

**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,) **ORDER RELEASING IGWA**
BURLEY IRRIGATION DISTRICT, MILNER) **FROM 2012 REASONABLE**
IRRIGATION DISTRICT, MINIDOKA IRRIGATION) **CARRYOVER SHORTFALL**
DISTRICT, NORTH SIDE CANAL COMPANY,) **OBLIGATION**
AND TWIN FALLS CANAL COMPANY)
) **(METHODOLOGY STEP 5)**
)

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 an order predicting a 17,318 acre-feet reasonable carryover shortfall to American Falls Reservoir District No. 2 (“AFRD2”). *Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9)* (“2012 Step 9 Order”). On December 21, 2012, and pursuant to stipulation between AFRD2 and the Idaho Ground Water Appropriators, Inc. (“IGWA”), the Director entered an order establishing that IGWA had secured 17,389 acre-feet of storage water to mitigate for predicted material injury to AFRD2. *Order Adopting Stipulated Notice of Secured Water in Compliance with Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9)*.

3. IGWA is authorized to mitigate material injury to the SWC by providing storage water. *Order Approving Mitigation Plan*, CM-MP-2009-007 (June 3, 2010); *Memorandum Decision and Order on Petition for Judicial Review*, CV-2010-3075 (Fifth Jud. Dist., Jan. 25, 2011).

4. In order to establish that it had secured the required volume of storage water to mitigate for the predicted shortfall to AFRD2's reasonable carryover, IGWA presented the following leases to the Department, which are summarized as follows in acre-feet:

Lessor	Volume
Aberdeen Springfield Canal Co.	8,939
Enterprise Canal Co.	3,750
Palisades Water Users	1,250
Peoples Canal	3,750
TOTAL	17,689

Stipulated Notice of Secured Water in Compliance with Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9) (December 10, 2012) at 2.

5. The 17,318 acre-feet reasonable carryover shortfall was based on preliminary Water District 01 accounting. *Final Order Regarding April 2013 Forecast Supply (Methodology Steps 1-4)* at 5. Based on final Water District 01 accounting, the reasonable carryover shortfall to AFRD2 is 14,605 acre-feet. *Id.*

6. Step 5 from the Methodology Order states as follows:

Step 5: If the storage allocations held by members of the SWC fill, there is no reasonable carryover shortfall. If the storage allocations held by members of the SWC do not fill, within fourteen (14) days following the publication of Water District 01's initial storage report, which typically occurs soon after the Day of Allocation, the volume of water secured by junior ground water users to fulfill the reasonable carryover shortfall shall be made available to injured members of the SWC. The amount of reasonable carryover to be provided shall not exceed the empty storage space on the Day of Allocation for that entity. If water is owed in addition to the reasonable carryover shortfall volume, this water shall be provided to members of the SWC at the Time of Need, described below. The Time of Need will be no earlier than the Day of Allocation.

Methodology Order at 36.

7. The Day of Allocation in Water District 01 occurred on or about June 5, 2013. On or about June 11, 2013, the watermaster for Water District 01 released the storage allocations for storage space holders. AFRD2 will receive its full storage allocation this season—393,550 acre-feet in American Falls Reservoir—less evaporation.

CONCLUSIONS OF LAW

1. In the 2012 Step 9 Order, the Director predicted AFRD2 would suffer a reasonable carryover shortfall of 17,318 acre-feet. Based on a stipulation entered into between

AFRD2 and IGWA, the Director found that IGWA secured 17,689 acre-feet of storage water to mitigate for the predicted reasonable carryover shortfall.

2. The 2013 Forecast Supply Order concluded that AFRD2's predicted reasonable carryover shortfall was 14,605 acre-feet.

3. The Day of Allocation in Water District 01 occurred on or about June 5, 2013. On or about June 11, 2013, the watermaster for Water District 01 released the storage allocations for storage space holders. AFRD2 will receive a full storage allocation this season, less evaporation.

4. Methodology Step 5 states in pertinent part: "If the storage allocations held by members of the SWC fill, there is no reasonable carryover shortfall." *Methodology Order* at 36. Because AFRD2 will receive a full storage allocation, there is no reasonable carryover shortfall.

5. Because there is no reasonable carryover shortfall, the Director releases IGWA from its 2012 reasonable carryover obligation. The watermaster for Water District 01 is instructed to allow IGWA access to the volume of water that was previously secured for the predicted reasonable carryover shortfall.

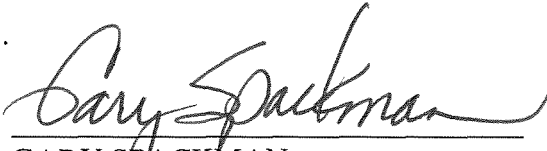
ORDER

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

Because AFRD2 will receive a full storage allocation, IGWA is no longer required to provide storage water to AFRD2 for its predicted 2012 reasonable carryover shortfall. The watermaster for Water District 01 is hereby instructed to allow IGWA access to the volume of water it secured to meet the 2012 predicted reasonable carryover shortfall to AFRD2.

IT IS FURTHER ORDERED that pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by the final order may appeal the final order 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 17th day of June, 2013.



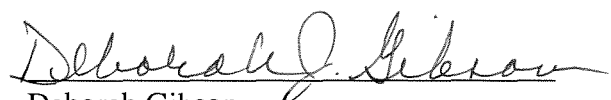
GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June, 2013, 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 & SIMPSON, LLP 195 River Vista Place, Ste. 204 Twin Falls, ID 83301-3029 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com</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 LAW OFFICES P.O. Box 2900 Boise, ID 83701 tom.arkoosh@arkoosh.com</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 wkf@pmt.org</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 rcb@racinelaw.net cmm@racinelaw.net tjb@racinelaw.net</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 kathleenmarion.carr@sol.doi.gov</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 18th Street South Terrace, Suite 370 Denver, CO 80202 david.gehlert@usdoj.gov</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 mhoward@usbr.gov</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 Pemberton WHITE JANKOWSKI 511 16th St., Ste. 500 Denver, CO 80202 sarahk@white-jankowski.com mitrap@white-jankowski.com</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 dtranmer@pocatello.us</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 & Stone, LLP P.O. Box 910 Burley, ID 83318 wparsons@pmt.org</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 mcc@givenspursley.com jcf@givenspursley.com</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, Ste. A Idaho Falls, ID 83402 lyle.swank@idwr.idaho.gov</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 allen.merritt@idwr.idaho.gov cindy.yenter@idwr.idaho.gov</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

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
 - (a) The petition for reconsideration is disposed of; or
 - (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.
- (8) The provisions of this section do not preclude an agency from taking immediate

action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

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.