

**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 CONFIRMING IGWA’S**
IRRIGATION DISTRICT, MINIDOKA IRRIGATION) **NOTICE OF SECURED WATER**
DISTRICT, NORTH SIDE CANAL COMPANY,)
AND TWIN FALLS CANAL COMPANY)
_____)

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 ten 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. On April 17, 2013, the Director issued a *Final Order Regarding April 2013 Forecast Supply (Methodology Steps 1-4)* (“2013 Forecast Supply Order”). The 2013 Forecast Supply Order predicted a 14,200 acre-feet in-season shortfall to the SWC.

7. According to the Methodology Order, junior ground water users had fourteen (14) days from the issuance of the 2013 Forecast Supply Order to establish, to the satisfaction of the Director, their ability to secure and provide a volume of storage water or to conduct other approved mitigation activities that will provide water to the SWC. The 2013 Forecast Supply Order informed IGWA that the storage water it secures for the predicted, in-season shortfall must be different from the storage water it secured to meet its reasonable carryover shortfall.

8. On April 22, 2013, IGWA provided documentation to the Director that it had secured water to mitigate for the 14,200 acre-feet in-season shortfall. *IGWA’s 2013 Notice of Secured Water; Affidavit of Timothy Deeg in Support of 2013 Notice of Secured Water.*

9. According to the *Affidavit of Timothy Deeg*, IGWA has secured the following volumes of water, which are summarized as follows in acre-feet:

Lessor	Minimum Volume
Aberdeen Springfield Canal Co.	10,000
Enterprise Canal Co.	3,000
Idaho Irrigation Dist.	3,000
Snake River Valley Irrigation Dist.	5,000
New Sweden	3,000
Peoples Canal	3,000
Palisades Water Users	500
State of Wyoming	5,000
TOTAL	32,500

10. Counsel for IGWA provided the Watermaster for Water District 01 and the Director with copies of the leases referred to in the *Affidavit of Timothy Deeg*.

11. In the 2013 Forecast Supply Order, it was stated that Jackson, American Falls, Palisades winter water savings (“WWS”), and Lake Walcott will have 100% storage allocations. *2013 Forecast Supply Order* at 3. The 1939 Palisades Reservoir right is not expected to fill. *Id.* Many of the entities that IGWA has entered into lease agreements with are spaceholders in Palisades Reservoir. As of April 26, 2013, Water District 01 records show that the lessors have the following volumes of storage water, which are summarized as follows in acre-feet:

Lessor	Jackson	Palisades WWS	Palisades 1939	Am. Falls
Aberdeen Springfield Canal Co.	70,703	22,860	8,448	52,263
Enterprise Canal Co.	11,252	1,820	2,153	8,779
Idaho Irrigation Dist.	13,230	13,040	36,753	18,792
Snake River Valley Irrigation Dist.	30,225	7,700	4,023	25,942
New Sweden	22,516	7,170	22,834	27,290
Peoples Canal	20,365	6,540	17,547	21,070
Palisades Water Users		560	23,594	
State of Wyoming			26,504	

12. The above reservoir volumes do not account for evaporation. *2013 Forecast Supply Order* at 3. While American Falls and Jackson Lake reservoirs are not filled as of the issuance of this order, they are predicted to fill. *Id.* Therefore, the table above shows full storage allocations for lessors with space in American Falls and Jackson Lake reservoirs.

13. The volumes of storage water described in the IGWA leases for reasonable carryover and in-season shortfalls are different. The volumes of storage water held by the lessors exceed the volumes specified in the leases and the predicted 14,605 acre-feet reasonable carryover shortfall and the 14,200 acre-feet in-season shortfall.

14. On May 1, 2013, the SWC filed a *Petition for Reconsideration and Request for Hearing on Final Order Regarding April 2013 Forecast Supply, and Motion to Authorize Discovery* (“Petition for Reconsideration”). This order will not address the Petition for Reconsideration. The Petition for Reconsideration will be addressed in a subsequent order.

CONCLUSIONS OF LAW

1. In the 2013 Forecast Supply Order, the Director predicted the SWC would suffer an in-season demand shortfall of 14,200 acre-feet.
2. CM Rule 40 states that, if material injury is found, the Director shall regulate junior-priority ground water rights, unless a mitigation plan has been approved by the Director. IDAPA 37.03.11.040.
3. Here, 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. Consistent with the Methodology Order, IGWA provided evidence, within fourteen days of the issuance of the 2013 Forecast Supply Order, that it secured a volume of storage water to mitigate for predicted injury.
5. The 2013 Forecast Supply Order instructed IGWA that the volume of storage water necessary to mitigate for predicted in-season injury must be different than the volume of storage water already pledged to mitigate for the predicted 14,605 acre-feet reasonable carryover shortfall to AFRD2.
6. The Director concludes that the volume of water secured by IGWA for the predicted in-season shortfall is different than the volume of water previously secured for the predicted reasonable carryover shortfall. The Director concludes that the volume of water secured by IGWA exceeds the predicted in-season shortfall. The Director concludes that the volume of water currently held by the lessors exceeds the predicted in-season shortfall. Based on the foregoing, the Director concludes that IGWA has satisfied its obligation under the 2013 Forecast Supply Order. Because IGWA has met its obligation, IGWA's members will not be subject to curtailment.
7. As established in Step 8 of the Methodology Order, the predicted in-season demand shortfall shall not be owed until the Time of Need. *Methodology Order* at 37. At the Time of Need, the volume of water necessary to mitigate for in-season material injury to the SWC may be less, but not greater than 14,200 acre-feet. *Methodology Order* at 35.

ORDER

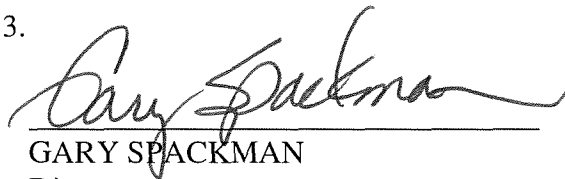
Based upon and consistent with the foregoing, IT IS HEREBY ORDERED as follows:

IGWA has established, to the satisfaction of the Director, that it secured 14,200 acre-feet to mitigate for predicted in-season injury to the SWC. The volume of storage water secured by IGWA for in-season purposes is different than the volume of storage water previously secured for the predicted reasonable carryover shortfall. IGWA is not required to provide the in-season volume of storage 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 shall not exceed 14,200 acre-feet.

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 22nd day of May, 2013.



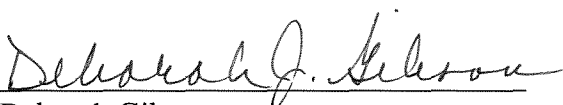
GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of May, 2013, the above and foregoing, was served by the method indicated below, and addressed to the following:

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