

**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>FINAL ORDER REGARDING</b>
BURLEY IRRIGATION DISTRICT, MILNER )	<b>APRIL 2017 FORECAST</b>
IRRIGATION DISTRICT, MINIDOKA IRRIGATION )	<b>SUPPLY</b>
DISTRICT, NORTH SIDE CANAL COMPANY, )	
AND TWIN FALLS CANAL COMPANY )	<b>(METHODOLOGY STEPS 1 – 3)</b>
_____ )	

**FINDINGS OF FACT**

1. On April 19, 2016, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued his *Fourth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”). The Methodology Order established nine steps for determining material injury to members of the Surface Water Coalition (“SWC”). This order applies steps 1, 2, and 3 of the Methodology Order.

**A. Step 1**

2. By April 1 of each year, Step 1 requires members of the SWC to submit to the Department electronic shape files delineating the total anticipated irrigated acres for the upcoming year “or confirm in writing that the existing electronic shape file submitted by SWC has not varied by more than five percent.” *Methodology Order* at 35.

3. On February 7, 2017, Minidoka Irrigation District (“Minidoka”) submitted its electronic shape files delineating its total irrigated acres to the Department.

4. On February 7, 2017, the Department received a letter from American Falls Reservoir District #2 (“AFRD2”), stating that its total number of irrigated acres has not varied by more than five percent.

5. On February 9, 2017, the Department received a letter from A&B Irrigation District (“A&B”), Burley Irrigation District (“BID”), Milner Irrigation District (“Milner”), North Side Canal Company (“NSCC”) and Twin Falls Canal Company (“TFCC”), stating that their

total number of irrigated acres for 2017 will not vary by more than five percent from the electronic shape files submitted in prior years.

6. Based on the information submitted by the SWC, the Department will use the following total irrigated acres:

	Total Irrigated Acres	Data Source
A&B	15,924	SRBA Partial Decree
AFRD2	62,361	SRBA Partial Decree
BID	46,035	2013 shapefile submitted by BID, reduced by Department for overlapping acres and acres outside of service area.
Milner	13,335	SRBA Partial Decree
Minidoka	74,731	2017 shapefile submitted by Minidoka, reduced by Department for overlapping acres and acres outside of service area.
NSCC	154,067	SRBA Partial Decree
TFCC	194,732	2013 shapefile submitted by TFCC, reduced by Department for overlapping acres and acres outside of service area.

## **B. Step 2**

7. Step 2 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 Corp of Engineers, the Director “will issue a final order predicting the April [Forecast Supply] for the water year for each SWC entity. The Director will compare the April [Forecast Supply] for each SWC entity to the [Baseline Demand] for each SWC entity to determine if a demand shortfall (“DS”) is anticipated for the upcoming irrigation season.” *Methodology Order* at 36.

8. On April 3, 2017, the Joint Forecast was announced, predicting an unregulated inflow of 4,800,000 acre-feet at the Snake River near Heise gage for the period of April through July. The Joint Forecast “is generally as accurate a forecast as is possible using current data gathering and forecasting techniques.” *Methodology Order* at 17. The forecasted flow volume equates to 148% percent of average.<sup>1</sup>

9. The Heise natural flow data from years 1990 – 2016 were data inputs for development of regression equations for A&B and Milner to predict the natural flow supply.<sup>2</sup>

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<sup>1</sup> The average is based on years 1981-2010.

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

Data greater or less than two standard deviations from average were excluded from the regression development.

10. The April-July Heise natural flow data from the years 1990 – 2016 and Box Canyon November-March total discharge data for the period 1989 –2016, were data inputs for development of multiple linear regression equations to predict the natural flow supplies for AFRD2, BID, Minidoka, NSCC, and TFCC. *Methodology Order* at 17-18. The U.S. Geological Survey measures and monitors the flow at the Box Canyon stream flow measurement gage. The Box Canyon November-March total discharge used by the Director in the regression models for 2017 totaled 90,638 acre-feet.

11. The storage allocations were predicted for each SWC member. As of the March 29, 2017, preliminary water right accounting, the reservoir rights were 766,700 acre-feet from satisfaction. The water rights for Lake Walcott, Jackson 1906, Jackson 1910, Palisades Winter Water Savings, American Falls Winter Water Savings, and American Falls space are satisfied. Based on a comparison of the current Heise natural flow forecast to another analogous year (1996), the Director anticipates the remaining reservoir water rights will be satisfied and the SWC will receive a full allocation. The storage allocations are based on the anticipated full allocation minus evaporation charges.

