

**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,)
BURLEY IRRIGATION DISTRICT, MILNER) **ORDER REGARDING APRIL**
IRRIGATION DISTRICT, MINIDOKA IRRIGATION) **2010 FORECAST SUPPLY**
DISTRICT, NORTH SIDE CANAL COMPANY,) **(Methodology Steps 3 & 4)**
AND TWIN FALLS CANAL COMPANY)
_____)

FINDINGS OF FACT

1. On April 7, 2010, the Director of the Idaho Department of Water Resources (“Director” or “Department”) issued his *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”). This order will apply steps 3 and 4.

A. Step 3

2. Step 3 states that, within fourteen days of the issuance of the joint forecast (“Joint Forecast”) prepared by the United States Bureau of Reclamation and the United States Army Corps of Engineers, the Director shall “issue a Forecast Supply for the water year and will compare the forecast supply to the baseline demand (“BD”) to determine if a demand shortfall (“DS”) is anticipated for the upcoming irrigation season. A separate Forecast Supply and DS will be determined for each member of the SWC.” *Id.* at 34.

3. On April 8, 2010, the Joint Forecast was announced,¹ predicting an unregulated inflow of 1,940,000 acre-feet.²

¹ The Methodology Order was issued on April 7, 2010. Petitions for reconsideration were filed with the Department on April 21, 2010. Issuance of this order was delayed to allow the Director time to review the petitions for reconsideration.

² Attached hereto are the regression analyses for each SWC entity used to predict natural flow supply.

4. Based upon the Joint Forecast, the Director predicts the following:

	Predicted Natural Flow Supply	Predicted Storage Allocation	Total Supply	BLY 2006/2008	Shortfall
A&B	0	135,371	135,371	58,492	0
AFRD2	1,256	387,102	388,358	415,730	27,400 ³
BID	65,123	222,507	287,630	250,977	0
Milner	0	89,107	89,107	46,332	0
Minidoka	94,486	358,438	452,924	362,884	0
NSCC	233,145	843,169	1,076,314	965,536	0
TFCC	747,391	241,078	988,469	1,045,382	56,900
				Total	84,300

B. Step 4

5. Step 4 states as follows:

If the April DS is greater than the reasonable carryover shortfall from the previous year, junior ground water users will be required to establish, to the satisfaction of the Director, their ability to secure and provide a volume of storage water equal to the difference of the April projected demand shortfall and reasonable carryover shortfall, for all injured members of the SWC. If junior ground water users cannot provide this information, by May 1, or within fourteen (14) days from issuance of the values set forth in Step 3, whichever is later in time, the Director will issue an order curtailing junior ground water users.

Id. at 34.⁴

6. As shown in the table above, it is predicted, at this time, that AFRD2 and TFCC will suffer a combined DS in the amount of 84,300 acre-feet (27,400 + 56,900). No later than May 13, 2010 (fourteen days from issuance of this order), junior ground water users must establish, to the satisfaction of the Director, their ability to secure 84,300 acre-feet.

³ In its *Corrected Petition for Reconsideration of Final Order Regarding Methodology Dated April 7, 2010*, the Idaho Ground Water Appropriators, Inc. ("IGWA") raised concerns regarding natural flow diversions by AFRD2 and the interim director's initial determination of material injury. IGWA did not explain why the interim director's determination of shortfall for AFRD2 was incorrect. The interim director reviewed the method of determining the shortfall, AFRD2's water rights, and the accounting of water deliveries to AFRD2. The interim director did not find compelling information to change the initial prediction of shortfall for AFRD2.

⁴ Steps 9 and 10 of the Methodology Order require the Director to predict reasonable carryover shortfalls to reservoir space held by member of the SWC in the fall before the subsequent irrigation season. *Methodology Order* at 36. Given when the Methodology Order was issued, junior ground water users were not under an obligation in the fall of 2009 to provide reasonable carryover shortfalls. At this time, it is forecasted that reservoir space held by members of the SWC will fill in 2010. In the fall of 2010, the Director will determine reasonable carryover shortfalls, if any, for members of the SWC. At that time, junior ground water users will be expected to comply with Steps 9 and 10, in whole or in part, or face curtailment, in whole or in part. *See id.* at 36.

