

**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,) | EIGHTH SUPPLEMENTAL |
| BURLEY IRRIGATION DISTRICT, MILNER) | ORDER AMENDING |
| IRRIGATION DISTRICT, MINIDOKA IRRIGATION) | REPLACEMENT WATER |
| DISTRICT, NORTH SIDE CANAL COMPANY,) | REQUIREMENTS FINAL 2007 |
| AND TWIN FALLS CANAL COMPANY) | & ESTIMATED 2008 |
|) | |
| (Water District Nos. 34, 110, 120, 130, and 140)) | |
| _____) | |

Background

From January 16, 2008 through February 5, 2008, an administrative hearing, which was presided over by hearing officer Gerald F. Schroeder, occurred. On April 29, 2008, a recommended order was received from the hearing officer. Petitions for reconsideration of the recommended order have been filed by the parties. For purposes of administration during the 2008 water year, the framework that will be utilized for predicting material injury, if any, will be that which was developed by the May 2, 2005 *Amended Order* ("May 2005 Order") and its progeny.

FINDINGS OF FACT

1. Findings of Fact set forth in the May 2005 Order, supplemental orders to the May 2005 Order, as well as all other related orders, as applicable, are incorporated into this order by reference.

Final Determination of Presumed Injury for 2007

2. On February 3, 2008 the final storage accruals for 2007 for the benefit of the members of the Surface Water Coalition ("SWC") and reservoir evaporation were determined by Water District 01 as follows:

| | 2007 Max. Storage (acre-feet) | 2007 Evap. (acre-feet) | Final 2007 Net Storage (acre-feet) |
|---------------------------------|----------------------------------|---------------------------|---------------------------------------|
| Jackson Lake: | 773,567 | 16,922 | 756,645 |
| Palisades Winter Water Savings: | 217,456 | 4,757 | 212,699 |
| Other Palisades Reservoir: | 787,732 | 17,232 | 770,500 |
| Henrys Lake: | 86,401 | 1,890 | 84,511 |
| Island Park Res. & Grassy Lake: | 148,358 ¹ | 3,246 ¹ | 145,112 ¹ |
| Ririe Reservoir: | 57,839 | 1,265 | 56,574 |
| Amer. Falls Winter Water Sav.: | 156,830 | 3,431 | 153,399 |
| Other American Falls: | 1,515,760 | 33,159 | 1,482,601 |
| Lake Walcott: | 95,200 | 2,083 | 93,117 |
| Palisades Powerhead: | 131,512 | 2,877 | 128,635 |
| Totals: | 3,970,655 | 86,862 | 3,883,793 |

3. Using the Department's accounting program for storage, Water District 01 determined the final 2007 storage allocations on March 3, 2008 for members of the SWC as follows:

| | Final 2007 Storage Allocations (acre-feet) |
|-------------------------------|--|
| A&B Irrigation District: | 120,197 |
| American Falls Res. Dist. #2: | 384,941 |
| Burley Irrigation District: | 215,308 |
| Milner Irrigation District: | 81,526 |
| Minidoka Irrigation District: | 337,202 |
| North Side Canal Company: | 796,113 |
| Twin Falls Canal Company: | 232,309 |

4. Using the Department's water rights accounting program, Water District 01 determined the following final diversions of surface water from the Snake River by members of the SWC as of the end of the 2007 irrigation season (October 31, 2007) on February 5, 2008 as follows:

¹ Grassy Lake included in Island Park storage and evaporation.

| | Final 2007 Natural Flow (acre-feet) | Final 2007 Storage (acre-feet) | Final Total 2007 Diversions (acre-feet) | Minimum Full Supply Needed ² (acre-feet) |
|-------------------------------|---|--------------------------------------|---|---|
| A&B Irrigation District: | 2,769 | 57,458 | 60,227 | 50,000 |
| American Falls Res. Dist. #2: | 42,564 | 386,478 | 429,042 | 405,600 |
| Burley Irrigation District: | 69,679 ³ | 194,015 | 263,695 ⁴ | 220,200 ⁵ |
| Milner Irrigation District: | 5,136 ³ | 52,122 | 57,259 | 50,800 |
| Minidoka Irrigation District: | 102,028 | 273,492 | 375,520 ⁶ | 314,300 ⁷ |
| North Side Canal Company: | 309,628 | 761,272 | 1,070,900 ⁸ | 988,200 |
| Twin Falls Canal Company: | 797,778 ³ | 254,257 | 1,052,035 | 1,075,900 |

5. Determination of presumed in-season material injury in 2007 to rights held by or for the benefit of members of the SWC resulting from depletions to the Snake River caused by the diversion and use of ground water under junior priority water rights, if any, cannot be based solely on the quantities of water diverted but must also take into account the amounts of carryover storage for the various members of the SWC.