12. Based on the above, the Director projects as follows:

	Predicted Natural Flow Supply	Predicted Storage Allocation	Minidoka Credit Adjustment	Total Supply	BLY 06/08/12	Shortfall
A&B	24,484	135,562		160,045	59,993	0
AFRD2	187,527	387,647	1,000	576,174	427,672	0
BID	136,864	223,090	5,130	365,084	251,531	0
Milner	29,804	88,109		117,914	47,135	0
Minidoka	191,669	361,056	8,370	561,094	369,492	0
NSCC	622,485	847,000	-7,750	1,461,734	978,888	0
TFCC	826,432	242,241	-6,750	1,061,923	1,060,011	0
Total Projected Demand Shortfall (AF)						0

### C. Step 3

13. Step 3 requires the following:

Step 3: By May 1, or within fourteen (14) days from issuance of the final order predicting the April FS, whichever is later in time, junior ground water users with approved mitigation plans for delivery of water must secure, to the satisfaction of the Director, a volume of water equal to their proportionate share of the April DS unless the April DS is revised as explained below in paragraph 6. If junior ground water users secured water for a reasonable carryover shortfall to an individual SWC member in the previous year, the current-year mitigation obligation to the individual SWC member will be reduced by the quantity of water secured for the reasonable carryover shortfall. The secured water will not be required to be delivered to the injured members of the SWC until the Time of Need.

*Methodology Order* at 36.

14. There is no projected DS for the SWC members for 2017.

### CONCLUSIONS OF LAW

1. The Fifth Judicial District Court, in and for the County of Minidoka, held that the evidentiary standard of proof to apply in conjunctive administration of hydraulically connected water rights is clear and convincing. *Memorandum Decision and Order on Petitions for Judicial Review*, CV-2009-000647 (Fifth Jud. Dist., May 4, 2010); *Memorandum Decision and Order on Petitions for Rehearing*, CV-2009-000647 (Fifth Jud. Dist., Nov. 2, 2010).

2. “Clear and convincing evidence refers to a degree of proof greater than a mere preponderance.” *Idaho State Bar v. Topp*, 129 Idaho 414, 416, 925 P.2d 1113, 1115 (1996) (internal quotations removed). “Clear and convincing evidence is generally understood to be ‘[e]vidence indicating that the thing to be proved is highly probable or reasonably certain.’” *State v. Kimball*, 145 Idaho 542, 546, 181 P.3d 468, 472 (2008) citing *In re Adoption of Doe*, 143 Idaho 188, 191, 141 P.3d 1057, 1060 (2006); see also *Idaho Dept. of Health & Welfare v. Doe*, 150 Idaho 36, 41, 244 P.3d 180, 185 (2010).

3. In 2017, the Director has sufficient information to quantify irrigated areas for each of the SWC members as required by Step 1.

4. The Joint Forecast predicts an unregulated inflow of 4,800,000 acre feet at the Snake River near Heise gage for the period of April through July. The forecasted flow volume equates to 148% of average.

5. The April projected demand shortfall is zero acre-feet.



## ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED there is no projected demand shortfall for the SWC members for 2017.

Dated this 13<sup>th</sup> day of April 2017.