7. If junior ground water users provide no water for purposes of mitigation, the Director will issue an order curtailing ground water rights junior to April 5, 1982, as simulated by the ESPA Model. Curtailment of ground water rights junior to April 5, 1982 will increase reach gains between the Near Blackfoot and Minidoka gages by a total amount of 84,361 acre-feet. Curtailing only those ground water rights located within the area of common ground water supply, IDAPA 37.03.11.050.01, will increase reach gains between the Near Blackfoot and Minidoka gages by 77,985 acre-feet. Curtailment of rights only within the area of common ground water supply will affect 73,782 acres. If junior ground water users secure a volume of water less than 84,300 acre-feet, the Director will redetermine the extent of curtailment, as simulated by the ESPA Model.

8. The 84,300 acre-feet of water required to mitigate material injury, shall be owed at the Time of Need, as established in Step 8 of the Methodology Order. At the Time of Need, the volume of water necessary to mitigate material injury to members of the SWC may be less but not greater than 84,300 acre-feet. *Id.* at 35.

CONCLUSIONS OF LAW

1. Based upon the Joint Forecast, the Director predicts, at this time, a demand shortfall will occur to AFRD2 and TFCC's Reasonable In-Season Demand ("RISD"); thereby resulting in material injury. IDAPA, 37.03.11.042. At this time, the predicted material injury to AFRD2 is 27,400 acre-feet. At this time, the predicted material injury is to TFCC 59,900 acre-feet. At this time, no other members of the SWC are predicted to suffer material injury during the 2010 irrigation season. The total predicted material injury to RISD for members of the SWC in the 2010 irrigation season shall be no greater than 84,300 acre-feet.

2. No later than May 13, 2010 (fourteen days from issuance of this order), junior ground water users must establish, to the satisfaction of the Director, that they have secured 84,300 acre-feet.

3. The predicted volume of water required to mitigate material injury shall be owed at the Time of Need, as established in Step 8 of the Methodology Order. The volume of water necessary to mitigate material injury at the Time of Need may be less, but not greater than 84,300 acre-feet.

4. If junior ground water users provide no water for purposes of mitigation, the Director shall issue an order curtailing ground water rights junior to April 5, 1982, which will increase reach gains between the Near Blackfoot and Minidoka gages by 84,361 acre-feet. Curtailing only those ground water rights located within the area of common ground water supply, IDAPA 37.03.11.050.01, will increase reach gains between the Near Blackfoot and Minidoka gages by 77,985 acre-feet. Curtailment of rights only within the area of common ground water supply will affect 73,782 acres. If junior ground water users secure a volume of water less than 84,300 acre-feet, the Director will redetermine the extent of curtailment, as simulated by the ESPA Model.

ORDER

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

The Director predicts, at this time, a demand shortfall of 27,400 acre-feet to AFRD2's reasonable in-season demand. The Director also predicts a demand shortfall, at this time, of 56,900 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 84,300 acre-feet.

No later than May 13, 2010 (fourteen days from issuance of this order), junior ground water users must establish, to the satisfaction of the Director, that they have secured 84,300 acre-feet of storage water to mitigate for the predicted material injury. If junior ground water users cannot establish, to the satisfaction of the Director, that they have secured the required volume of water, in whole or in part, the Director shall issue an order curtailing junior ground water users, in whole or in part, for the material injury caused to the injured members of the SWC.

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 84,300 acre-feet.

IT IS FURTHER ORDERED that if junior ground water users provide no water for purposes of mitigation, the Director shall issue an order curtailing ground water rights junior to April 5, 1982. The curtailment shall affect 73,782 acres within the area of common ground water supply in Water District Nos. 34, 110, 120, 130, and 140, and will increase reach gains by 77,985 acre-feet. If junior ground water users secure a volume of water less than 84,300 acre-feet, the Director will redetermine the extent of curtailment, as simulated by the ESPA Model. Curtailment shall apply to consumptive ground water rights for agricultural, commercial, industrial, and municipal uses, excluding ground water rights used for *de minimis* domestic purposes where such domestic use is within the limits of the definition set forth in Idaho Code § 42-111 and ground water rights used for *de minimis* stock watering where such stock watering use is within the limits of the definitions set forth in Idaho Code § 42-1401A(12), pursuant to IDAPA 37.03.11.020.11.