² Water rights held by or for the benefit of members of the Surface Water Coalition entitle the diversion of up to the full quantities of water authorized by the respective rights when needed for the full beneficial use defined under the rights. For a variety of reasons (e.g., cropping patterns, changes in irrigation methods, reductions in irrigated acreage, weather, etc.) the full quantities of water authorized by the respective rights are often not needed, and junior priority rights are not subject to curtailment to provide for the differences, if any, between the maximum quantities of water authorized by the rights and the lesser quantities of water actually needed. 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 water 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. While the April 29, 2008 recommended order from Hearing Officer Schroeder has questioned the computation of material injury, reconsideration of the recommended order has been petitioned for by the parties and the order is not final. Until such time as the recommended order is finalized by the Director or upon agreement of the parties, the Director will continue to use as an initial estimate of need the minimum full supply computed in the 2005 Amended Order.

³ Natural flow use reduced for Southwest Irrigation District wheeled water as follows: 2,700 acre-feet from Burley Irrigation District, 2,200 acre-feet from Milner Irrigation District, and 1,800 acre-feet from Twin Falls Canal Company.

⁴ 41.5 percent of total Minidoka Project diversions.

⁵ 41.2 percent of total Minidoka Project diversions for the 1995 irrigation year from Water District 01 report.

⁶ 58.5 percent of total Minidoka Project diversions.

⁷ 58.8 percent of total Minidoka Project diversions for the 1995 irrigation year from Water District 01 report.

⁸ Deliveries for North Side Canal Company include approximately 47,700 acre-feet used on ground water to surface water conversion acres and ground water recharge projects which are not related to irrigation of shareholder lands.

6. Based on the final storage allocations set forth in Finding of Fact 3, the final amounts of storage water diverted set forth in Finding of Fact 4, and rental pool or other adjustments documented in the storage report dated March 3, 2008, resulting from the Department's accounting program for storage, the following are the final amounts of carryover storage at the end of the 2007 irrigation season:

| | Final 2007 Storage Alloc. (acre-feet) | Final 2007 Storage Used (acre-feet) | Final 2007 Rental/Adjust. (acre-feet) | Final 2007 Carryover Storage (acre-feet) |
|-------------------------------|---|---|---|--|
| A&B Irrigation District: | 120,197 | 57,458 | 0 | 62,739 |
| American Falls Res. Dist. #2: | 384,941 | 386,478 | 9,500 | 7,962 |
| Burley Irrigation District: | 215,308 | 194,015 | 10,847 ⁹ | 32,140 |
| Milner Irrigation District: | 81,526 | 52,122 | 7,117 | 36,520 |
| Minidoka Irrigation District: | 337,202 | 273,492 | -1,965 | 61,744 |
| North Side Canal Company: | 796,113 | 761,272 | 34,106 ¹⁰ | 68,947 |
| Twin Falls Canal Company: | 232,309 | 254,257 | 137 ¹¹ | -21,811 |

7. The final 2007 presumed in-season material injury and carryover shortfalls, if any, for members of the SWC is determined by subtracting the sum of the total 2007 diversions (set forth in Finding of Fact 4 above) and the final carryover storage (set forth in Finding of Fact 6 above) from the sum of the minimum full water supply needed (set forth in Finding of Fact 4 above) and the reasonable carryover storage (set forth in Finding of Fact 119 of the May 2005 Order). The final 2007 presumed in-season material injury and carryover shortfalls, if any, for members of the SWC is set forth as follows:

⁹ Includes minus 2,500 acre-feet adjustment for Southwest Irrigation District private lease omitted from the March 3, 2008 storage report.

¹⁰ Includes minus 14,643.6 acre-feet adjustment for late season recharge water delivered after the 2007 irrigation season but charged against the 2007 storage allocation.

