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**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 THE BENEFIT OF)
A&B IRRIGATION DISTRICT, AMERICAN)
FALLS RESERVOIR DISTRICT #2, BURLEY)
IRRIGATION DISTRICT, MILNER IRRIGATION))
DISTRICT, MINIDOKA IRRIGATION DISTRICT))
NORTH SIDE CANAL COMPANY, AND TWIN)
FALLS CANAL COMPANY)
)
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)

**SURFACE WATER
COALITION'S REQUEST FOR
UPDATED MATERIAL INJURY
DETERMINATION FOR 2007
WATER RIGHT
ADMINISTRATION**

COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley
Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal

Company, and Twin Falls Canal Company (hereinafter collectively referred to as the “Surface Water Coalition” or “Coalition”), and hereby file this *Request for Updated Material Injury Determination for 2007 Water Right Administration*. This request is supported by the Coalition’s previous filings in this matter regarding the Director’s May 2, 2005 *Amended Order* and subsequent orders, and the following documents submitted together herewith:

- a. June 18, 2007 – *Updated SWC 2007 Water Supply Assessment*
- b. June 20, 2007 – *Affidavit of Vince Alberdi*
- c. June 20, 2007 – *Affidavit of Ted Diehl*
- d. June 21, 2007 – *Affidavit of Lynn Harmon*
- e. June 20, 2007 – *Affidavit of Billy R. Thompson*
- f. June 21, 2007 – *Affidavit of Dan Temple*
- g. June 21, 2007 – *Affidavit of Randy Bingham*
- h. June 21, 2007 – *Affidavit of Walt Mullins*

REQUEST FOR UPDATED MATERIAL INJURY DETERMINATION

As provided in the Director’s May 2, 2005 *Amended Order* (“*May 2 Order*”) and again in the May 23, 2007 *Fifth Supplemental Order Amending Replacement Water Requirements Final 2006 & Estimated 2007* (“*Fifth Order*”), the Director has ordered the following with respect to water right administration during the irrigation season:

10. The Director will monitor water supply requirements and the water supplies available throughout the irrigation season and may issue additional orders or instructions to the watermasters as conditions warrant.

May 2 Order at 47, ¶ 10.

8. The Director will continue to monitor water supply and climatic conditions through the 2007 irrigation season and issue additional orders regarding replacement water needs in 2007 or further instructions to the watermasters for Water District Nos. 34, 110, 120, and 130 should material injury be predicted to occur to rights held by or for the benefit of members of the Surface Water Coalition.

Fifth Order at 17, ¶ 8.

At the June 5, 2007 status conference in the contested case on the *May 2 Order*, the Director further indicated that a new computation of material injury would be completed given the changes between predicted storage fill and the actual 2007 storage fill for members of the Coalition (approximately 100,000 acre-feet less). To date, no additional orders have been issued.

In addition to the reduced reservoir fill this year, the Upper Snake River Basin is experiencing low natural flow runoff conditions. Based upon information compiled in the Coalition's 2007 Water Supply Assessment (April 13, 2007) and the Updated Assessment (June 18, 2007) (as taken from NOAA's Water Supply Forecast), the April-July natural flow forecast for the Snake River at Heise has reduced from 2,380 kAF (67% of average) as of April 7, 2007 to 1,840 kAF (52% of average) on June 8, 2007. The April-September natural flow forecast for the Snake River at Heise is 2,150 kAF (52% of average) as of June 8, 2007. In addition, temperatures are forecasted to be higher than normal and precipitation is forecasted to be lower than normal throughout the irrigation season.

Given the conditions in water supply, the Water District 01 Watermaster, an employee of the Department as well as the Water District, has determined that water supply conditions and deliveries in 2007 are most similar to 2001, one of the hottest and driest years in recent history. Since water supply conditions witnessed so far this year, and as predicted for the rest of the irrigation season, are lower than predicted in early April, an updated "material injury" determination is warranted at this time in order to provide sufficient water to the Coalition members during the irrigation season. Such an update is provided for by the Director's *May 2 Order* and *Fifth Order*, and was indicated it would be forthcoming by the Director at the June 5, 2007 status conference.

As referenced in the affidavits of the managers and the Updated Assessment (filed together herewith), temperatures on the individual irrigation projects are higher than normal and precipitation has been lower. The managers are also experiencing high irrigation demands on their individual projects. As described above, forecasted natural flow at Heise is lower today than at the beginning of April (the April forecast was relied upon by the Director in making the injury determination at the end of May). Consequently, there is no question that water supply conditions in the Upper Snake River Basin in 2007 are not similar to those witnessed in 1995. Water District 01's weekly report indicates that current water supply conditions and actual diversions are most similar to 2001, not 1995. This acknowledgement alone dictates that 1995 serves only as a beginning point for the Director's injury determination. Further, all available spring discharge and reach gain data indicate that natural flow conditions have changed for the worse from 2001 to 2007. The Director must review the actual water conditions this year, and the resulting injury being suffered by the Coalition members.