  
GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

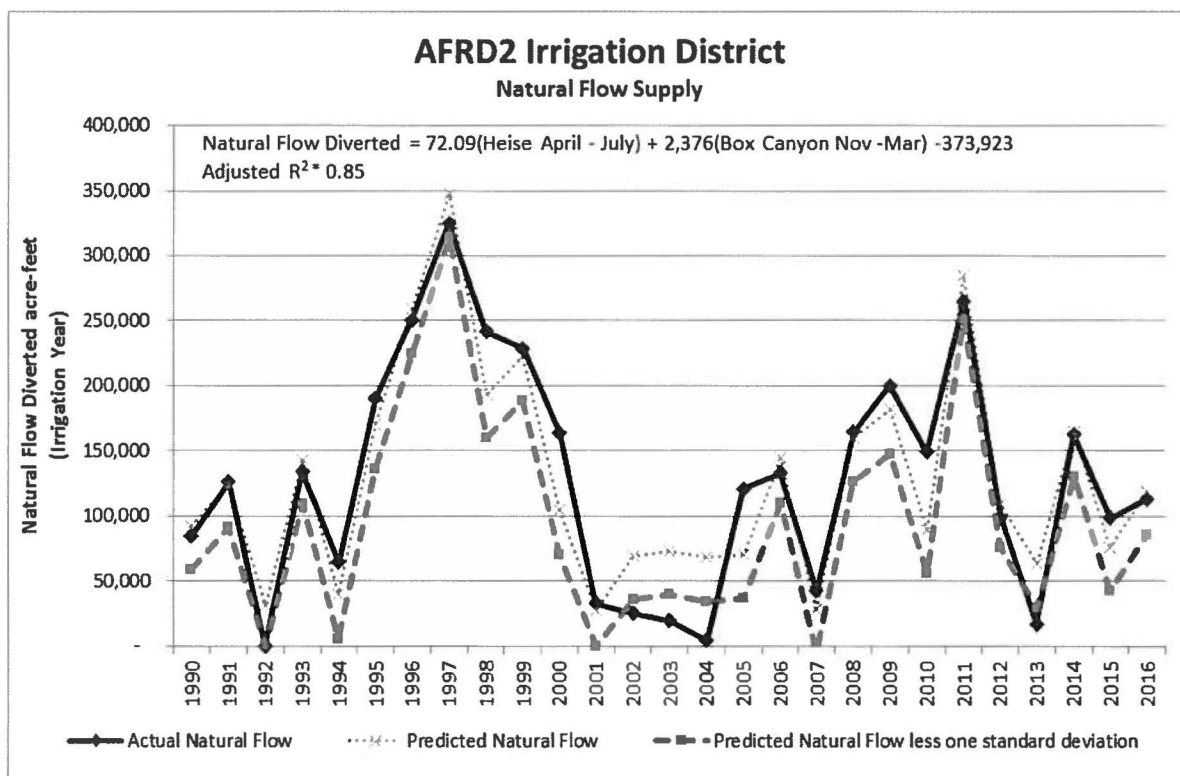
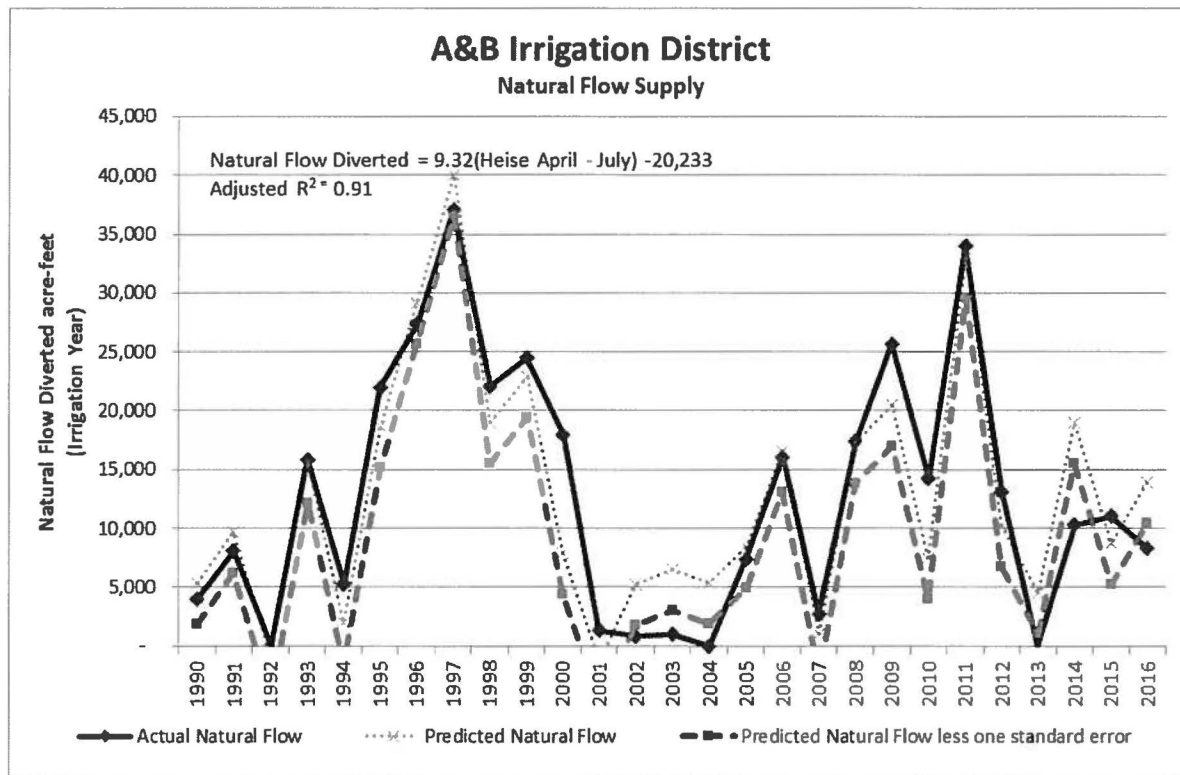
I HEREBY CERTIFY that on this 13<sup>th</sup> day of April 2017, the above and foregoing, was served by the method indicated below, and addressed to the following:

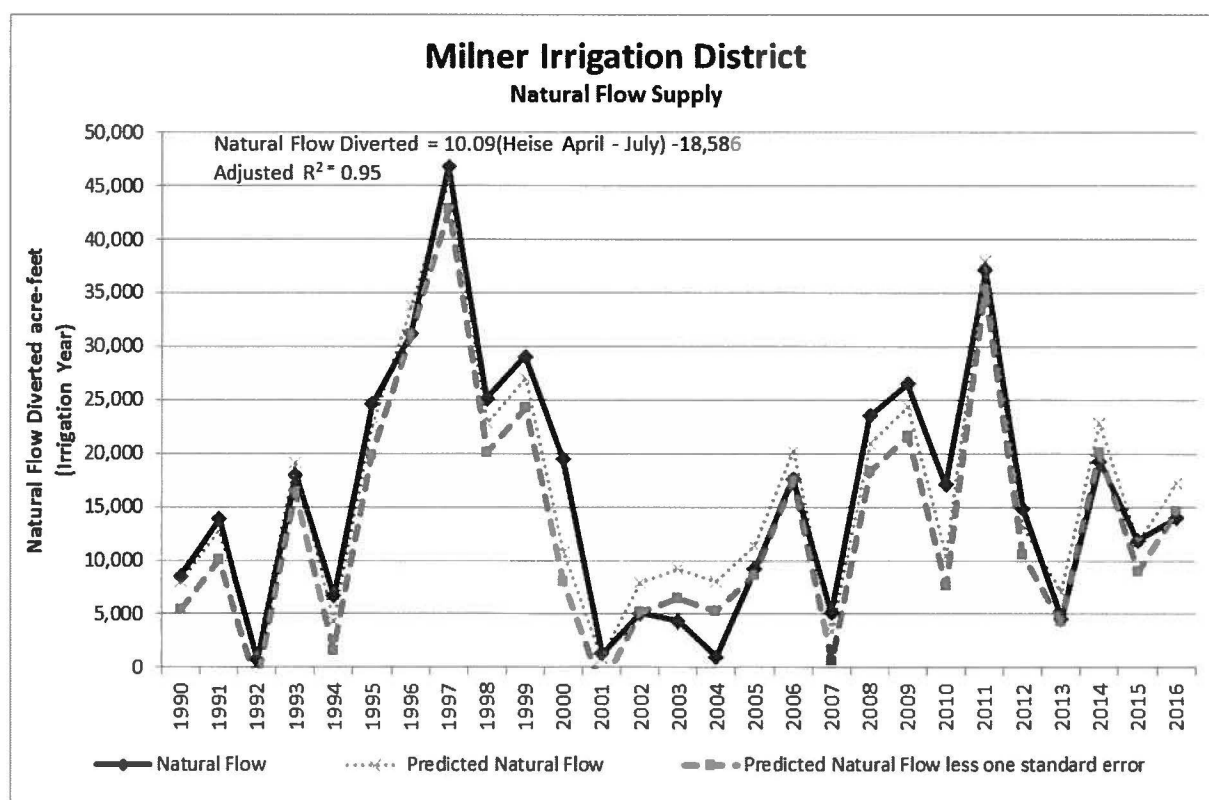
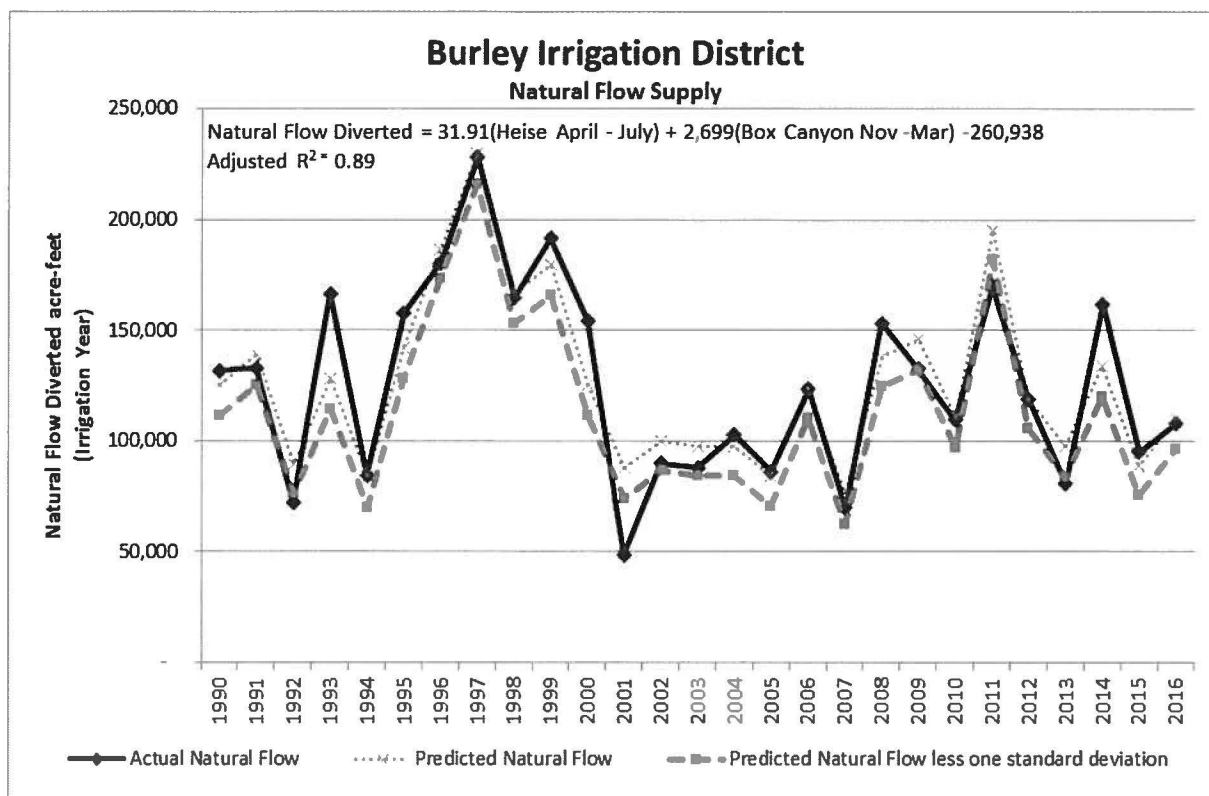
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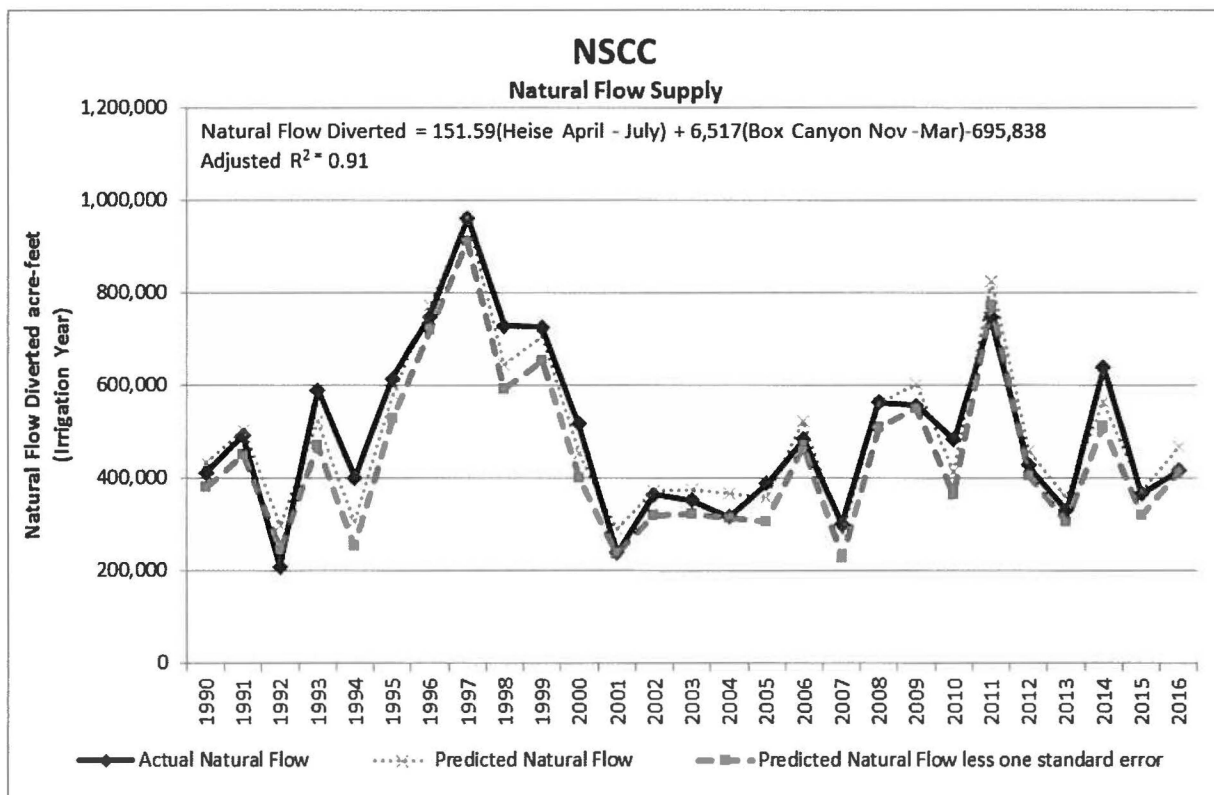
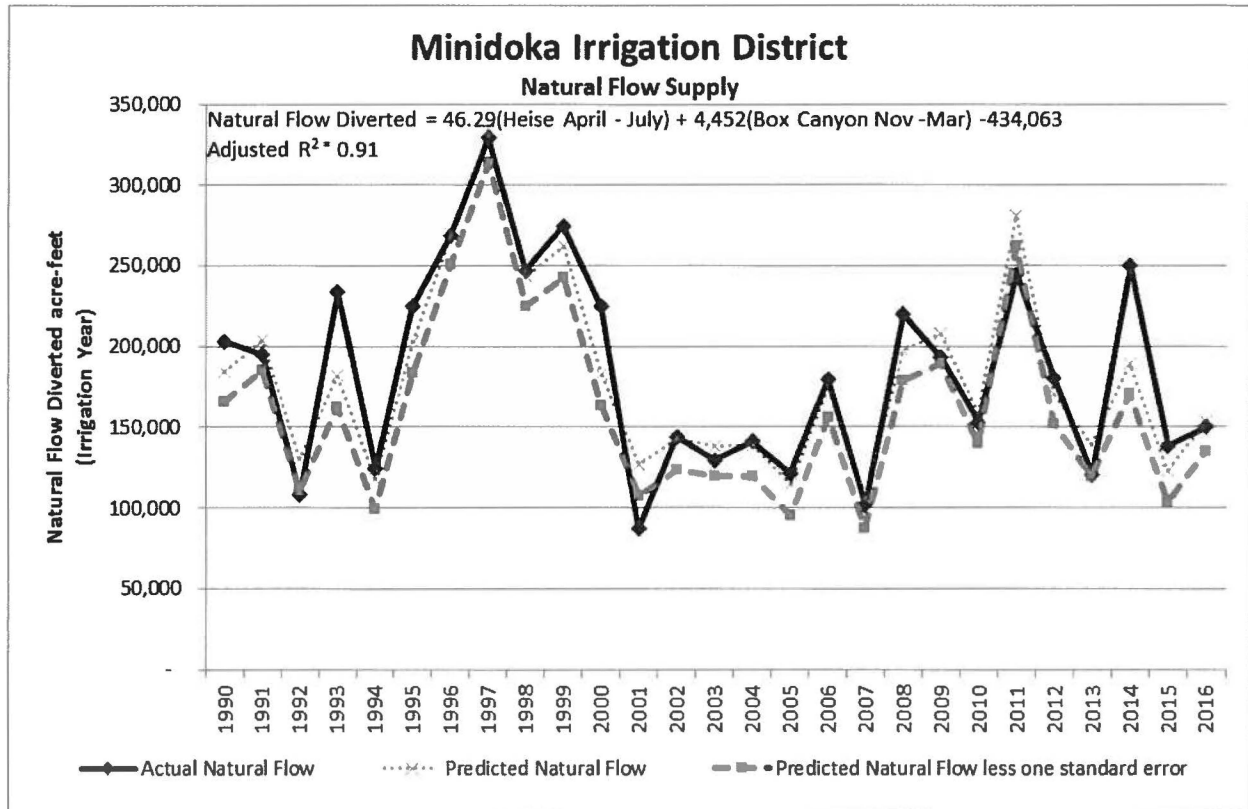