¹¹ Includes plus 2,500 acre-feet adjustment for Southwest Irrigation District private lease omitted from the March 3, 2008 storage report. Supplemental storage amounts of 40,000 acre-feet from the Water District 01 rental pool and 14,345 acre-feet supplied by IGWA for mitigation are omitted for purposes of material injury calculations.

| | Minimum Full Supply Needed (acre-feet) | Reasonable Carryover (acre-feet) | Final Total 2007 Diversions (acre-feet) | Final 2007 Carryover (acre-feet) |
|-------------------------------|--|--|---|--|
| A&B Irrigation District: | 50,000 | 8,500 | 60,227 | 62,739 |
| American Falls Res. Dist. #2: | 405,600 | 51,200 | 429,042 | 7,962 |
| Burley Irrigation District: | 220,200 ⁴ | 0 | 263,695 | 32,140 |
| Milner Irrigation District: | 50,800 | 7,200 | 57,259 | 36,520 |
| Minidoka Irrigation District: | 314,300 ⁶ | 0 | 375,520 | 61,744 |
| North Side Canal Company: | 988,200 | 83,300 | 1,070,900 | 68,947 |
| Twin Falls Canal Company: | 1,052,035 ¹² | 38,400 | 1,052,035 | -21,811 |

| | Minimum Full Supply Needed + Reas. Carryover (acre-feet) | Final Total 2007 Diversions + Carryover (acre-feet) | Final 2007 Presumed Material Injury and Carryover Shortfalls (not less than zero) (acre-feet) |
|-------------------------------|---|--|---|
| A&B Irrigation District: | 58,500 | 122,966 | 0 |
| American Falls Res. Dist. #2: | 456,800 | 437,005 | 19,795 |
| Burley Irrigation District: | 220,200 | 295,835 | 0 |
| Milner Irrigation District: | 58,000 | 93,779 | 0 |
| Minidoka Irrigation District: | 314,300 | 437,265 | 0 |
| North Side Canal Company: | 1,071,500 | 1,139,847 | 0 |
| Twin Falls Canal Company: | 1,090,435 | 1,030,224 | 60,211 |

8. The Twin Falls Canal Company's ("TFCC") material injury and shortfall includes 38,400 of carryover shortfall; therefore, the in-season injury is 60,211 minus 38,400, which equals 21,811 acre-feet.

9. Because American Falls Reservoir District No. 2 ("AFRD2") had adequate supplies to meet its in-season minimum full supply of 405,600 acre-feet, the amount of Material Injury and Carryover Shortfall of 19,795 acre-feet is attributed to a shortfall in reasonable carryover at the end of the 2007 irrigation season.

10. Carryover shortfalls are predicted from the 2007 irrigation season for AFRD2 and TFCC in the amounts of 19,795 acre-feet and 38,400 acre-feet, respectively. As will be discussed below, because reservoirs are predicted to fill in 2008, IGWA's 2007 carryover obligations to TFCC and AFRD2 are canceled.

¹² Since TFCC's water supply for 2007 was guaranteed by IGWA, *see* Findings of Fact 11-18, its minimum full supply was reduced from 1,075,900 acre-feet to the volume of water actually diverted (natural flow plus storage), 1,052,035 acre-feet. Had TFCC been required to divert more water in 2007 to satisfy its beneficial needs, IGWA would have been responsible for making up that additional amount.

11. In the *Sixth Supplemental Order Amending Replacement Water Requirements and Order Approving IGWA's 2007 Replacement Water Plan* (July 11, 2007) ("Sixth Supplemental Order"), TFCC's in-season material injury was to be supplied by the Idaho Ground Water Appropriators, Inc. ("IGWA"), if needed, including underwriting of 40,000 acre-feet of leased water by TFCC.

12. On December 20, 2007, the Director issued his *Seventh Supplemental Order Amending Replacement Water Requirements* ("Seventh Supplemental Order"), which provided an updated material injury prediction for members of the SWC. According to the Seventh Supplemental Order, which was based on preliminary accounting by Water District 01, TFCC was predicted to have experienced 17,345 acre-feet of material injury. TFCC was the only member of the SWC predicted to have experienced material injury in 2007.

13. The Seventh Supplemental Order provided "that on or before January 7, 2008, the Idaho Ground Water Appropriators, Inc. shall be required to provide the Director with a signed lease or leases demonstrating that it has secured 14,345 acre-feet of water to compensate the Twin Falls Canal Company for the 17,345 acre-feet of material injury predicted to have occurred in 2007. The Idaho Ground Water Appropriators, Inc. will not be required to provide the remaining 3,000 acre-feet until final accounting for the 2007 irrigation season is completed in early 2008, in anticipation that the final accounting could result in adjustment of this magnitude. After final accounting, the Director will order Idaho Ground Water Appropriators, Inc. to provide any balance remaining to the account of Twin Falls Canal Company." *Seventh Supplemental Order* at 9.

