

**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, ) **NOTICE OF HEARING**  
BURLEY IRRIGATION DISTRICT, MILNER ) **REGARDING 2008 DATA**  
IRRIGATION DISTRICT, MINIDOKA IRRIGATION )  
DISTRICT, NORTH SIDE CANAL COMPANY, )  
AND TWIN FALLS CANAL COMPANY )  
\_\_\_\_\_ )

On April 7, 2010, the Director of the Department of Water Resources (“Director” or “Department”) issued his *Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”). The City of Pocatello (“Pocatello”), the Idaho Ground Water Appropriators, Inc. (“IGWA”), and the Surface Water Coalition filed petitions for reconsideration regarding the Methodology Order. One issue raised by IGWA and Pocatello was the Director’s use, in the Methodology Order, of information that is not contained in the record before the district court, namely 2008 data. On page 7, footnote 4, of the Methodology Order, the Director specifically directed the parties to the Director’s use of 2008 data.

Idaho Code § 67-5251(4) states as follows:

Official notice may be taken of:

- (a) any facts that could be judicially noticed in the courts of this state; and
- (b) generally recognized technical or scientific facts within the agency’s specialized knowledge. Parties shall be notified of the specific facts or material noticed and the source thereof, including any staff memoranda and data. Notice should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material noticed. Parties must be afforded a timely and meaningful opportunity to contest and rebut the facts or material so noticed. When the presiding officer proposes to notice staff memoranda or reports, a responsible staff member shall be made available for cross-examination if any party so requests.

*See also* IDAPA 37.01.01.602.

On April 21, 2010, the Director provided the parties with background technical information regarding the Methodology Order. This information contained 2008 data. The 2008 data used by the Director in the Methodology Order was used in order to update data already contained in the record before the district court. The 2008 data is the type of data described in Idaho Code § 67-5251(4).

Based upon the concerns raised by the parties, the Director shall conduct a limited hearing to provide the parties the opportunity to contest or rebut the 2008 data.

**ORDER**

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

The Director shall conduct a limited hearing to provide the parties the opportunity to contest or rebut the 2008 data. The hearing shall commence on May 24, 2010, starting at 9:00 a.m., at the Department's State Office.

Dated this 10<sup>th</sup> day of May, 2010.


  
\_\_\_\_\_  
GARY SPACKMAN  
Interim Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10<sup>th</sup> day of May, 2010, the above and foregoing, was served by the method indicated below, and addressed to the following:

|   |   |
|---|---|
| <p>John K. Simpson<br/>BARKER ROSHOLT &amp; SIMPSON, LLP<br/>P.O. Box 2139<br/>Boise, ID 83701<br/><a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a></p>   | <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br/><input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Facsimile<br/><input checked="" type="checkbox"/> Email</p> |
| <p>Travis L. Thompson<br/>Paul L. Arrington<br/>BARKER ROSHOLT &amp; SIMPSON, LLP<br/>P.O. Box 485<br/>Twin Falls, ID 83303<br/><a href="mailto:ilt@idahowaters.com">ilt@idahowaters.com</a><br/><a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a></p> | <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br/><input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Facsimile<br/><input checked="" type="checkbox"/> Email</p> |
| <p>C. Thomas Arkoosh<br/>CAPITOL LAW GROUP, PLLC<br/>P.O. Box 32<br/>Gooding, ID 83339<br/><a href="mailto:tarkoosh@capitolawgroup.net">tarkoosh@capitolawgroup.net</a></p>   | <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br/><input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Facsimile<br/><input checked="" type="checkbox"/> Email</p> |
| <p>W. Kent Fletcher<br/>FLETCHER LAW OFFICE<br/>P.O. Box 248<br/>Burley, ID 83318<br/><a href="mailto:wkf@pmt.org">wkf@pmt.org</a></p>  | <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br/><input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Facsimile<br/><input checked="" type="checkbox"/> Email</p> |
| <p>Candice M. McHugh<br/>RACINE OLSON<br/>101 Capitol Blvd., Ste. 208<br/>Boise, ID 83702<br/><a href="mailto:cmm@racinelaw.net">cmm@racinelaw.net</a></p>  | <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br/><input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Facsimile<br/><input checked="" type="checkbox"/> Email</p> |
| <p>Randall C. Budge<br/>Thomas J. Budge<br/>RACINE OLSON<br/>P.O. Box 1391<br/>Pocatello, ID 83204-1391<br/><a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a><br/><a href="mailto:tjb@racinelaw.net">tjb@racinelaw.net</a></p>                             | <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br/><input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Facsimile<br/><input checked="" type="checkbox"/> Email</p> |
| <p>Kathleen M. Carr<br/>US Dept. Interior<br/>960 Broadway Ste 400<br/>Boise, ID 83706<br/><a href="mailto:kathleenmarion.carr@sol.doi.gov">kathleenmarion.carr@sol.doi.gov</a></p>   | <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br/><input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Facsimile<br/><input type="checkbox"/> Email</p>            |

|  |  |
|--|--|
| <p>David W. Gehlert<br/> Natural Resources Section<br/> Environment and Natural Resources Division<br/> U.S. Department of Justice<br/> 1961 Stout Street, 8<sup>th</sup> Floor<br/> Denver, CO 80294<br/> <a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></p>                    | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |
| <p>Matt Howard<br/> US Bureau of Reclamation<br/> 1150 N Curtis Road<br/> Boise, ID 83706-1234<br/> <a href="mailto:mhoward@pn.usbr.gov">mhoward@pn.usbr.gov</a></p>   | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |
| <p>Sarah A. Klahn<br/> WHITE JANKOWSKI<br/> 511 16<sup>th</sup> St., Ste. 500<br/> Denver, CO 80202<br/> <a href="mailto:sarahk@white-jankowski.com">sarahk@white-jankowski.com</a></p>  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |
| <p>Dean A. Tranmer<br/> City of Pocatello<br/> P.O. Box 4169<br/> Pocatello, ID 83205<br/> <a href="mailto:dtranmer@pocatello.us">dtranmer@pocatello.us</a></p>  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |
| <p>Michael C. Creamer<br/> Jeffrey C. Fereday<br/> GIVENS PURSLEY LLP<br/> P.O. Box 2720<br/> Boise, ID 83701-2720<br/> <a href="mailto:mcc@givenspursley.com">mcc@givenspursley.com</a><br/> <a href="mailto:jcf@givenspursley.com">jcf@givenspursley.com</a></p>                                     | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |
| <p>Lyle Swank<br/> IDWR—Eastern Region<br/> 900 N. Skyline Drive<br/> Idaho Falls, ID 83402-6105<br/> <a href="mailto:lyle.swank@idwr.idaho.gov">lyle.swank@idwr.idaho.gov</a></p>   | <input type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email            |
| <p>Allen Merritt<br/> Cindy Yenter<br/> IDWR—Southern Region<br/> 1341 Fillmore St., Ste. 200<br/> Twin Falls, ID 83301-3033<br/> <a href="mailto:allen.merritt@idwr.idaho.gov">allen.merritt@idwr.idaho.gov</a><br/> <a href="mailto:cindy.yenter@idwr.idaho.gov">cindy.yenter@idwr.idaho.gov</a></p> | <input type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email            |

  
Victoria Wigle  
Administrative Assistant to the Director