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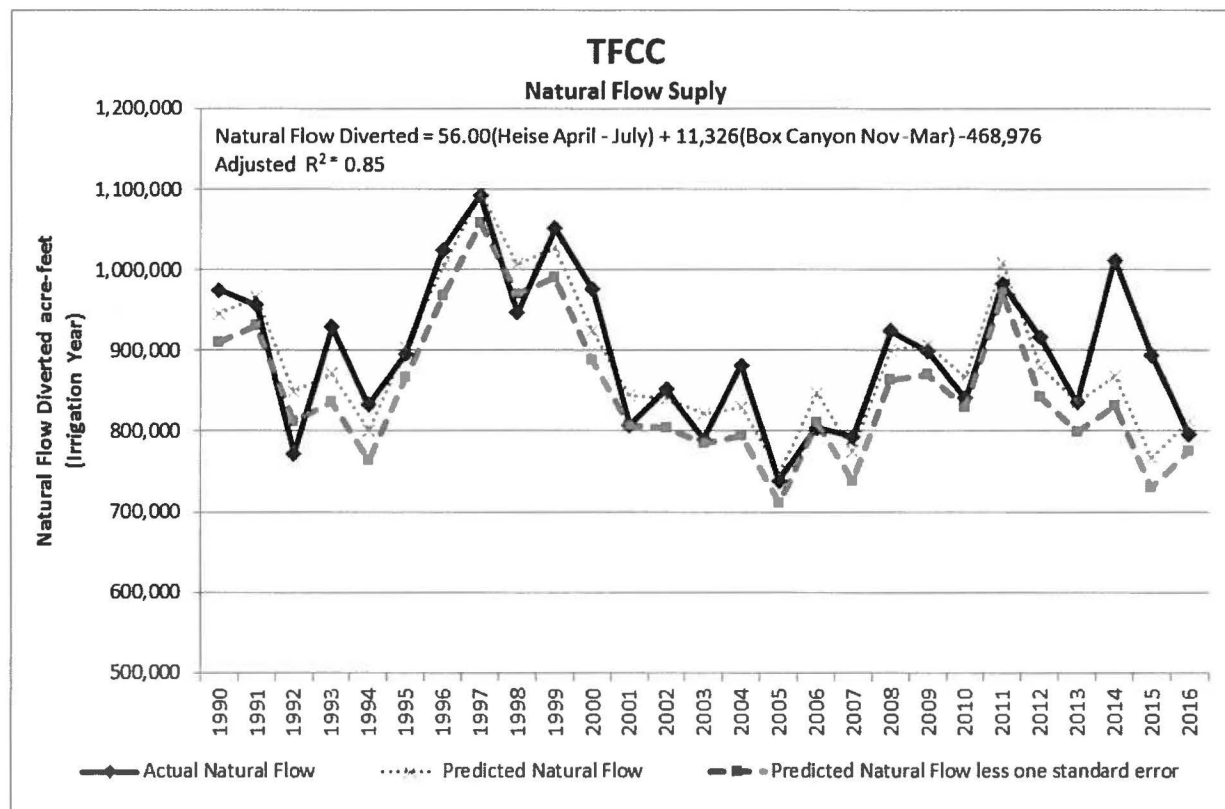
  
Kimi White











## **EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER**

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code.

### **REQUEST FOR HEARING**

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

### **APPEAL OF FINAL ORDER TO DISTRICT COURT**

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. 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 of: a) the service date of the final order, b) the service date 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 section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.