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 issuance 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 any person aggrieved by this decision shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director, within fifteen (15) days after receipt of written notice of the order, or receipt of actual notice, a

written petition stating the grounds for contesting the action and requesting a hearing. Any hearing conducted shall be in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. Judicial review of any final order of the Director issued following the hearing may be had pursuant to Idaho Code § 42-1701A(4).

Dated this 29th day of April, 2010.

A handwritten signature in cursive script, reading "Gary Spackman", written over a horizontal line.

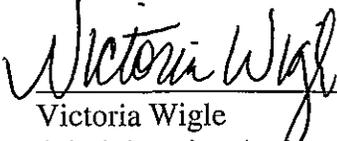
GARY SPACKMAN
Interim Director

CERTIFICATE OF SERVICE

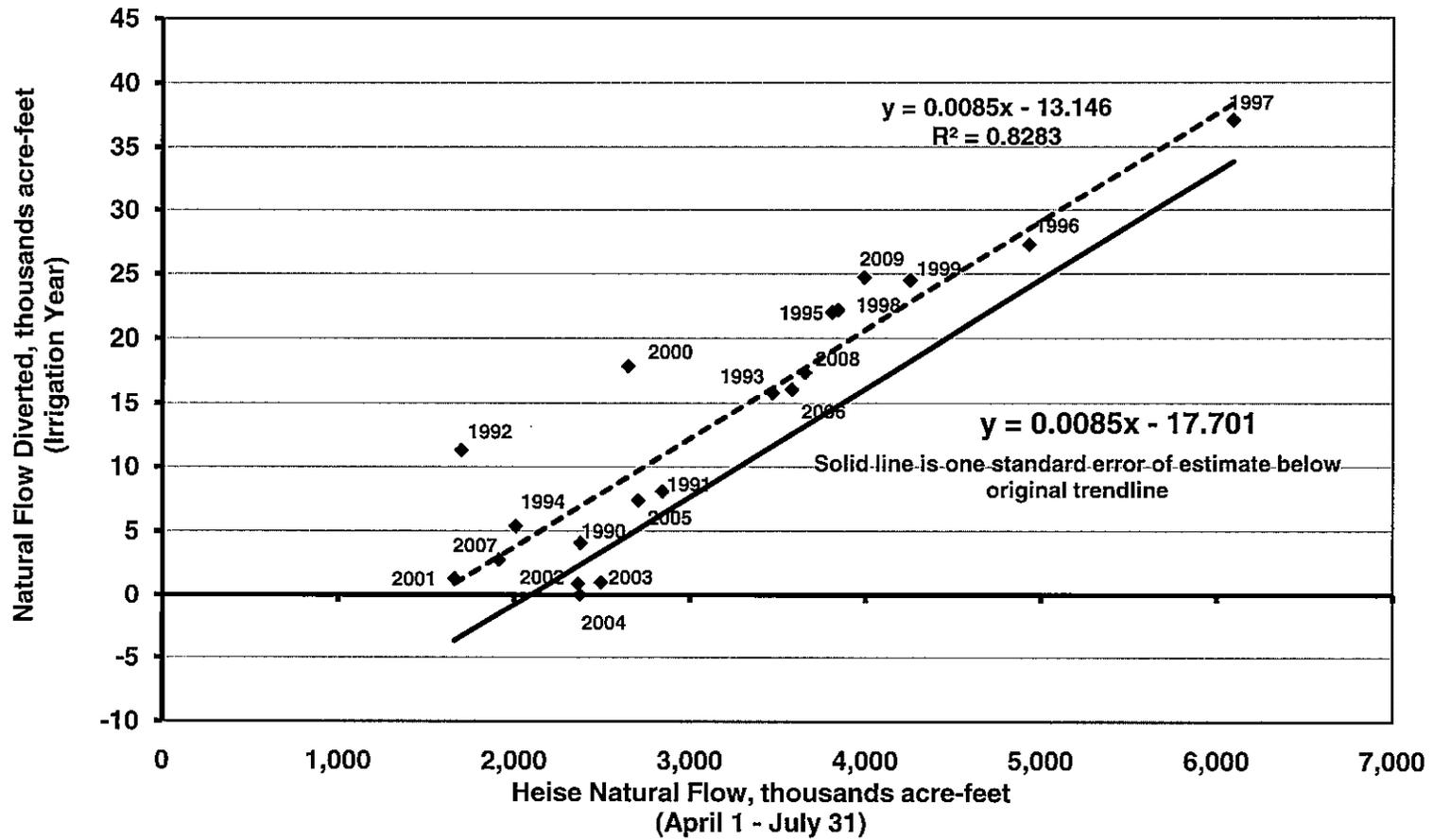
I HEREBY CERTIFY that on this 29th day of April, 2010, the above and foregoing, was served by the method indicated below, and addressed to the following:

<p>John K. Simpson BARKER ROSHOLT & SIMPSON, LLP P.O. Box 2139 Boise, ID 83701 jks@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>Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON, LLP P.O. Box 485 Twin Falls, ID 83303 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 CAPITOL LAW GROUP, PLLC P.O. Box 32 Gooding, ID 83339 tarkoosh@capitollawgroup.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>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>Candice M. McHugh RACINE OLSON 101 Capitol Blvd., Ste. 208 Boise, ID 83702 cmm@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>Randall C. Budge Thomas J. Budge RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 rcb@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 type="checkbox"/> Email</p>

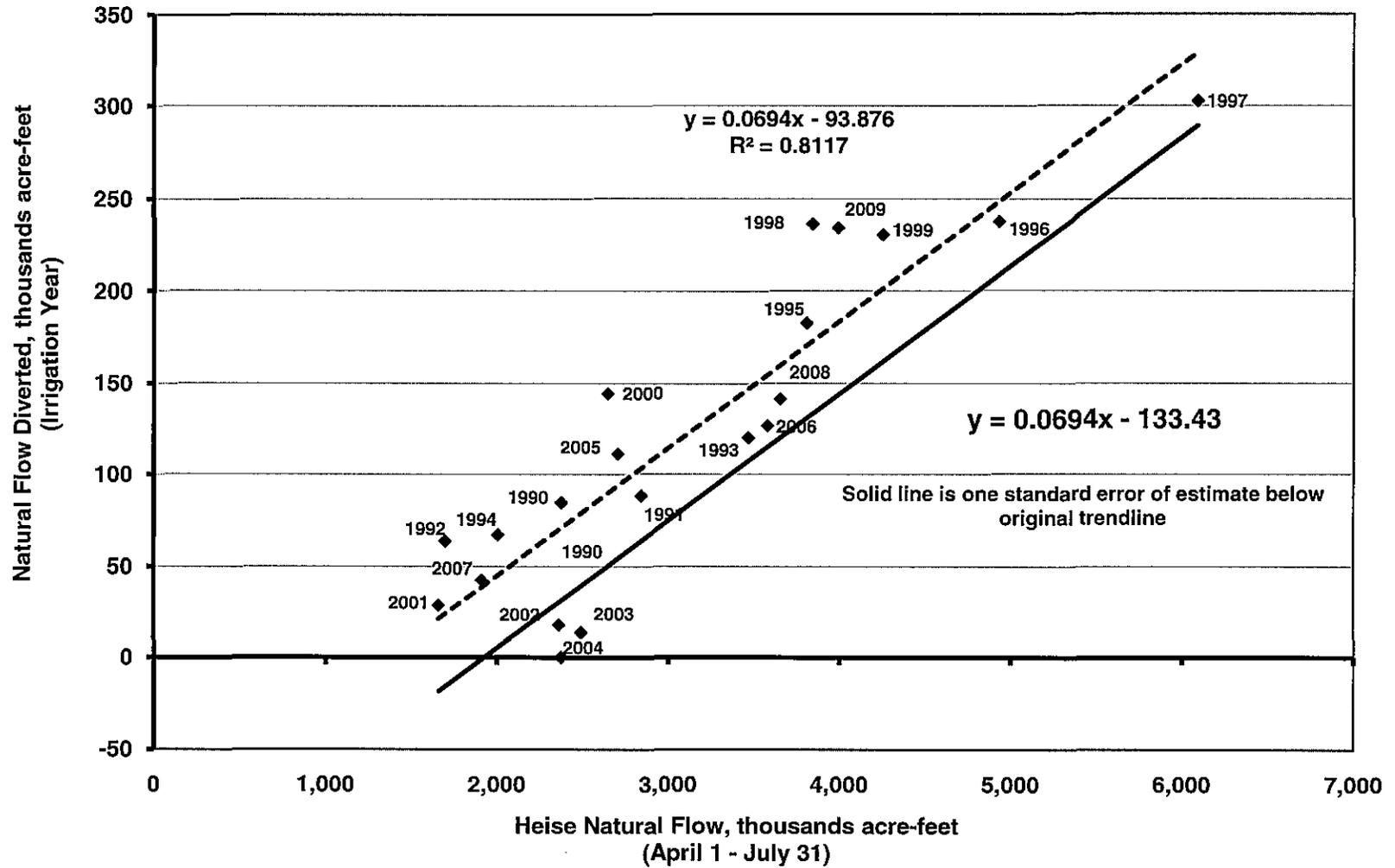
<p>David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 1961 Stout Street, 8th Floor Denver, CO 80294 david.gehlert@usdoj.gov</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@pn.usbr.gov</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>Sarah A. Klahn WHITE JANKOWSKI 511 16th St., Ste. 500 Denver, CO 80202 sarahk@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>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 Idaho Falls, ID 83402-6105 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