14. On January 3, 2008, IGWA filed its *Petition for Reconsideration of the Director's Seventh Supplemental Order Amending Replacement Water Requirements and Request for an Extension of Time* ("Request"). The Request sought "an extension of time to provide the Director with a signed lease or leases for the additional water to compensate Twin Falls Canal Company for its alleged material injury in 2007." *Request* at 3. The Request further stated that, "IGWA will provide the signed lease or leases to the Director on or before January 21, 2008. IGWA has a commitment from a lessor for this water, however, IGWA has not fully finalized the details of the lease and thus, requests more time to provide the final lease and response to the Director. IGWA has a board meeting scheduled for January 9, 2008, and the extension would allow IGWA and its board to consider the lease and work out details with the lessor and then provide the Director with a full and complete response." IGWA's request was granted on January 7, 2008 by order of the Director. *Order Granting Request for Extension of Time*.

15. On January 9, 2008, IGWA, through a transmittal document entitled *IGWA's Compliance with Seventh Supplemental Order and Assignment of Leased Replacement Water*, assigned an additional 14,345 acre-feet of replacement water to the Director to be distributed to TFCC for its 17,345 acre-feet of material injury. "IGWA further hereby assigns and transfers to the Director said additional 14,345 AF of leased water, together with all remaining replacement water as identified in IGWA's Exhibit 2 from the June 22, 2007 hearing, reflecting the then-total of 65,145.8 AF of replacement water by lease." On February 1, 2008, a letter was issued by Water District 01 stating that "The leased water (14,345 Acre-Ft) has been credited to Twin Falls Canal Company's account and will be reflected in Water District 01's final accounting and computations of carryover for the 2007 water year."

16. On February 5, 2008, Water District 01 completed its final accounting for 2007. According to final accounting, in-season material injury to TFCC was 21,811 acre-feet, which is 4,466 acre-feet greater than what the Director predicted (17,345 acre-feet), based on preliminary data in his Seventh Supplemental Order. The difference is attributable to decreased reach gains calculated from Water District 01's preliminary data and final USGS gage data, reservoir levels, and diversion records. Furthermore, because of a change in the methodology used to calculate the Minidoka return flow credit from preliminary to final accounting, TFCC's natural flow supply was expected to increase by 6,760 acre-feet in the final analysis. The expected increase, however, was offset by the effects of reduced reach gains.

17. TFCC's total diversion volume for 2007 comprised of both natural flow and storage use, as set forth in Finding of Fact 4, was 1,052,035 acre-feet. This 2007 total diversion volume was less than the minimum full supply of 1,075,900 acre-feet, as set forth in Finding of Fact 116 of the May 2005 Order. TFCC diverted 1,052,035 acre-feet of water in 2007 to furnish a full irrigation supply for the crop water requirement that it had been guaranteed by IGWA up to a minimum full supply of 1,075,900 acre-feet, as approved by the Director.

18. Because IGWA has already provided TFCC with 14,345 acre-feet, IGWA must provide TFCC with the remaining balance, 7,466 acre-feet. According to *IGWA's Compliance with Seventh Supplemental Order and Assignment of Leased Replacement Water*, IGWA assigned to the Director any remaining replacement water identified in IGWA's Exhibit 2 from the June 22, 2007 hearing. Of the leases identified in Exhibit 2, the only water remaining is 6,097 acre-feet of water leased from the Aberdeen Springfield Canal Company. Applying the remainder of water leased from Aberdeen Springfield to IGWA's 2007 obligation to TFCC results in a remaining balance of 1,369 acre-feet.

Material Injury Predicted for 2008

19. Whether effects of ground water depletions result in material injury to the senior priority surface water rights held by the members of the SWC in a particular year depends in large part on the total water supply, under natural flow water rights and from reservoir storage, and in some instances supplemental ground water rights, otherwise available to each member of the Coalition in that year.

20. The United States Bureau of Reclamation ("USBR") and the United States Army Corp of Engineers ("USACE") jointly prepare operating forecasts for unregulated inflow from the Upper Snake River Basin projected for the Heise Gage beginning soon after January 1 of each year. The Heise Gage location is the most representative location for overall surface water supply conditions in the Upper Snake River Basin. The USBR and USACE jointly issue forecasts each year for unregulated inflow at the Heise Gage after April 1, for the period April 1 through July 31, which is generally as accurate a forecast as is possible using current data gathering and forecasting techniques.

