without waiving its right to support and/or to take exceptions from this order and/or the Director's final order as provided by 37.01.01.720.02(b), Reclamation seeks to have the Hearing Officer address certain housekeeping matters and potential ambiguities within the *Opinion* to facilitate the parties' briefing of exceptions.

ISSUES NEEDING CLARIFICATION

1. FERC Required Releases Below Milner

On page 16, the *Opinion* states: Reclamation has the responsibility for ... “the management [of storage] water to meet the requirements of the Federal Energy Regulatory Commission [FERC]....” However, it is not Reclamation that must make those particular releases, but Idaho Power. Idaho Power has a FERC-licensed hydropower plant below Milner, and FERC has required the Company to provide certain minimum flows. Idaho Power meets this requirement with water from its American Falls’ storage entitlement and from water rentals when available.

2. Incidental Power Releases

In addition, on page 16, the *Opinion* states that Reclamation has the responsibility for ... “some production of electrical power incident to the release of water from storage...” (emphasis added). Reclamation has licenses and decrees for the production of power at Palisades and Minidoka. These are licensed rights for power, and these rights are independent of its licensed rights to store and release water for irrigation. Reclamation may generate power incidental to irrigation releases, but that may not occur in all cases throughout the year. It is inaccurate, therefore, to state that Reclamation only generates power incident to irrigation releases. It is important to note, however, that there are objections to Reclamation’s power rights in the Snake River Basin Adjudication. This issue will be fully developed and litigated in that proceeding. Therefore, we believe it is fair to state in the *Opinion* simply:

In addition to its obligation to make irrigation deliveries, Reclamation has the responsibility for flood control releases, production of electrical power, and the management of water to meet both the requirements of the Endangered Species Act and the Nez Perce Water Settlement.

3. In Season Replacement of Reasonable Carryover Shortfalls

On page 65 of the *Opinion*, the Hearing Officer stated that “[Seniors]” are entitled . . . replacement water in the season of material injury.” It is unclear, however, when the replacement water needs to be provided for reasonable carryover. The *Opinion* states on page 29 that “hindrance to reasonable carry-over storage constitutes material injury” and requires mitigation of the amount of reasonable carryover deemed protected (pages 61-64). The *Opinion* also states on page 36 that the Director should determine when the replacement water will be provided. Consistent with the testimony of former Director Dreher, it is Reclamation’s position that replacement water for shortfalls in reasonable carryover needs to occur in the same year that replacement water is provided to fulfill the irrigation entity’s total water supply.

4. Methodology in Determining Reasonable Carryover Amount

Reclamation also believes that the determination of the amount of reasonable carryover replacement water should be consistent with the process outlined by Finding of Fact 119 in Director Dreher’s *Amended Order* of May 2, 2005. It is Reclamation’s belief that this method is better suited for administration of water rights than the steps outlined on page 63-64 of the *Opinion*.

5. Accounting of Reasonable Carryover

If replacement of reasonable carryover occurs within the same year that the injury occurs as described in 3 above, no amendment to the accounting process needs to occur as described on page 36 of the *Opinion*. Since all replacement water is paid in the year of the injury, it moots the sticky issue of holding carryover replacement water in non-existent space.

CONCLUSION

Reclamation requests that its *Petition for Reconsideration* be granted to clarify the issues identified above. Reclamation reserves its right to take exceptions to these and other issues as contemplated by 37.01.01.720.02(b) when the Hearing Officer's order is issued.

Dated this 12 day of May, 2008.


KATHLEEN MARION CARR

CERTIFICATE OF SERVICE

The undersigned certifies that on the 12 day of May 2008, a true and correct copy of *Reclamation's Petition for Reconsideration* was served on the following person(s) as shown below:

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