Victoria Wigle
Administrative Assistant to the Director

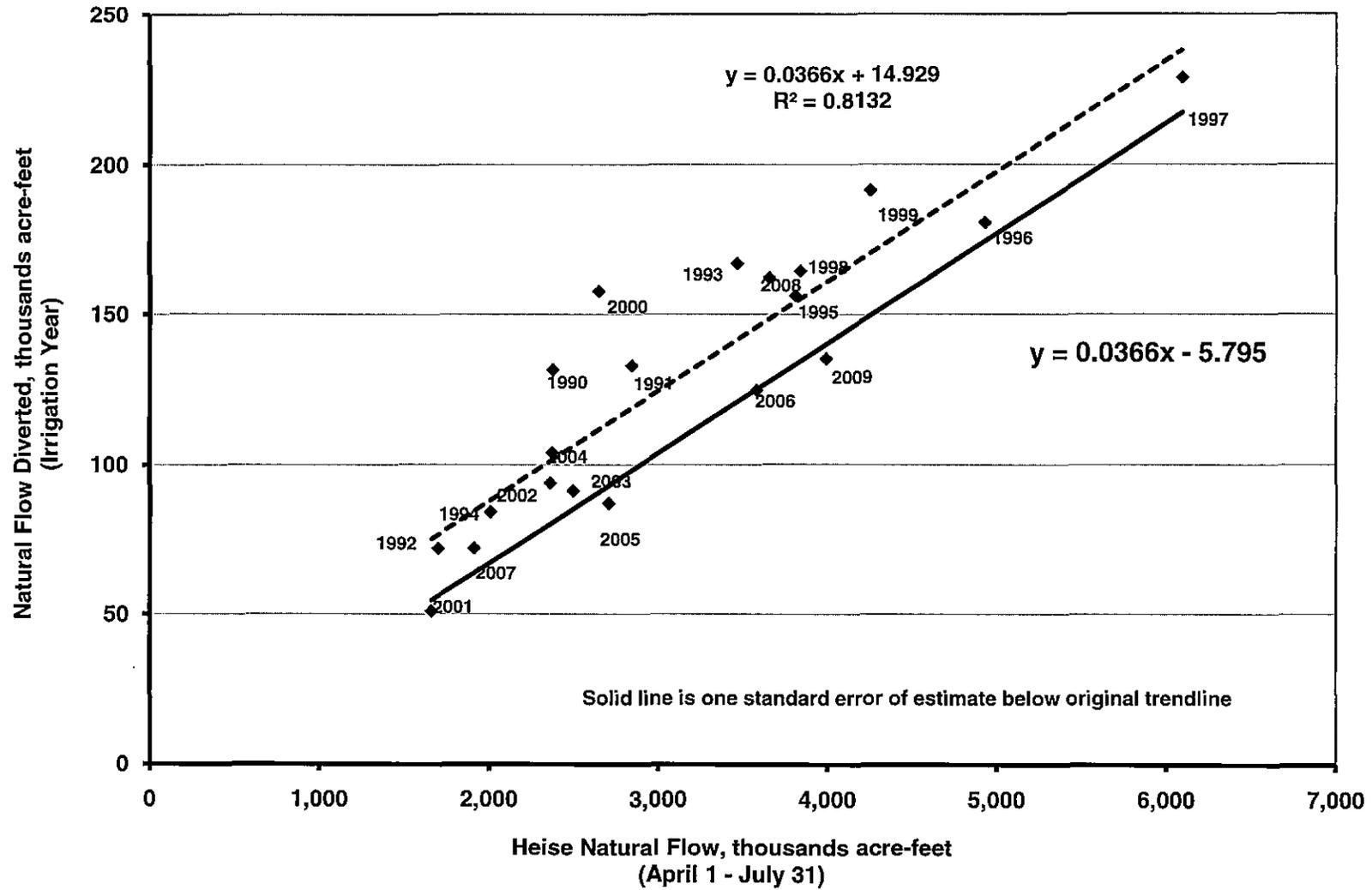
A & B IRRIGATION DISTRICT Natural Flow Diversions with Heise Inflow



