

**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</b>
BURLEY IRRIGATION DISTRICT, MILNER )	<b>ESTABLISHING 2017</b>
IRRIGATION DISTRICT, MINIDOKA IRRIGATION )	<b>REASONABLE CARRYOVER</b>
DISTRICT, NORTH SIDE CANAL COMPANY, )	
AND TWIN FALLS CANAL COMPANY )	<b>(METHODOLOGY STEP 9)</b>
_____ )	

**FINDINGS OF FACT**

1. On April 19, 2016, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued the *Fourth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”). The Methodology Order establishes nine steps for determining material injury to members of the Surface Water Coalition (“SWC”). This order applies step nine, the final step of the Methodology Order, for the 2017 water year.

2. The Methodology Order describes step 9 as follows:

Step 9: Following the end of the irrigation season (on or before November 30), the Department will determine the total actual volumetric demand and total actual [crop water need] for the entire irrigation season. This information will be used for the analysis of reasonable carryover shortfall, selection of future BLY, and for the refinement and continuing improvement of the method for future use.

On or before November 30, the Department will issue estimates of actual carryover and reasonable carryover shortfall volumes for all members of SWC. These estimates will be based on, but not limited to, the consideration of the best available water diversion and storage data from Water District 01, return flow monitoring, comparative years, and [reasonable in-season demand]. These estimates will establish the obligation of junior ground water users in providing water to the SWC for reasonable carryover shortfall. Fourteen (14) days following the issuance by the Department of reasonable carryover shortfall obligations, junior ground water users will be required to establish, to the satisfaction of the Director, their ability to supply a volume of storage water or to conduct other approved mitigation activities

that will provide water to the injured members of the SWC equal to the reasonable carryover shortfall for all injured members of the SWC. If junior ground water users cannot provide this information, the Director will issue an order curtailing junior ground water rights.

*Methodology Order* at 38-39.

3. Mitigation plans filed by the Idaho Ground Water Appropriators, Inc. (“IGWA”); A&B Irrigation District (“A&B”); Southwest Irrigation District and Goose Creek Irrigation District (collectively, “SWID”); and the City of Pocatello, City of Idaho Falls, and Coalition of Cities<sup>1</sup> (collectively, “Cities”) are approved for the SWC delivery call to mitigate for material injury to in-season demand and reasonable carryover. *Final Order Approving Mitigation Credits Regarding SWC Delivery Call*, CM-MP-2009-006 (July 19, 2010); *Order Approving Mitigation Plan*, CM-MP-2009-007 (June 3, 2010)<sup>2</sup>; *Final Order Approving Mitigation Plan*, CM-MP-2015-003 (Dec. 16, 2015); *Final Order Approving Mitigation Plan for 2016*, CM-MP-2010-001 (Mar. 29, 2016)<sup>3</sup>; *Final Order Approving Mitigation Plan for 2016*, CM-2016-002 (Apr. 27, 2016)<sup>4</sup>; *Final Order Approving Stipulated Mitigation Plan*, CM-MP-2016-001 (May 2, 2016).<sup>5</sup>

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<sup>1</sup> The cities participating as the Coalition of Cities in this mitigation plan are Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell. In addition to the Cities, the following cities are participating in the Cities’ mitigation plan at the approval of the Cities: Ammon, Blackfoot, Iona, and Rigby. See *Notice of 2017 Cities’ Participation*, CM-2016-002 (Sept. 15, 2017).

<sup>2</sup> These final orders were affirmed on judicial review. *Memorandum Decision and Order on Petition for Judicial Review*, Case No. CV 2010-3822 (Fifth Jud. Dist. April 22, 2011) (affirming the Director’s *Final Order Approving Mitigation Credits Regarding SWC Delivery Call*); *Memorandum Decision and Order on Petition for Judicial Review*, Case No. CV 2010-3075 (Fifth Jud. Dist. Jan. 25, 2011) (affirming the Director’s *Order Approving Mitigation Plan*).

<sup>3</sup> The *Final Order Approving Mitigation Plan for 2016* for SWID ordered the mitigation plan is only effective through December 31, 2016. The Director issued a *Final Order Approving SWID’s Interim Mitigation Plan for 2017* on February 8, 2017, ordering that the mitigation plan is effective until December 31, 2017.

<sup>4</sup> The *Final Order Approving Mitigation Plan for 2016* for the Cities ordered the mitigation plan is only effective through December 31, 2016. The Director issued a *Final Order Approving Cities’ Interim Mitigation Plan for 2017* on February 8, 2017, ordering that the mitigation plan is effective until December 31, 2017.

<sup>5</sup> On May 9, 2017, the Director issued a *Final Order Approving Amendment to Stipulated Mitigation Plan*.