21. The United States Natural Resources and Conservation Service ("NRCS") operates and maintains Snotel sites that measure and record snowpack conditions throughout the

western United States that are used to develop forecasts for inflow to various river systems and for other purposes. The USBR and USACE use the NRCS Snotel sites in the Upper Snake River Basin to develop inflow forecasts. The joint operating forecast prepared by the USBR and the USACE for unregulated inflow from the Upper Snake River Basin predicted for the Heise Gage for the period April 1 through July 31, 2008, predicts an unregulated inflow of 3,650,000 acre-feet. The actual, measured inflow from April 1, 2008, through July 31, 2008, will likely be different than the predicted inflow of 3,650,000 acre-feet.

22. The amount of unregulated inflow that may be divertible under the water rights held by members of the SWC and the amount of water that may be divertible to storage in the reservoirs operated by the USBR for the benefit of the members of the Coalition can be highly variable and depends on climatic conditions and when water rights authorizing diversions from the Snake River are in priority.

23. Attachments A through G show correlations between measured, unregulated inflows at the Heise Gage for the period April 1 through July 31, as well as the amounts of natural flow historically diverted by each of the members of the SWC for the years 1990 through 2007.

24. Predicting the amount of natural flow that may be divertible in 2008 under the water rights held by individual members of the SWC based on what was historically divertible is uncertain because it is unlikely that the climatic conditions and the resulting portion of the inflow divertible by individual members of the SWC will be exactly the same in 2008 as in any prior particular year. While acknowledging the uncertainty in predicting the amount of natural flow that may be divertible in 2008 under the water rights held by individual members of the SWC, the predicted unregulated flow of 3,650,000 acre-feet from April 1 through July 31, 2008, at Heise together with the regression relationships that are one standard deviation below the best-fit trendlines in Attachments A through G for each member of the SWC provide a conservative estimate of the natural flow that may be divertible in 2008 by each member of the SWC.

25. Using the predicted unregulated flow of 3,650,000 acre-feet from April 1 through July 31, 2008, at Heise, with the regression relationships that are one standard deviation below the best-fit trendlines in Attachments A through G, results in the following predicted natural flow available during the 2008 irrigation season to each member of the SWC:

Predicted 2008
Natural Flow Diversions
(acre-feet)

| | |
|-------------------------------|---------|
| A&B Irrigation District: | 12,700 |
| American Falls Res. Dist. #2: | 116,700 |
| Burley Irrigation District: | 150,000 |
| Milner Irrigation District: | 18,100 |
| Minidoka Irrigation District: | 159,100 |
| North Side Canal Company: | 531,100 |
| Twin Falls Canal Company: | 872,600 |

26. Similar to predicting the amount of natural flow that may be divertible in 2008, predicting the volume of water that may be storable in the reservoirs operated by the USBR for the benefit of members of the SWC based on what was historically storable in a specific year is uncertain because, as for divertible natural flow, it is unlikely that the climatic conditions and the resulting portion of the inflow divertible to storage will be the same in 2008 as in any prior particular year. While acknowledging the uncertainty in predicting the amount of unregulated inflow that may be storable in 2008 under the water rights held by the USBR, using the 2006 storage right accruals provides a reasonable estimate of storage water for SWC members in 2008. In 2006, the joint operating forecast called for 3,620,000 acre-feet of unregulated inflow into the system. In 2008, the joint operating forecast calls for 3,650,000 acre-feet of unregulated inflow into the system. Using the 2006 historical runoff and demand patterns in the Department's water rights accounting program, and substituting the current reservoir storage right volumes, predicts that Jackson and Palisades will fill if the Heise runoff volume is greater than 3,400,000 acre-feet. For projecting 2008 storage supplies for members of the SWC, allocations are assumed to be the same as 2006, where reservoirs filled except for some flood control releases. This results in the following maximum storage predicted for 2008, adjusted for estimated evaporation:

| | 2008 Max. Storage (acre-feet) | 2008 Evap. (acre-feet) | Preliminary 2008 Net Storage (acre-feet) |
|---------------------------------|----------------------------------|---------------------------|---|
| Jackson Lake: | 829,100 | 17,600 | 811,500 |
| Palisades Winter Water Savings: | 248,000 | 5,300 | 242,700 |
| Other Palisades Reservoir: | 898,200 | 19,100 | 879,100 |
| Henrys Lake: | 90,000 | 1,900 | 88,100 |
| Island Park Res. & Grassy Lake: | 150,200 ¹³ | 3,200 | 147,000 |
| Ririe Reservoir: | 80,500 | 1,700 | 78,800 |
| Amer. Falls Winter Water Sav.: | 156,800 | 3,300 | 153,500 |
| Other American Falls: | 1,515,800 | 32,200 | 1,483,600 |
| Lake Walcott: | 95,200 | 2,000 | 93,200 |
| Totals: | 4,063,800 | 86,300 | 3,977,500 |

