

**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, )	<b>ORDER DENYING REQUEST</b>
BURLEY IRRIGATION DISTRICT, MILNER )	<b>FOR RECONSIDERATION OF</b>
IRRIGATION DISTRICT, MINIDOKA IRRIGATION )	<b>ORDER REVISING APRIL</b>
DISTRICT, NORTH SIDE CANAL COMPANY, )	<b>2010 FORECAST SUPPLY</b>
AND TWIN FALLS CANAL COMPANY )	<b>(METHODOLOGY STEP 7)</b>
_____ )	

On June 24, 2010, the director issued a *Final Order Regarding April 2010 Forecast Supply (Methodology Steps 3 & 4); Order on Reconsideration* ("June 24 As Applied Order") The June 24 As-Applied Order ordered as follows:

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

The Director predicts, at this time, a demand shortfall of 56,600 acre-feet to TFCC's reasonable in-season demand. At this time, no other members of the SWC are predicted to experience material injury during the 2010 irrigation season. The maximum, combined demand shortfall for members of the SWC during the 2010 irrigation season is 56,600 acre-feet.

IT IS FURTHER ORDERED that junior ground water users are not required to provide the secured volume of mitigation water until after the Director determines the SWC's Time of Need, as established in Step 8 of the Methodology Order. The volume of water required for mitigation at the Time of Need may be more or less for individual SWC members, but the combined volume will not be greater than 56,600 acre-feet.

IT IS FURTHER ORDERED that the following leases and contracts for lease of storage water shall be dedicated solely for mitigation to the SWC until further determined by the Director:

<i>Water Storage Lessor Entities</i>	<i>Storage Volume Obtained (acre- feet)</i>
Enterprise Canal Company	10,000
Idaho Irrigation District	10,000
Snake River Valley Irrigation District	10,000
Peoples Canal & Irrigation Company	7,000
Mitigation, Inc.	5,000
New Sweden Irrigation District	5,000
Palisades Water Users & City of Idaho Falls	5,000
Progressive Irrigation District	<u>5,000</u>
Total	57,000

IT IS FURTHER ORDERED that the Watermaster of Water District 01 shall not deliver water rented under the above contracts to any other entity other than the SWC, including the lessor, until further notice by the Director.

On September 17, 2010, the interim director (“the director”) of the Idaho Department of Water Resources (“Department” or “IDWR”) issued a *Final Order Revising April 2010 Forecast Supply (Methodology Step 7)* (“Final Forecast Order”). The final forecast determined no member of the Surface Water Coalition (“SWC”) would be materially injured because there would be there would no shortfall in the reasonable in-season demand for any of the members of the SWC during the 2010 irrigation season. As a result, the Idaho Ground Water Appropriators (“IGWA”) were excused from any obligation for mitigation created by previous orders to the SWC for depletions caused by ground water pumping during the 2010 irrigation season.

On October 1, 2010, the SWC filed its *Petition for Reconsideration and Clarification of Final Order Revising April 2010 Forecast Supply (Methodology Step 7)* (“Petition for Reconsideration”). The Petition for Reconsideration stated that the water rented by IGWA was not assigned to the Watermaster, the underlying fees for the rental of the water through the Water District 01 Rental Pool were not paid, and the Watermaster never had control of the storage water rented. The SWC argued that the Final Forecast Order demonstrates “a misunderstanding of the procedural requirement of the rental pool rules and the inability of IDWR to control the delivery of mitigation water, control that is lawfully required and mandated by the Orders of the Director if a junior ground water user wants to divert out-of-priority following a finding of material injury.”

Neither the June 24 As-Applied Order nor the underlying Methodology Order required actual assignment to the Watermaster and the payment of fees to the rental pool. The director purposely wrote the June 24 As-Applied Order prohibiting the Watermaster from allowing the dedicated water to be used for any other purpose until released. The director is aware the storage water was not used for another purpose until released by the director’s Final Forecast Order. IGWA complied with the requirement of the June 24 As-Applied Order.

**ORDER**

IT IS HEREBY ORDERED that the Surface Water Coalition's Petition for reconsideration is **Denied**.

Dated this 22<sup>nd</sup> day of October, 2010.

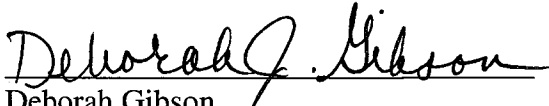
  
GARY SPACKMAN  
Interim Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of October, 2010, 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 &amp; SIMPSON, LLP          P.O. Box 485          Twin Falls, ID 83303  <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a>  <a href="mailto:tlt@idahowaters.com">tlt@idahowaters.com</a>  <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a></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>C. Thomas Arkoosh          CAPITOL LAW GROUP, PLLC          P.O. Box 32          Gooding, ID 83339  <a href="mailto:tarkoosh@capitolawgroup.net">tarkoosh@capitolawgroup.net</a></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  <a href="mailto:wkf@pmt.org">wkf@pmt.org</a></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>
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<p>Kathleen M. Carr          US Dept. Interior          960 Broadway Ste 400          Boise, ID 83706  <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  <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 18<sup>th</sup> Street          South Terrace – Suite 370          Denver, CO 80202  <a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></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  US Bureau of Reclamation  1150 N Curtis Road  Boise, ID 83706-1234  <a href="mailto:mhoward@pn.usbr.gov">mhoward@pn.usbr.gov</a></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
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Deborah Gibson  
Administrative Assistant, IDWR

## **EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION**

**(To be used in connection with actions when a hearing was held)**

The accompanying order is an **Order Denying Petition for Reconsideration** of the "final order" or "amended final order" issued previously in this proceeding by the Idaho Department of Water Resources ("department") pursuant to section 67-5246, Idaho Code.

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.