4. The following table summarizes the 2017 irrigation season diversions, crop water need, and reasonable in-season demand (“RISD”) volumes for each SWC entity. RISD is calculated for each SWC entity using demand, crop water need, and project efficiency *Methodology Order* at 16. All values are reported in acre-feet (“AF”).

Entity	Demand <sup>6</sup>	Crop Water Need	RISD
A&B	60,491	37,740	63,461
AFRD2	398,896	147,288	428,307
BID	236,935	108,590	265,702
Milner	62,371	29,877	54,100
Minidoka	343,956	194,378	433,218
NSCC	991,957	347,966	976,965
TFCC	1,053,742	435,307	1,115,310

5. The following table summarizes the final calculated 2017 in-season demand shortfall values in AF, if any, for each member of the SWC. The values in this table are different from those in the *Final Order Regarding April 2017 Forecast Supply (Methodology Steps 1-3)* (Apr. 19, 2016) (“April Forecast Supply Order”) and *Order Revising April 2017 Forecast Supply and Rescinding Curtailment Order (Methodology Step 5 & 6)* (August 3, 2017) (“August Order”). The differences are due to changes in total supply and RISD that reflect diversion and ET data not available at the time the April Forecast Supply Order and August Order were issued. In the April Forecast Supply Order, the Director predicted no demand shortfall to members of the SWC. *April Forecast Supply Order* at 3. In the August Order, the Director continued to predict no demand shortfall. *August Order* at 8. The second column of the summary table contains the total natural flow diversions from April 1 to October 31 for each SWC member.<sup>7</sup> The third column summarizes the natural flow adjustments, which include natural flow delivered for recharge<sup>8</sup> and natural flow delivered to SWID.<sup>9</sup> The fourth column contains the preliminary storage allocations reported from the July 11, 2017, Water District 01 storage report.<sup>10</sup> The fifth column summarizes storage adjustments due to application of the Minidoka Credit.<sup>11</sup> The sixth

<sup>6</sup> The “Demand” for each SWC entity is equal to each entity’s 2017 April – October diversions.

<sup>7</sup> The natural flow diverted was calculated from the preliminary daily water right accounting records located here: <http://www.idwr.idaho.gov/water-data/water-rights-accounting/research.html>.

<sup>8</sup> Natural flow recharge values represent accomplished recharge through the Idaho Water Resource Board’s recharge water rights as of October 31, 2017.

<sup>9</sup> See column titled “Natural Flow Adjustment” in “Attachment A” for further information regarding these adjustments.

<sup>10</sup> The preliminary storage allocations can be found on Water District 01’s website located here: <http://www.waterdistrict1.com/WD01%20Storage%20Report.pdf>.

<sup>11</sup> See column titled “In-Season Storage Adjustment” in “Attachment A.” The Minidoka Credit is a long existing exchange of stored water among AFRD2, BID, MID, NSCC, and TFCC that has been incorporated into an agreement of those entities and accepted by the SRBA district court.

column contains the total supply available to each SWC member and is calculated by summing columns two through five. The seventh column contains the calculated RISD. The demand shortfall in the last column is calculated by subtracting the RISD from the total supply. The demand shortfall is zero when the total supply is greater than the RISD. No members of the SWC have a demand shortfall for 2017.

Entity	Natural Flow Diverted through 10/31	Natural Flow Adjustment	Preliminary Storage Allocation	In-Season Storage Adjustment	Total Supply	RISD	Demand Shortfall
A&B	34,702	-	135,638	-	170,340	63,461	0
AFRD2	270,831	(51,483)	387,866	1,000	608,214	428,307	0
BID	174,215	(3,714)	223,216	5,130	398,847	265,702	0
Milner	40,569	(3,011)	88,159	-	125,717	54,100	0
Minidoka	249,148	-	361,260	8,370	618,778	433,218	0
NSCC	669,838	(8,346)	847,478	(7,750)	1,501,220	976,965	0
TFCC	977,250	(159)	242,378	(6,750)	1,212,719	1,115,310	0

6. The following table summarizes the end of season reasonable carryover shortfall calculation for 2017. All values are reported in AF. The second column of the table contains the preliminary storage allocations reported from the July 11, 2017, Water District 01 storage report. The third column summarizes adjustments for storage water due to application of the Minidoka Credit. The fourth column summarizes adjustments for water delivered through the SWC member's canals for use by non-SWC members.<sup>12</sup> The fifth column contains the total storage water use reported from the October 31, 2017, Water District 01 water right accounting report.<sup>13</sup> The sixth column contains the actual carryover volumes as defined by the Methodology Order (*Methodology Order* at 38) and is calculated by subtracting the sum of columns four and five from the sum of columns two and three. The seventh column contains the reasonable carryover volumes established in the Methodology Order. *Methodology Order* at 28. The reasonable carryover shortfall in the last column is zero when the actual carryover is greater than the reasonable carryover, otherwise it is calculated as the difference between reasonable carryover and the actual carryover volume for each member of the SWC. No members of the SWC have a reasonable carryover shortfall for 2017.