27. Using the Department's accounting program for storage, the preliminary maximum storage, less estimated evaporation for 2008, was allocated among all reservoir storage spaceholders in the Upper Snake River Basin, which resulted in the following preliminary storage allocations for members of the SWC. When the preliminary storage allocations are added to the natural flow predicted to be available for the 2008 irrigation year, the predicted total supply for each member of the SWC is considered to be a reasonably likely projection of the total amount of water that may be available to each member of the SWC during the 2008 irrigation year, subject to variations in water supply conditions and variations caused by climatic conditions, for the limited purpose of assessing reasonably likely material injury caused by the diversion and use of ground water under junior priority rights. The reasonably likely predicted total supply for the 2008 irrigation year for each member of the SWC is as follows:

¹³ Grassy Lake included with Island Park Reservoir.

| | 2008 Natural Flow (acre-feet) | 2008 Storage (acre-feet) | Total 2008 Supply (acre-feet) |
|-------------------------------|----------------------------------|-----------------------------|----------------------------------|
| A&B Irrigation District: | 12,700 | 130,700 | 143,400 |
| American Falls Res. Dist. #2: | 116,700 | 385,200 | 501,900 |
| Burley Irrigation District: | 150,000 | 220,000 | 370,000 |
| Milner Irrigation District: | 18,100 | 85,800 | 103,900 |
| Minidoka Irrigation District: | 159,100 | 353,400 | 512,500 |
| North Side Canal Company: | 531,100 | 822,300 | 1,353,400 |
| Twin Falls Canal Company: | 872,600 | 231,900 | 1,104,500 |

28. To predict the shortages in surface water supplies that are reasonably likely for members of the SWC for the 2008 irrigation year, if any, the amounts of water diverted for the 1995 irrigation year, as described in the May 2005 Order, are deemed to be the minimum amounts needed for full deliveries to land owners and shareholders. If crop evapotranspiration is greater in 2008, or precipitation during the irrigation season is less than in 1995, the amounts of water diverted in 1995 may be less than what is needed for a full supply in 2008. If crop evapotranspiration is less in 2008, or precipitation during the irrigation season is greater than in 1995, the amounts of water diverted in 1995 may be more than what is needed for a full supply in 2008.

29. The shortages in surface water supplies that are reasonably likely for members of the SWC in 2008 are estimated by subtracting the reasonably likely total supplies of natural flow and storage for the 2008 irrigation year from the minimum amounts needed for full deliveries based on diversions in 1995 as follows:

| | Minimum Full Supply Needed (acre-feet) | Predicted 2008 Supply (acre-feet) | Predicted Shortages in 2008 (- is surplus) (acre-feet) |
|-------------------------------|--|---|--|
| A&B Irrigation District: | 50,000 | 143,400 | -93,400 |
| American Falls Res. Dist. #2: | 405,600 | 501,900 | -96,300 |
| Burley Irrigation District: | 220,200 ¹⁴ | 370,000 | -149,800 |
| Milner Irrigation District: | 50,800 | 103,900 | -53,100 |
| Minidoka Irrigation District: | 314,300 ¹⁵ | 512,500 | -198,200 |
| North Side Canal Company: | 988,200 | 1,353,400 | -365,200 |
| Twin Falls Canal Company: | 1,075,900 | 1,104,500 | -28,600 |

30. As set forth above, no members of the SWC are predicted to experience in-season material injury (shortages) in 2008.

31. As set forth below, the following are the predicted amounts of carryover shortfall and ending carryover storage for 2008 for members of the SWC:

¹⁴ 41.2 percent of total Minidoka Project diversions for the 1995 irrigation year from Water District 01 report.

¹⁵ 58.8 percent of total Minidoka Project diversions for the 1995 irrigation year from Water District 01 report.

| | Predicted 2008 Carryover Shortfall (acre-feet) | Predicted 2008 Carryover ¹⁶ (acre-feet) |
|-------------------------------|---|--|
| A&B Irrigation District: | 0 | 93,400 |
| American Falls Res. Dist. #2 | 0 | 96,300 |
| Burley Irrigation District: | 0 | 149,800 |
| Milner Irrigation District: | 0 | 53,100 |
| Minidoka Irrigation District: | 0 | 198,200 |
| North Side Canal Company: | 0 | 365,200 |
| Twin Falls Canal Company: | 9,800 | 28,600 |

32. TFCC is the only member of the SWC predicted to experience a carryover shortfall.

CONCLUSIONS OF LAW

1. Conclusions of Law set forth in the May 2005 Order, as well as all subsequent orders related thereto, as applicable, are incorporated into this order. All findings of fact in this order later deemed to be conclusions of law are hereby made as conclusions of law.

