

**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</b>
BURLEY IRRIGATION DISTRICT, MILNER )	<b>AFRD2's PETITION FOR</b>
IRRIGATION DISTRICT, MINIDOKA IRRIGATION )	<b>RECONSIDERATION OF</b>
DISTRICT, NORTH SIDE CANAL COMPANY, )	<b>ORDER RELEASING IGWA</b>
AND TWIN FALLS CANAL COMPANY )	<b>FROM 2012 REASONABLE</b>
)	<b>CARRYOVER SHORTFALL</b>
)	<b>OBLIGATION</b>
)	
)	<b>(METHODOLOGY STEP 5)</b>
)	

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**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. During 2010, the Director issued multiple orders applying the Methodology Order. Parties to the SWC delivery call filed petitions for judicial review in the Fifth Judicial District, Case No. CV-2010-382 (hereinafter “Consolidated 382”).

3. On September 10, 2010, the Honorable John M. Melanson issued his *Amended Order on Petitions for Rehearing: Order Denying Surface Water Coalition’s Motion for Clarification in A&B Irr. Dist. et al. v. IDWR et al.*, Gooding County District Court Case No. 2008-000551. Judge Melanson issued a *Judgment Nunc Pro Tunc* in that case on November 30, 2010. Notice of appeal were filed with the Idaho Supreme Court, Case No. 38193-2010.

4. Because the “issues on appeal in Consolidated 382 relate to the issues raised in the SWC Supreme Court Appeal [Case No. 38193-2010],” all parties to the SWC delivery call filed a *Motion for Stay* with the Fifth Judicial District Court in Consolidated 382: “For purposes of judicial economy, IDWR and the parties to these proceedings request that this Court stay all proceedings in the above-captioned matters until a decision has been entered by the Idaho

Supreme Court in the SWC Supreme Court Appeal.” *Motion for Stay* at 3. The Motion for Stay was filed on December 10, 2010. The Motion for Stay also recited the following: “IDWR and the parties to these proceedings further agree that, in the interim, administration of hydraulically connected ground water and surface water rights shall continue as set forth in the Methodology Order.” *Id.* On December 13, 2010, the Honorable Eric J. Wildman, in and for the Fifth Judicial District Court, entered an *Order Granting Motion for Stay* in Consolidated 382.<sup>1</sup> “Within 30 days of the Idaho Supreme Court’s issuance of its decision in the SWC Supreme Court Appeal, the parties shall contact this Court regarding a status and scheduling conference to resolve any remaining matters . . . .” *Order Granting Motion for Stay* at 2.

5. The Director issued orders applying the Methodology Order in 2011 and 2012.

6. On June 13, 2012, oral argument occurred in the SWC delivery call appeal before the Idaho Supreme Court, Case No. 38193-2010. As of the issuance of this order, the Idaho Supreme Court has not yet issued a written decision.

7. 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 the predicted material injury to AFRD2’s reasonable carryover. *Order Adopting Stipulated Notice of Secured Water in Compliance with Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9)*.

8. IGWA is authorized to mitigate material injury to members of 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).

9. 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:

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

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

<sup>1</sup> Following Judge Melanson’s appointment to the Idaho Court of Appeals, Judge Wildman replaced Judge Melanson as presiding judge of the SRBA District Court.

10. 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 was computed as 14,605 acre-feet. *Id.*

11. 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.

12. 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 in the Upper Snake. While American Falls Reservoir did not fill to 100%, AFRD2 received its full storage allocation this season: 393,550 acre-feet, less evaporation. Therefore, on the Day of Allocation, AFRD2 had no empty storage space.

13. On June 17, 2013, the Director issued an *Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)* ("Step 5 Order"). Because AFRD2's storage allocation in American Falls Reservoir filled, the Step 5 Order released IGWA from its 2012 reasonable carryover obligation to AFRD2.

14. On June 27, 2013, the Department received AFRD2's *Request for Reconsideration of Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)* ("Petition for Reconsideration"). Asserting, among other things,<sup>2</sup> that its "storage space did not fill," AFRD2's Petition for Reconsideration asks the

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<sup>2</sup> AFRD2 states that the Idaho Supreme Court's decision in *Clear Springs Foods v. Spackman*, 150 Idaho 790 (2011) was issued "nearly three months prior" to the Methodology Order. *Petition for Reconsideration* at 3. AFRD2 is incorrect. The *Clear Springs* decision was issued on March 17, 2011. The Methodology Order was issued on June 23, 2010, or approximately nine months before *Clear Springs*. It also appears AFRD2 may be asking for the Director to alter some of the procedures set forth in the Methodology Order. As stated above, the parties to the SWC delivery call agreed to follow the Methodology Order, until a decision was issued by the Idaho Supreme Court in the appeal of Consolidated 382. *Motion for Stay; Order Granting Motion for Stay*. The Idaho Supreme Court has not yet issued a written decision in the Consolidated 382 appeal.

