

**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 GRANTING REQUEST**
BURLEY IRRIGATION DISTRICT, MILNER) **FOR HEARING**
IRRIGATION DISTRICT, MINIDOKA IRRIGATION)
DISTRICT, NORTH SIDE CANAL COMPANY,)
AND TWIN FALLS CANAL COMPANY) **(METHODOLOGY STEP 10)**
_____)

BACKGROUND

On June 23, 2010, the Director (“Director”) of the Idaho Department of Water Resources (“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”).

The SWC and other parties filed petitions for judicial review of the Methodology Order in the Fifth Judicial District. By agreement of the parties, including the SWC, the appeals of the Methodology Order were consolidated and stayed pending a decision from the Idaho Supreme Court in Case No. 38193-2010. *Order Granting Motion for Stay*, CV-2010-382 (Fifth Jud. Dist., Dec. 13, 2010). It was agreed to by the parties that during the stay, administration “shall continue as set forth in the Methodology Order.” *Motion for Stay* at 3, filed in CV-2010-382. A decision was issued by the Idaho Supreme Court in Case No. 38193-2010 on December 17, 2013.

Consistent with the stipulation, the Director applied the Methodology Order in 2013. On November 27, 2013, the Director issued his *Final Order Establishing 2013 Reasonable Carryover (Methodology Step 9)* (“2013 Step 9 Order”) in which the Director determined the reasonable carryover shortfall obligation for junior ground water users for 2013. The Director concluded that American Falls Reservoir District No. 2 (“AFRD2”) and Twin Falls Canal Company (“TFCC”) are the only SWC entities with a reasonable carryover shortfall for 2013, and that their final 2013 adjusted carryover shortfall values are 40,819 acre-feet and 5,176 acre-feet respectively, a combined obligation of 45,995 acre-feet. *2013 Step 9 Order* at 5. Consistent with the Methodology Order, the 2013 Step 9 Order required that junior ground water users establish their ability to provide

40,819 acre-feet to AFRD2 and 5,176 to TFCC or alternatively, notify the Department of their intention to implement Step 10. *Id.* at 5.

The Director made an adjustment to the carryover shortfall as a result of a recently approved interim CM Rule 43 mitigation plan for Southwest Irrigation District (“SWID”) and Goose Creek Irrigation District (“GCID”). *2013 Step 9 Order* at 4. With the acceptance of the SWID and GCID interim mitigation plan, material injury to the SWC in association with ground water pumping by SWID and GCID is being mitigated for this year. This necessitated that the carryover shortfall obligation be proportionately reduced¹ in recognition of the SWID and GCID mitigation plan.

On November 27, 2013, the Idaho Ground Water Appropriators Inc. (“IGWA”), on behalf of junior ground water users, requested that the Department implement Step 10 of the Methodology Order and model the transient impacts of the proposed curtailment based on the Department’s water rights database and the Eastern Snake Plain Aquifer ESPA Model. Email from Randy Budge, Atty. for IGWA, to Gary Spackman, Dir. of IDWR, *SWC Delivery Call, Docket No. CM-DC-2010-001 – Reasonable Carryover* (Nov. 27, 2013).

On December 11, 2013, prior to the Director responding to IGWA’s request to implement Step 10, the Director received *Surface Water Coalition’s Petition for Reconsideration and Request for Hearing on Final Order Establishing 2013 Reasonable Carryover (Step 9) / Motion to Authorize Discovery* (“Step 9 Petition”). One issue raised in the Step 9 Petition related to the adjustment to the carryover shortfall as a result of the SWID and GCID interim mitigation plan. The SWC questions adjustment’s accuracy. *Petition* at 2.

On December 16, 2013, the Director issued his *Final Order Establishing 2013 Reasonable Carryover (Methodology Step 10)* (“2013 Step 10 Order”), which responded to IGWA’s request to implement Step 10. The 2013 Step 10 Order concluded that IGWA’s obligation pursuant to Step 10 for 2013 is 11,924 acre-feet and that the appropriate proportional distribution is 10,583 acre-feet to AFRD2 and 1,341 acre-feet to TFCC. The 2013 Step 10 Order also included an adjustment based on the SWC’s interim mitigation plan with SWID and GCID.

On December 30, 2013, the Director received the *Surface Water Coalition’s Petition for Reconsideration and Request for Hearing on Final Order Establishing Reasonable Carryover (Step 10) / Motion to Authorize Discovery* (“Step 10 Petition”).² The SWC again raises concerns regarding the adjustment to the ground water users’ carryover obligation as a result of the SWID and GCID interim mitigation plan. *Step 10 Petition* at 2.

¹ The proportionate reduction is based on the ratio of the impact from ground water irrigated lands within the SWID and GCID service areas to the total impact from ground water irrigated lands for which IGWA was obligated to mitigate prior to the acceptance of the SWID and GCID mitigation plan. The Department concluded the appropriate ratio is 10% or 0.10.

² On December 30, 2013, the Director also received *IGWA’s Request for Reconsideration of Final Order Establishing 2013 Reasonable Carryover (Methodology Step 10)*. As the matter is being set for hearing, the Director will not address the issues raised by IGWA at this point.

On January 2, 2014, the Director issued an *Order Granting Request for Hearing (Methodology Step 9)*. The Director granted the SWC's request for hearing on the narrow issue of how a mitigation plan like the SWID/GCID mitigation plan should be accounted for in the 2013 Step 9 Order.

On January 14, 2014, the Director issue a *Notice of Pre-Hearing Conference (Methodology Step 9)*, setting a pre-hearing conference for January 29, 2014.

CONCLUSIONS

The Director has already granted the SWC's request for hearing on the issue of how a mitigation plan like the SWID/GCID mitigation plan should be accounted for in the 2013 Step 9 Order. Because the SWC raises the same concern as to the 2013 Step 10 Order, the Director should grant the SWC's request for hearing made in its Step 10 Petition and consolidate the two matters for hearing.

ORDER

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

The Director GRANTS the SWC's request for a hearing on the issue of the Department's adjustment to the carryover obligation as a result of the SWID and GCID interim mitigation plan as used in the 2013 Step 10 Order.

The Director CONSOLIDATES the hearing on this issue with the hearing set to address the SWC's request for hearing on the 2013 Step 9 Order. A prehearing conference will be noticed in a subsequent order. Issues of discovery will be addressed at the prehearing conference.

Dated this 21st day of January, 2014.



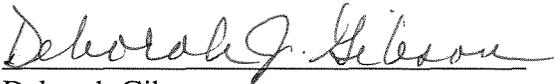
GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of January, 2014, 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 lt@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>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 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 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>	<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>

<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>	<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>A. Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83205 dtranmer@pocatello.us</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>William A. Parsons Parsons, Smith & Stone, LLP P.O. Box 910 Burley, ID 83318 wparsons@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>Michael C. Creamer Jeffrey C. Fereday GIVENS PURSLEY LLP P.O. Box 2720 Boise, ID 83701-2720 mcc@givenspursley.com jcf@givenspursley.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>Lyle Swank IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 lyle.swank@idwr.idaho.gov</p>	<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>
<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>	<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>



Deborah Gibson
Administrative Assistant, IDWR