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DEC 30 2013

DEPARTMENT OF
WATER RESOURCES

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Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)

**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,
BURLEY IRRIGATION DISTRICT,
MILNER IRRIGATION DISTRICT,
MINIDOKA IRRIGATION DISTRICT,
NORTH SIDE CANAL COMPANY, AND
TWIN FALLS CANAL COMPANY.

Docket No. CM-DC-2010-001

**IGWA's Request for
Reconsideration of Final Order
Establishing 2013 Reasonable
Carryover (Methodology Step 10)**

Idaho Ground Water Appropriators, Inc. ("IGWA") hereby petitions the Director pursuant to Idaho Code §67-5246 and IDAPA 37.01.01.740.02 to reconsider two aspects of the *Final Order Establishing 2013 Reasonable Carryover (Methodology Step 10)* issued December 16, 2013 (the "Order"):

1. Use of ESPAM 1.1. ESPAM version 1.1 was used for modeling exercises in the Order.¹ In July of 2012, the Eastern Snake Hydrologic Modeling Committee recommended that the Director begin using ESP AM version 2.0 rather than ESPAM version 1.1 for ground water modeling. ESPAM 2.1 was published shortly thereafter, and was used for modeling in the Rangen delivery call.

IGWA assumed ESPAM2.1 would, and believes it should, be used to make contemporary modeling calculations in this case. In so doing, the Director should maintain the established 10% trimline approved by the Idaho Supreme Court in

¹ Finding of Fact 7, n. 1, p. 2.

Clear Springs Foods, Inc. v. Spackman, 150 Idaho 790 (2011). Director Dreher cited the 10% margin of error in USGS stream gauges to support his adoption of a 10% trimline with ESPAM 1.1, and the Idaho Supreme Court held that this was not an abuse of the Director's discretion. *Id.* at 817. The same USGS stream gauges are used in ESPAM 2.1. In addition, the IDWR's uncertainty analysis for ESPAM 2.1 found the highest degree of uncertainty in the Blackfoot to Minidoka reach. Accordingly, the Director should continue to apply a 10% trimline to water administration decisions in this case that are informed by ESPAM 2.1.

Therefore, IGWA asks the Director to re-calculate Methodology Step 10 using ESPAM 2.1, applying a 10% trimline.

2. Account for wintertime reach gains from IGWA mitigation activities. IGWA has ongoing mitigation activities, such as CREP, that increase reach gains to the Snake River during the non-irrigation season. Some of these reach gains augment the supply of storage water available to the Surface Water Coalition. The Order does not appear to provide credit to IGWA for these mitigation activities. Therefore, IGWA asks the Director to re-calculate Methodology Step 10, taking into account wintertime reach gains from IGWA mitigation activities.

3. Account for junior groundwater use not represented by IGWA. The Order calculates cumulative impacts to the near Blackfoot to Minidoka reach of the Snake River from groundwater pumping junior to July 1, 1985, within the 10% trimline, but excluding the Southwest Irrigation District and Goose Creek Irrigation District service areas.² The Order then charges junior groundwater users represented by IGWA with responsibility to mitigate the full amount calculated, or suffer curtailment.³

IGWA represents most, but not all, groundwater users within the 10% trimline, excluding the Southwest Irrigation District and Goose Creek Irrigation District service areas. For instance, the Fort Hall Indian Reservation is located within the 10% trimline, but not within any Ground Water District represented by IGWA. There are also a number of groundwater users located within the boundaries of a Ground Water District, but who do not belong to the District.

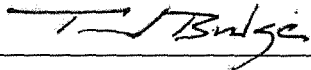
IGWA's members cannot lawfully be held responsible to provide mitigation for groundwater users who are not represented by IGWA and are not protected by IGWA's mitigation plan. If the Order already accounts for junior groundwater use not represented by IGWA, please explain how that was done. If not, please re-calculate Methodology Step 10 in a manner that accounts only for groundwater users represented by IGWA. If needed, IGWA can upon request supply a list of all groundwater rights represented by IGWA.

² Findings of Fact 7-10.

³ Conclusion of Law 4.

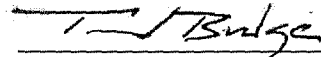
RESPECTFULLY SUBMITTED this 30th day of December, 2013.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

By: 
Thomas J. Budge
Attorneys for IGWA

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of December, 2013, a true and correct copy of the foregoing was served upon the following persons in the manner indicated.



THOMAS J. BUDGE

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