Director to reconsider his decision releasing IGWA from its 2012 reasonable carryover obligation. *Petition for Reconsideration* at 4.

## CONCLUSIONS OF LAW

1. According to the Department's Rules of Procedure, the Department must "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." IDAPA 37.01.01.740.02.a. *See also* Idaho Code § 67-5246(4); *A&B Irr. Dist. v. Idaho Dept. of Water Resources*, 154 Idaho 652, 301 P.3d 1270 (2012). The Department received the Petition for Reconsideration on June 27, 2013. This order is issued before the expiration of the twenty-one (21) day time period.

2. 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.

3. The 2013 Forecast Supply Order concluded that, based on final Water District 01 accounting, AFRD2's predicted reasonable carryover shortfall was 14,605 acre-feet.

15. 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. Even though American Falls Reservoir did not fill to 100%, AFRD2 received a full storage allocation.

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. . . . The amount of reasonable carryover to be provided shall not exceed the empty storage space on the Day of Allocation for that entity." *Methodology Order* at 36. Because AFRD2 received a full storage allocation, it has no empty storage space; thus, there is no reasonable carryover shortfall.

5. In its Petition for Reconsideration, AFRD2 argues "the Director's April estimate predicted American Falls Reservoir District #2 would receive a supply of 441,503 acre-feet to meet a baseline year of 415,730 acre-feet, American Falls Reservoir District #2 will not receive the predicted amount." *Petition for Reconsideration* at 4. AFRD2 goes on to say it will receive "significantly less water than initially predicted by the Director in [Methodology] Step 4 . . . ." *Id.*

6. AFRD2's concerns are not germane to the current administrative order. The acre-foot figures AFRD2 cites in its *Petition for Reconsideration* are its 2013 in-season volumes. The Director previously issued an order applying Methodology Order Steps 1-4 to the 2013 irrigation season. *Final Order Regarding April 2013 Forecast Supply (Methodology Steps 1-4)* (April 17, 2013) ("April Forecast Supply Order"). The SWC filed a petition for judicial review regarding the April Forecast Supply Order in the Fifth Judicial District. *Notice of Appeal and Petition for Judicial Review of Final Agency Action (April 2013 Forecast Supply Order)*, CV-2013-2305

(Fifth Jud. Dist., June 4, 2013). By agreement of the parties, including AFRD2, the April Forecast Supply Order is stayed on judicial review, pending a decision from the Idaho Supreme Court in Case No. 38193-2010. *Order Staying Proceeding Pursuant to Stipulation*, CV-2013-2305 (Fifth Jud. Dist., June 28, 2013). Issues concerning the April Forecast Supply Order may be addressed on judicial review. Moreover, the SWC's 2013 in-season volumes will be addressed by the Department in subsequent 2013 Methodology orders applying steps 6, 7, and 8.

7. The purpose of the Step 5 Order was to establish whether IGWA was required to provide the volume of water it secured in 2012 to meet AFRD2's predicted reasonable carryover shortfall of 14,605 acre-feet.

8. While American Falls Reservoir did not fill to 100%, AFRD2's storage allocation did fill. Because AFRD2's storage allocation filled, it has no empty storage space; thus, there is no reasonable carryover shortfall. *Methodology Order* at 36. Since AFRD2 received a full storage allocation, it was proper for the Director to release IGWA from its 2012 reasonable carryover obligation.

### ORDER

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

AFRD2's *Petition for Reconsideration* is DENIED. Because AFRD2 received a full storage allocation, it had no empty reservoir space, and IGWA is not required to provide storage water to AFRD2 for its predicted 2012 reasonable carryover shortfall.

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 18<sup>th</sup> day of July, 2013.



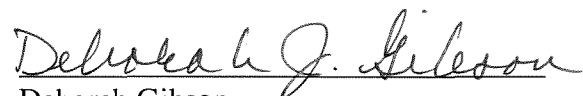
GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18<sup>th</sup> day of July, 2013, the above and foregoing, was served by the method indicated below, and addressed to the following:

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