<sup>12</sup> See column titled "Storage Use Adjustment" in "Attachment A" for further information regarding these adjustments.

<sup>13</sup> This water right accounting report was published to the Water District 01 webpage on November 1, 2017: <http://www.waterdistrict1.com/SNKWRA.htm>.

	Preliminary Storage Allocation	In- Season Storage Allocation Adjustment	Storage Use Adjustment	Storage Use	Actual Carryover	Reasonable Carryover	Reasonable Carryover Shortfall
A&B	135,638	0	0	25,789	109,849	18,500	0
AFRD2	387,866	1,000	(10,000)	189,549	209,317	11,500	0
BID	223,216	5,130	0	66,434	161,912	0	0
Milner	88,159	0	(1,137)	25,950	63,346	4,800	0
Minidoka	361,260	8,370	(200)	95,008	274,822	0	0
NSCC	847,478	(7,750)	(1,600)	332,066	509,262	65,500	0
TFCC	242,378	(6,750)	(1,617)	78,268	58,977	25,200	0

7. The above determinations are based on water diversion and storage data from Water District 01. Although these preliminary numbers are subject to revision by Water District 01 during final accounting for 2017, revisions will not become available until after issuance of this order. For this reason, these estimates establish the final obligation of junior ground water users in supplying water to the SWC for reasonable carryover shortfall. The above determination of reasonable carryover shortfall is carried forward from the Methodology Order and takes into account the best available water diversion and storage data, comparative water years, and RISD. *Methodology Order* at 38-39.

### CONCLUSIONS OF LAW

1. The Methodology Order states that, on or before November 30, the Director will estimate the SWC's reasonable carryover shortfall, if any, for 2017. *Methodology Order* at 38-39. If a reasonable carryover shortfall is established, junior-priority ground water users shall have fourteen days to demonstrate, to the satisfaction of the Director, "their ability to provide a volume of storage water or to conduct other approved mitigation activities that will provide water to the injured members of the SWC equal to the reasonable carryover shortfall for all injured members of the SWC." *Id.* at 39.

2. The evidentiary standard to apply in conjunctive administration of hydraulically connected water rights is clear and convincing. *A&B Irr. Dist. v. Idaho Dept. of Water Resources*, 153 Idaho 500, 524, 284 P.3d 225, 249 (2012).

3. "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).

4. Consistent with Finding of Fact 6, the Director concludes by clear and convincing evidence that no members of the SWC have a reasonable carryover shortfall for 2017.

5. Because no members of the SWC have a reasonable carryover shortfall for 2017, junior ground water users do not need to establish “their ability to supply a volume of storage water or to conduct other approved mitigation activities that will provide water to the injured members of the SWC equal to the reasonable carryover shortfall for all injured members of the SWC.” *Methodology Order* at 39. The Director will not “issue an order curtailing junior ground water rights.” *Id.*

### ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that no member of the SWC is owed reasonable carryover storage in 2017 for use in 2018.

IT IS FURTHER ORDERED that this final order concludes application of the Methodology Order to the climatic, hydrologic, and agronomic facts of the 2017 irrigation season.

DATED this 30<sup>th</sup> day of November 2017.

  
GARY SPACKMAN  
Director

**Attachment A  
2017 SWC Adjustments**

	Adjustments	Description	Natural Flow Adjustment	In-Season Storage Adjustment	Storage Use Adjustment
<b>A&amp;B</b>	0	None			
		<b>Total A&amp;B</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>AFRD2</b>	2,000	Idaho Irrigation (IGWA)			Yes
	3,000	New Sweden			Yes
	5,000	Snake River Valley			Yes
	1,000	Minidoka Credit		Yes	
	(51,483)	IWRB Recharge	Yes		
		<b>Total AFRD</b>	<b>(51,483)</b>	<b>1,000</b>	<b>(10,000)</b>
<b>BID</b>	5,130	Minidoka Credit		Yes	
	(3,714)	SWID Natural Flow	Yes		
		<b>Total BID</b>	<b>(3,714)</b>	<b>5,130</b>	<b>0</b>
<b>Milner</b>	1,137	Artesian			Yes
	(3,011)	SWID Natural Flow	Yes		
		<b>Total Milner</b>	<b>(3,011)</b>	<b>0</b>	<b>(1,137)</b>
<b>MID</b>	(200)	Wickel Farms			
	200	Wickel Farms			Yes
	(1,500)	Water Mitigation Coalition			
	8,370	Minidoka Credit		Yes	
		<b>Total MID</b>	<b>0</b>	<b>8,370</b>	<b>(200)</b>
<b>NSCC</b>	100	Arther Henry Farms			Yes
	(7,750)	Minidoka Credit		Yes	
	1,500	Water Mitigation Coalition (Minidoka)			Yes
	(8,346)	IWRB Recharge	Yes		
		<b>Total NSCC</b>	<b>(8,346)</b>	<b>(7,750)</b>	<b>(1,600)</b>
<b>TFCC</b>	1,617	Artesian			Yes
	(6,750)	Minidoka Credit		Yes	
	(159)	IWRB Recharge	Yes		
		<b>Total TFCC</b>	<b>(159)</b>	<b>(6,750)</b>	<b>(1,617)</b>

