

**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 ADOPTING</b>
BURLEY IRRIGATION DISTRICT, MILNER )	<b>STIPULATED NOTICE OF</b>
IRRIGATION DISTRICT, MINIDOKA IRRIGATION )	<b>SECURED WATER IN</b>
DISTRICT, NORTH SIDE CANAL COMPANY, )	<b>COMPLIANCE WITH FINAL</b>
AND TWIN FALLS CANAL COMPANY )	<b>ORDER ESTABLISHING</b>
)	<b>2012 REASONABLE</b>
)	<b>CARRYOVER</b>
)	
)	<b>(METHODOLOGY STEP 9)</b>
)	

---

**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. On November 26, 2012, the Director issued his *Order Establishing 2012 Reasonable Carryover* (“2012 Step 9 Order”). In that order, it was established that American Falls Reservoir District No. 2 (“AFRD2”) suffered a reasonable carryover shortfall in the amount of 17,318 acre-feet. *2012 Step 9 Order* at 3. The Idaho Ground Water Appropriators, Inc. (“IGWA”) were ordered to inform the Director, within 14 days, of its intention to provide the carryover shortfall or ask for implementation of Methodology Step 10. *Id.* at 5.

3. On December 10, 2012, AFRD2 and IGWA jointly filed a *Stipulated Notice of Secured Water in Compliance with Final Order Establishing 2012 Reasonable Carryover* (“Stipulation”). In the Stipulation, it was stated as follows:

The Ground Water Users have secured more than 17,318 acre-feet of water under various leases. The water under these leases has been assigned to four storage space holders' accounts in Palisades Reservoir as follows:

3750af—Enterprise  
3750af—Peoples  
1250af—Palisades WU  
8639af—ASCC (balance)

The Ground Water Users have assigned this to the junior storage space holders' accounts in Palisades Reservoir in order to maximize the security and availability of this storage supply for use in the 2013 irrigation season. To the extent that AFRD2's storage account does not fill in 2013, then storage water will be withdrawn from the above accounts' 2013 storage in accordance with WD01 rules and procedures and reassigned to AFRD2 in 2013 not to exceed an amount of 17,318 acre-feet obligation and in satisfaction of the 2012 Order as it now exists unless such obligation is altered by administrative or judicial order.

*Stipulation at 2.*

4. The Department corresponded with the Watermaster for Water District 01 and confirmed that IGWA assigned leased storage water to the entities and in the amounts as described on page 2 of the *Stipulation*.

### 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 2012. *Methodology Order* at 37-38 (Steps 9 and 10). If the Director projects a reasonable carryover shortfall, IGWA shall have fourteen days to establish its ability to secure "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.

2. On November 26, 2012, the Director issued his 2012 Step 9 Order, in which a carryover shortfall to AFRD2 in the amount of 17,318 acre-feet was found.

3. Fourteen days later, on December 10, 2012, AFRD2 and IGWA submitted a *Stipulation*, notifying the Director that at least 17,318 acre-feet of storage water had been secured by IGWA and will be provided to AFRD2 if a shortfall exists in 2013.

4. 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, \_\_\_, 284 P.3d 225, 249 (2012).

5. “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).

6. Based on the Stipulation, it is clear that IGWA has secured the required volume of storage water and can supply that volume of storage water to AFRD2 if there is carryover shortfall in 2013 (Methodology Step 5). *Methodology Order* at 35-37.

## ORDER


Based upon the foregoing, IT IS HEREBY ORDERED that, based on the *Stipulation* entered into between AFRD2 and IGWA, IGWA has met its Methodology Step 9 requirement.

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 21<sup>st</sup> day of December, 2012.

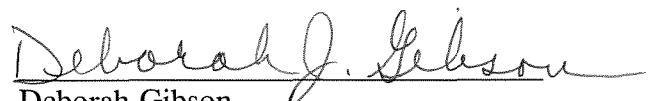
  
GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of December, 2012, 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          195 River Vista Place, Ste. 204          Twin Falls, ID 83301-3029  <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          ARKOOSH EIGUREN LLC          P.O. Box 2900          Boise, ID 83701  <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>
<p>Randall C. Budge          Candice M. McHugh          Thomas J. Budge          RACINE OLSON          P.O. Box 1391          Pocatello, ID 83204-1391  <a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a>  <a href="mailto:cmm@racinelaw.net">cmm@racinelaw.net</a>  <a href="mailto:tjb@racinelaw.net">tjb@racinelaw.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>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, Ste 370          Denver, CO 80294  <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@usbr.gov">mhoward@usbr.gov</a></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>Sarah A. Klahn  Mitra M. Pemberton  WHITE JANKOWSKI  511 16<sup>th</sup> St., Ste. 500  Denver, CO 80202  <a href="mailto:sarahk@white-jankowski.com">sarahk@white-jankowski.com</a>  <a href="mailto:mitrap@white-jankowski.com">mitrap@white-jankowski.com</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
<p>Dean A. Tranmer  City of Pocatello  P.O. Box 4169  Pocatello, ID 83205  <a href="mailto:dtranmer@pocatello.us">dtranmer@pocatello.us</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
<p>William A. Parsons  PARSONS SMITH &amp; STONE  P.O. Box 910  Burley, ID 83318  <a href="mailto:wparsons@pmt.org">wparsons@pmt.org</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
<p>Michael C. Creamer  Jeffrey C. Fereday  GIVENS PURSLEY LLP  P.O. Box 2720  Boise, ID 83701-2720  <a href="mailto:mcc@givenspursley.com">mcc@givenspursley.com</a>  <a href="mailto:jcf@givenspursley.com">jcf@givenspursley.com</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
<p>Lyle Swank  IDWR—Eastern Region  900 N. Skyline Drive  Idaho Falls, ID 83402-6105  <a href="mailto:lyle.swank@idwr.idaho.gov">lyle.swank@idwr.idaho.gov</a></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>Allen Merritt  Cindy Yenter  IDWR—Southern Region  1341 Fillmore St., Ste. 200  Twin Falls, ID 83301-3033  <a href="mailto:allen.merritt@idwr.idaho.gov">allen.merritt@idwr.idaho.gov</a>  <a href="mailto:cindy.yenter@idwr.idaho.gov">cindy.yenter@idwr.idaho.gov</a></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

  
Deborah Gibson  
Administrative Assistant to the Director