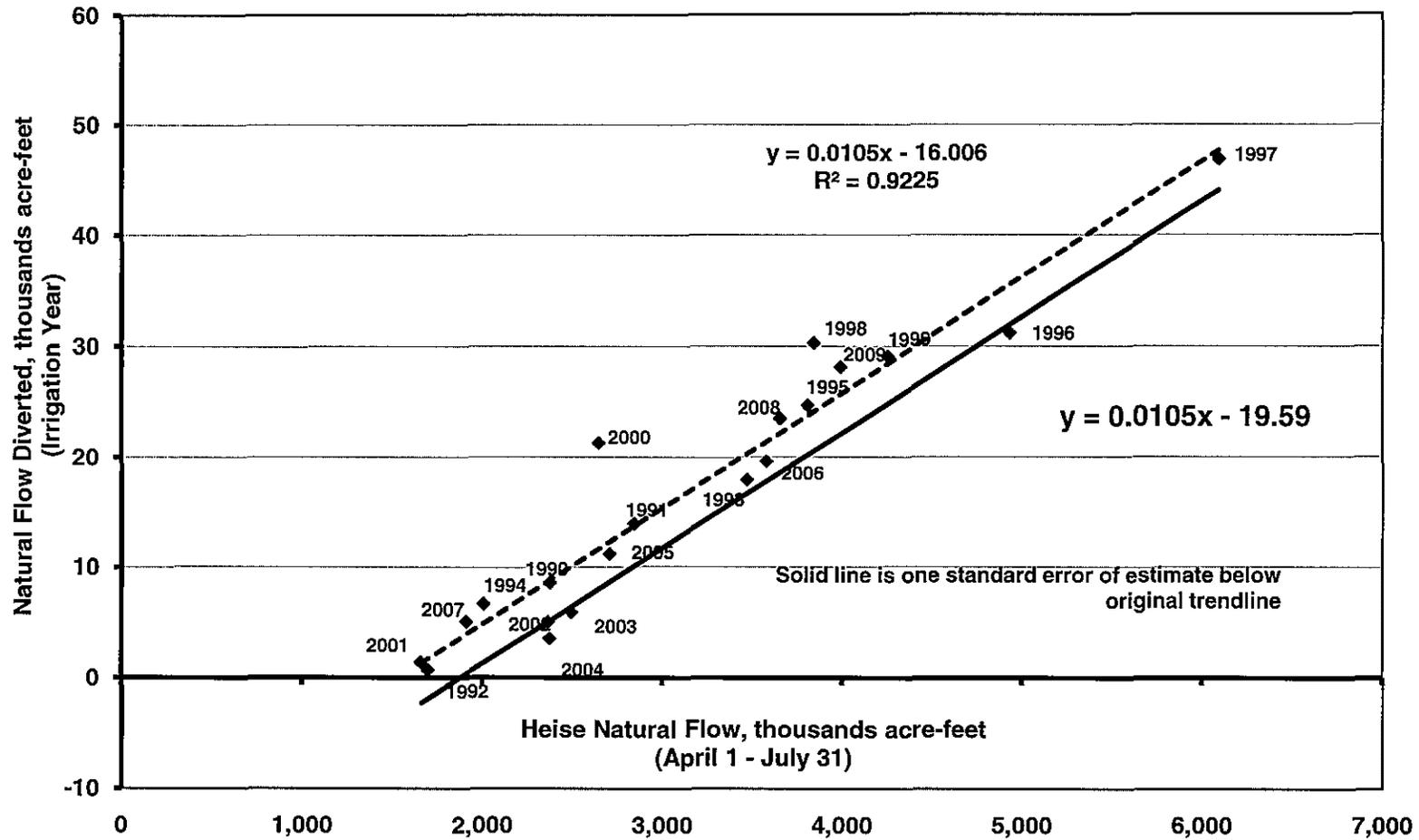
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Natural Flow Diversions with Heise Inflow**