2. Based on the Final 2007 Presumed Shortages and Material Injury, *see* Finding of Fact 7, the only member of the Surface Water Coalition that experienced in-season material injury in 2007 was TFCC.

3. As ordered by the Director, IGWA, through its January 9, 2008 assignment, provided 14,345 acre-feet to the Director for the benefit of TFCC, which Water District 01 subsequently credited to TFCC's account. Based on final accounting, TFCC's material injury for the 2007 irrigation season was 21,811 acre-feet.

4. Based on the unique circumstances of the differences in Water District 01's preliminary versus its final accounting and the change in methodology used to calculate the Minidoka return flow credit, IGWA must provide 7,466 acre-feet of replacement water to TFCC to compensate it for its 2007 material injury. Since IGWA has 6,097 acre-feet of water remaining from its lease with Aberdeen Springfield that it assigned to the Director, the watermaster for Water District 01 is directed to assign that water to TFCC's account. The remaining balance, 1,369 acre-feet, must be provided by IGWA directly to TFCC's account within seven (7) days of the issuance of this order to be reflected in Water District 01's 2007 final water rights accounting.

5. Because it is predicted that all reservoir storage will fill in 2008, IGWA's carryover obligations to TFCC and AFRD2 are canceled. *See May 2005 Order* at 46.

¹⁶ Excluding rental pool leases.

6. While this order does not require IGWA, at this time, to provide replacement water to TFCC for its 9,800 acre-feet of predicted shortage in reasonable carryover storage at the end of the 2008 irrigation season, such replacement water shall be required soon after the USBR and USACE April 1, 2009 forecast for Heise Gage is issued, unless the Director predicts based upon that forecast that TFCC's storage space will fill in 2009. IGWA should be prepared to address acquisition of carryover water accordingly. At the end of the 2008 irrigation season, the Director will inform the parties of any shortages in reasonable carryover to members of the SWC.

7. The Director should continue to monitor water supply and climatic conditions in 2008 and if necessary require replacement water, or involuntary curtailment if replacement water cannot be secured.

8. Based on the predicted fill of all storage accounts, it is reasonable to conclude that IGWA should be able to provide replacement water to the members of the SWC if later forecasting and predictions lead the Director to conclude that material injury will occur.

ORDER

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

1. Requirements set forth in the May 2005 Order, as well as all subsequent orders related thereto, as applicable, are incorporated into this order.

2. TFCC was the only member of the SWC that experienced in-season material injury in 2007. To date, IGWA has provided the amount of replacement water ordered by the Director, 14,345 acre-feet. As described above, because of the difference in Water District 01's preliminary and final accounting and the change in methodology used to calculate the Minidoka return flow credit, the amount of replacement water owed by IGWA increased by 7,466 acre-feet. Because IGWA assigned the remainder of water from its lease with Aberdeen Springfield Canal Company, 6,097 acre-feet, which the watermaster of Water District 01 is directed to assign to TFCC's account, IGWA's remaining obligation is 1,369 acre-feet. IGWA shall provide 1,369 acre-feet of water to TFCC within seven days (7) of the issuance of this order to be reflected in Water District 01's 2007 final water rights accounting.

3. The Director will continue to monitor water supply and climatic conditions through the 2008 irrigation season and issue additional orders regarding replacement water needs in 2008 or further instructions to the watermasters for Water District Nos. 34, 110, 120, 130 and 140 should material injury be predicted to occur to rights held by or for the benefit of members of the Surface Water Coalition.

4. The carryover shortfalls predicted by the Director in 2007 to TFCC and AFRD2 are hereby canceled as the storage space held by the members of the SWC is predicted to fill.

5. The predicted carryover shortfall for TFCC for the end of the 2008 irrigation season is 9,800 acre-feet. Providing this carryover water is an obligation that IGWA and its member ground water districts must meet, unless the Director predicts, based upon the USBR and USACE April 1, 2009 forecast for Heise Gage, that TFCC's storage space will fill in 2009.