Given these conditions, members of the Surface Water Coalition are suffering and will continue to suffer injuries to their water rights. AFRD #2, NSCC, and TFCC cannot make "full headgate deliveries" through the 2007 irrigation season.¹ See Affidavits of Harmon, Diehl, and Alberdi. TFCC has been forced to rent water from the Water District 01 Rental Pool. See Alberdi Affidavit. The Director has acknowledged that this effort to rent water shall not be considered part of TFCC's water supply to alleviate the injury caused by junior ground water diversions.

Although the Director "conditionally approved" IGWA's *Joint Amended Replacement Water Plan* on May 23, 2007, that approval did not take into account these changed conditions in

¹ The Director's determination regarding "full headgate delivery", among other findings in the *May 2 Order* are subject to challenge by the Coalition.

the water supply. Moreover, no water has been provided to any Coalition members pursuant to that plan as of today. Since water supply conditions have changed, the Director should consider the best available information and issue an updated material injury determination for 2007. The Coalition members request an updated determination as soon as possible in order to make water delivery decisions during this irrigation season.

Regarding the Coalition's request for administration, the Director has further stated the following with respect to determining how much water may be diverted or needed by members of the Surface Water Coalition:

The Director determined that 1995 was the most recent year that the members of the Surface Water Coalition received a water supply sufficient for the beneficial uses made under the respective rights and, based on available information, used the amounts of water diverted during the 1995 irrigation season as measures of the quantities of water needed for current conditions (herein termed "minimum full supply"), while recognizing that amounts of water up to the maximum quantities authorized by the water rights held by or for the benefit of the Coalition could be demanded upon a showing of need. To date, the Surface Water Coalition has not shown such need.

Fifth Order at 6, n. 3 (emphasis in original).

Notwithstanding the above statement, the Coalition has provided the Director with information that clearly demonstrates the Coalition members' irrigation demand, or "need", and a history of water diversions. Specifically, the Coalition has made the following filings for purposes of the Director's evaluation:

- a. March 15, 2005 - *Surface Water Coalition's Response to Director's Request for Information*
- b. April 15, 2005 - *Surface Water Coalition's Supplemental Response to Director's Information Request*
- c. July 12, 2006 - *Affidavit of Charles E. Brockway in Support of Surface Water Coalition's Petition for Reconsideration of Third Supplemental Order Amending Replacement Water Requirements Final 2005 & Estimated 2006*
- d. April 13, 2007 - *Surface Water Coalition 2007 Water Supply Assessment*
- e. June 18, 2007 - *Updated SWC 2007 Water Supply Assessment*
- f. June 20, 2007 - *Affidavit of Vince Alberdi*

- g. June 20, 2007 – *Affidavit of Ted Diehl*
- h. June 21, 2007 – *Affidavit of Lynn Harmon*
- i. June 20, 2007 – *Affidavit of Billy R. Thompson*
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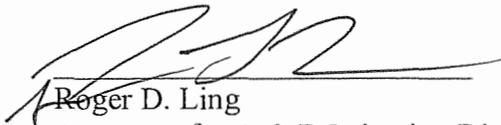
The above filings address the Director’s statement in the *Fifth Order* regarding the demonstration of “need” for the 2007 irrigation season. As demonstrated, at the least AFRD #2, NSCC, and TFCC are suffering and will continue to suffer injury this irrigation season (including the likelihood of little or no carryover water at the end of the season). The exhaustion of storage supplies is creating further injury in “reasonable carryover” storage and will likely cause additional shortages and injuries in 2008. A&B, BID, MID, Milner, in addition to reduced natural flow supplies, are facing the prospect of reduced carryover storage supplies and a projected lack of storage fill for 2008. Timely administration during the irrigation season is critical to address these ongoing injuries.

REQUEST FOR RELIEF

As committed to and ordered in the *May 2* and *Fifth Orders*, the Director should evaluate current climatic and water supply conditions and issue and updated order regarding material injury for the 2007 irrigation season. The Coalition’s storage space did not fill and natural flow conditions are far worse than predicted in the Director’s *Fifth Order*. The Coalition requests a timely response so that sufficient mitigation can be provided, or curtailment ordered to satisfy these existing injuries. Otherwise, Coalition members will be denied their respective property rights, amounting to a taking without just compensation.

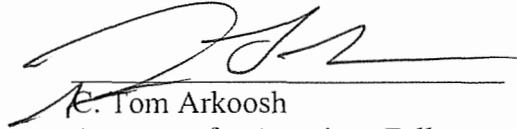
DATED this 21st day of June 2007.

ROBINSON & ASSOCIATES



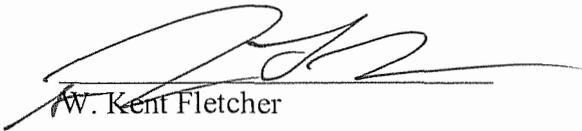
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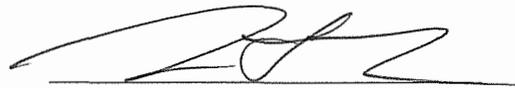
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June, 2007, I served a true and correct copy of the foregoing *Surface Water Coalition's Request for Updated Material Injury Determination for 2007 Water Right Administration* on the following by the method indicated:

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