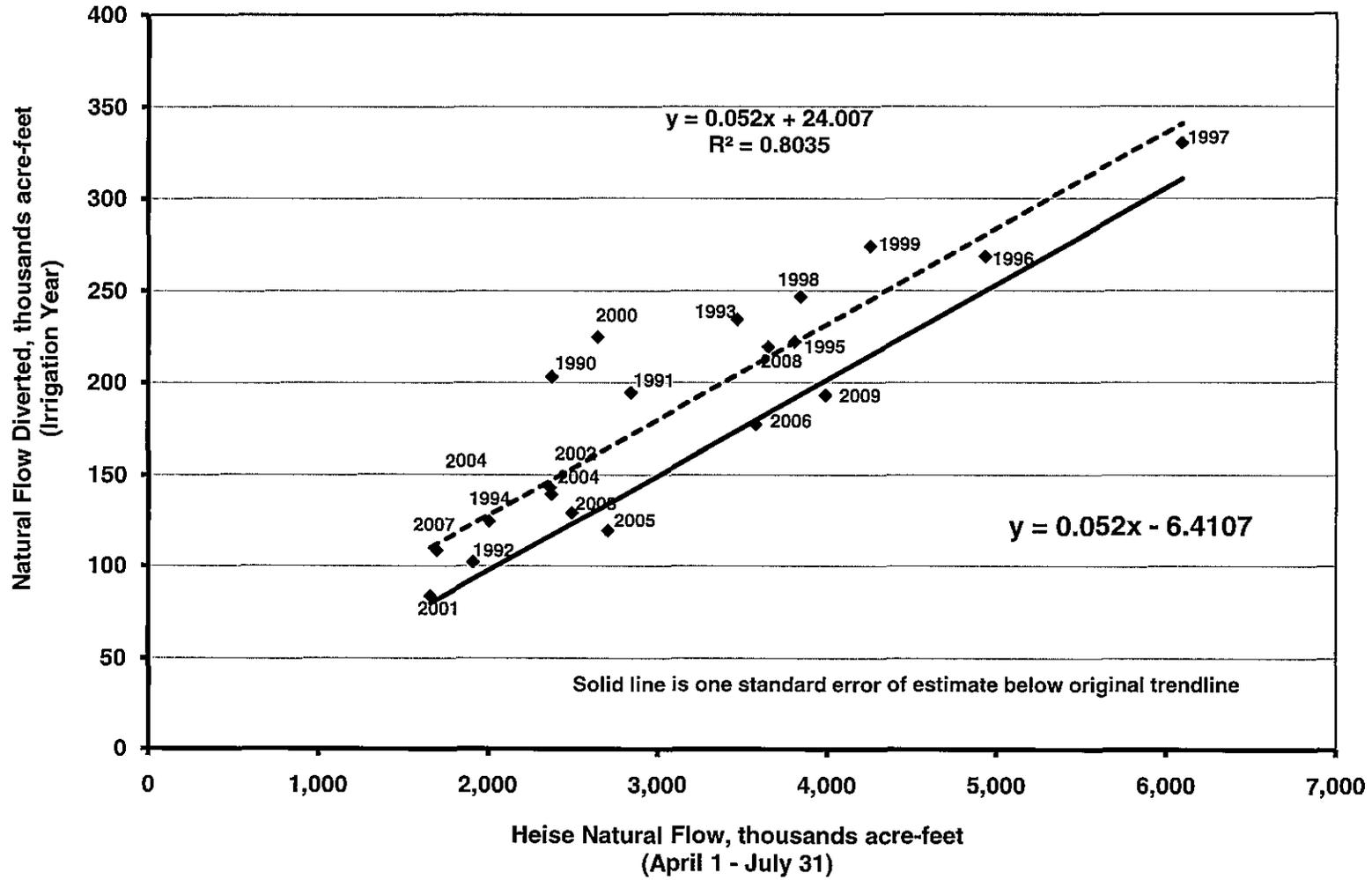
**BURLEY IRRIGATION DISTRICT
Natural Flow Diversions with Heise Inflow**