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30<sup>th</sup> day of November 2017, the above and foregoing, was served by the method indicated below, and addressed to the following:

John K. Simpson  
Travis L. Thompson  
BARKER ROSHOLT & SIMPSON, LLP  
P. O. Box 63  
Twin Falls, ID 83303-0063  
[jks@idahowaters.com](mailto:jks@idahowaters.com)  
[tlt@idahowaters.com](mailto:tlt@idahowaters.com)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

W. Kent Fletcher  
FLETCHER LAW OFFICE  
P.O. Box 248  
Burley, ID 83318  
[wkf@pmt.org](mailto:wkf@pmt.org)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Randall C. Budge  
Thomas J. Budge  
RACINE OLSON  
P.O. Box 1391  
Pocatello, ID 83204-1391  
[rcb@racinelaw.net](mailto:rcb@racinelaw.net)  
[tjb@racinelaw.net](mailto:tjb@racinelaw.net)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Kathleen Marion Carr  
US Dept. Interior  
960 Broadway Ste 400  
Boise, ID 83706  
[kathleenmarion.carr@sol.doi.gov](mailto:kathleenmarion.carr@sol.doi.gov)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

David W. Gehlert  
Natural Resources Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
999 18<sup>th</sup> St., South Terrace, Suite 370  
Denver, CO 80202  
[david.gehlert@usdoj.gov](mailto:david.gehlert@usdoj.gov)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Matt Howard  
US Bureau of Reclamation  
1150 N Curtis Road  
Boise, ID 83706-1234  
[mhoward@usbr.gov](mailto:mhoward@usbr.gov)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Sarah A. Klahn  
Mitra Pemberton  
WHITE & JANKOWSKI  
511 16<sup>th</sup> St., Ste. 500  
Denver, CO 80202  
[sarahk@white-jankowski.com](mailto:sarahk@white-jankowski.com)  
[mitrap@white-jankowski.com](mailto:mitrap@white-jankowski.com)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Kirk Bybee  
City of Pocatello  
P.O. Box 4169  
Pocatello, ID 83205  
[kibybee@pocatello.us](mailto:kibybee@pocatello.us)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Chris M. Bromley  
MCHUGH BROMLEY, PLLC  
380 South 4<sup>th</sup> Street, Suite 103  
Boise, ID 83702  
[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Robert E. Williams  
WILLIAMS, MESERVY, &  
LOTHSPEICH, LLP  
P.O. Box 168  
Jerome, ID 83338  
[rewilliams@cableone.net](mailto:rewilliams@cableone.net)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Robert L. Harris  
HOLDEN, KIDWELL, HAHN & CRAPO,  
PLLC  
P.O. Box 50130  
Idaho Falls, ID 83405  
[rharris@holdenlegal.com](mailto:rharris@holdenlegal.com)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Randall D. Fife  
City Attorney, City of Idaho Falls  
P.O. Box 50220  
Idaho Falls, ID 83405  
[rfife@idahofallsidaho.gov](mailto:rfife@idahofallsidaho.gov)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Lyle Swank  
IDWR—Eastern Region  
900 N. Skyline Drive, Ste. A  
Idaho Falls, ID 83402  
[lyle.swank@idwr.idaho.gov](mailto:lyle.swank@idwr.idaho.gov)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Corey Skinner  
Nathan Erickson  
IDWR—Southern Region  
1341 Fillmore St., Ste. 200  
Twin Falls, ID 83301-3033  
[corey.skinner@idwr.idaho.gov](mailto:corey.skinner@idwr.idaho.gov)  
[nathan.erickson@idwr.idaho.gov](mailto:nathan.erickson@idwr.idaho.gov)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Cindy Yenter  
IDWR-Salmon Field Office  
102 S. Warpath  
Salmon ID 83467-4435  
[cindy.yenter@idwr.idaho.gov](mailto:cindy.yenter@idwr.idaho.gov)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

**COURTESY COPY TO:**  
William A. Parsons  
PARSONS SMITH & STONE  
P.O. Box 910  
Burley, ID 83318  
[wparsons@pmt.org](mailto:wparsons@pmt.org)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email



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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.