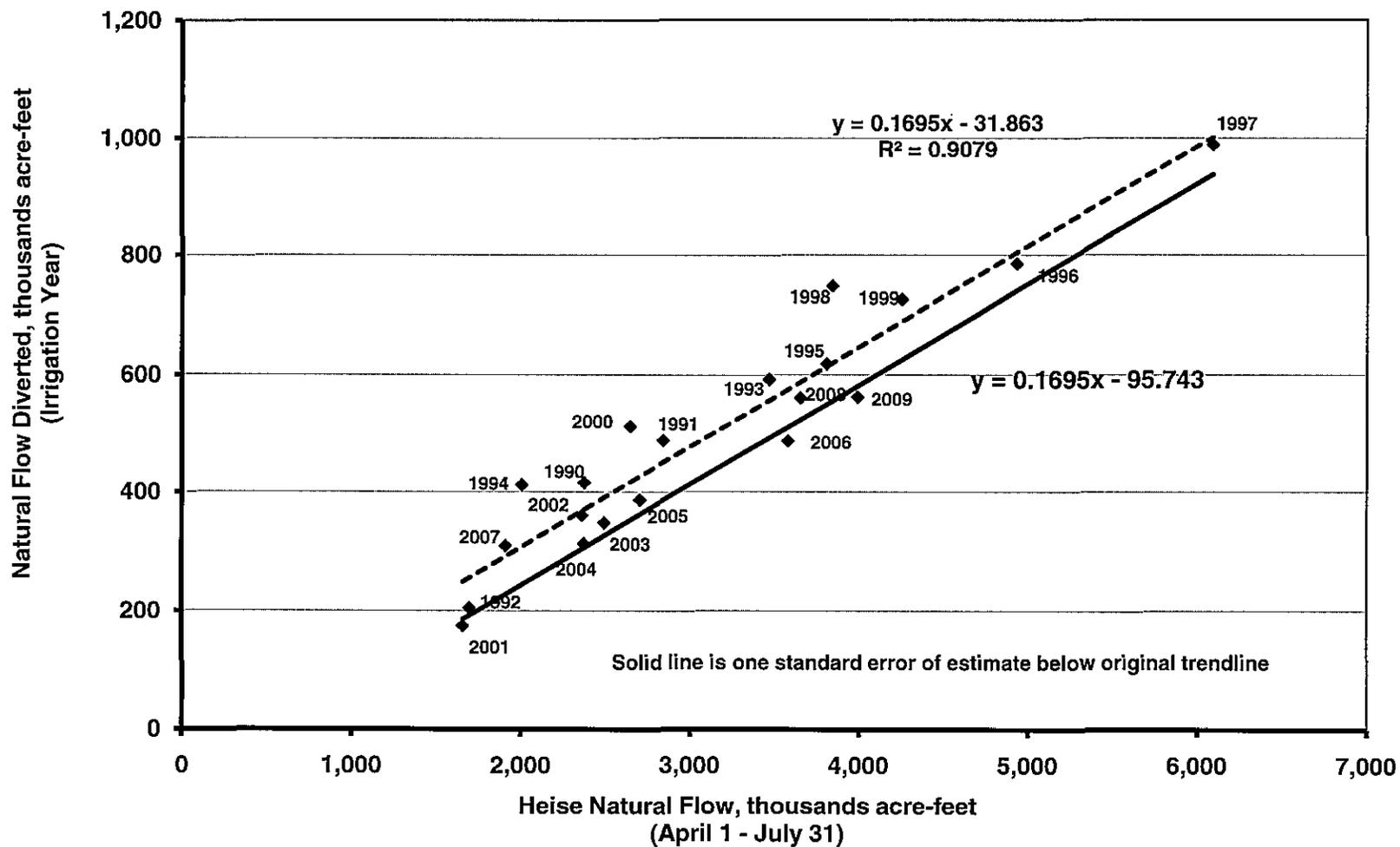
MILNER IRRIGATION DISTRICT
Natural Flow Diversions with Heise Inflow



**MINIDOKA IRRIGATION DISTRICT
Natural Flow Diversions with Heise Inflow**



NORTH SIDE CANAL COMPANY
Natural Flow Diversions with Heise Inflow



TWIN FALLS CANAL COMPANY
Natural Flow Diversions with Heise Inflow