IT IS FURTHER ORDERED that this is a final order of the agency. Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law pursuant to Idaho Code § 67-5246.

IT IS FURTHER ORDERED that any person aggrieved by this decision shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director, within fifteen (15) days after receipt of written notice of the order, or receipt of actual notice, a written petition stating the grounds for contesting the action and requesting a hearing. Any hearing conducted shall be in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. Judicial review of any final order of the Director issued following the hearing may be had pursuant to Idaho Code § 42-1701A(4).

DATED this 23rd day of May, 2008.

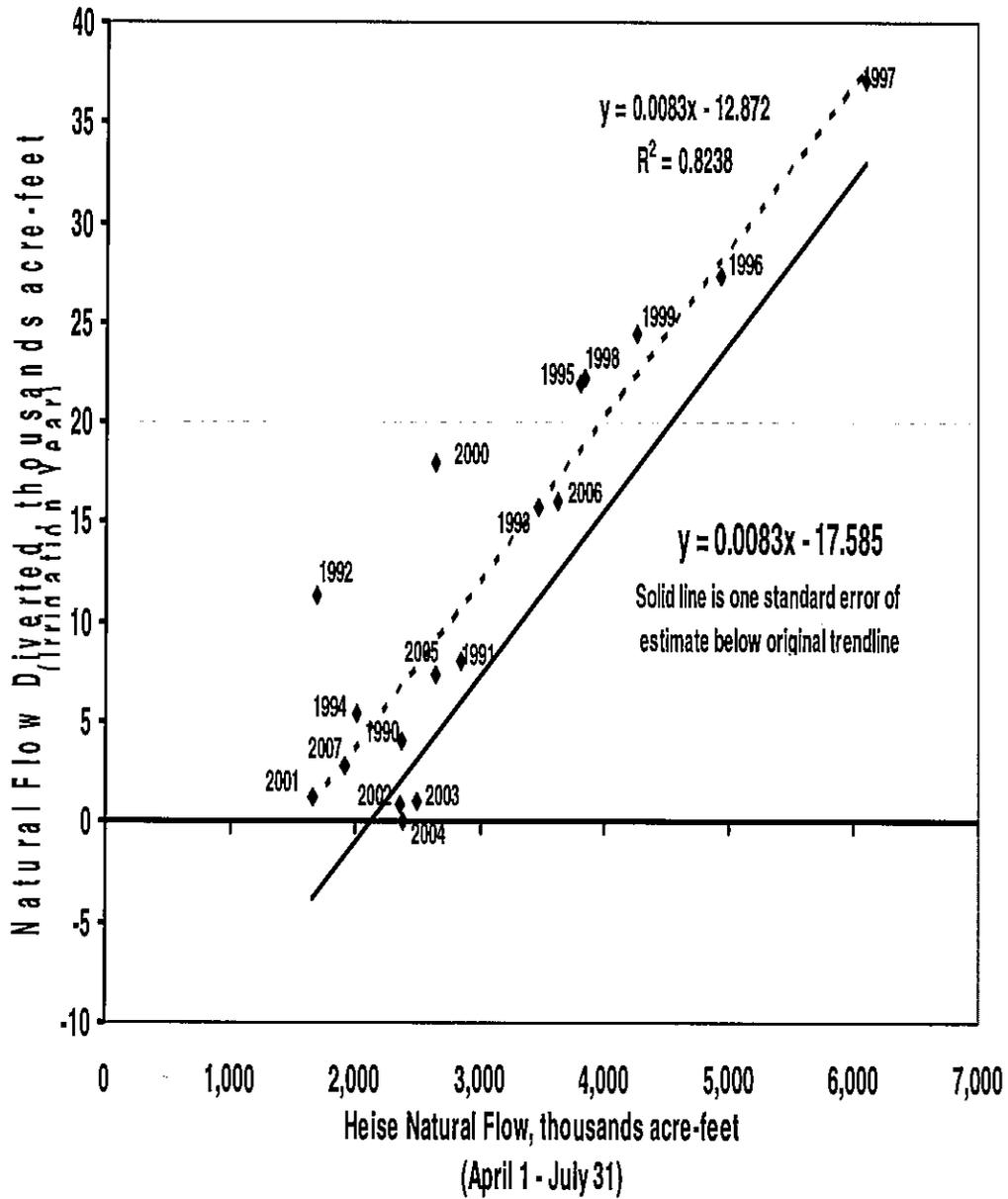


DAVID R. TUTHILL, JR.
Director

ATTACHMENT A

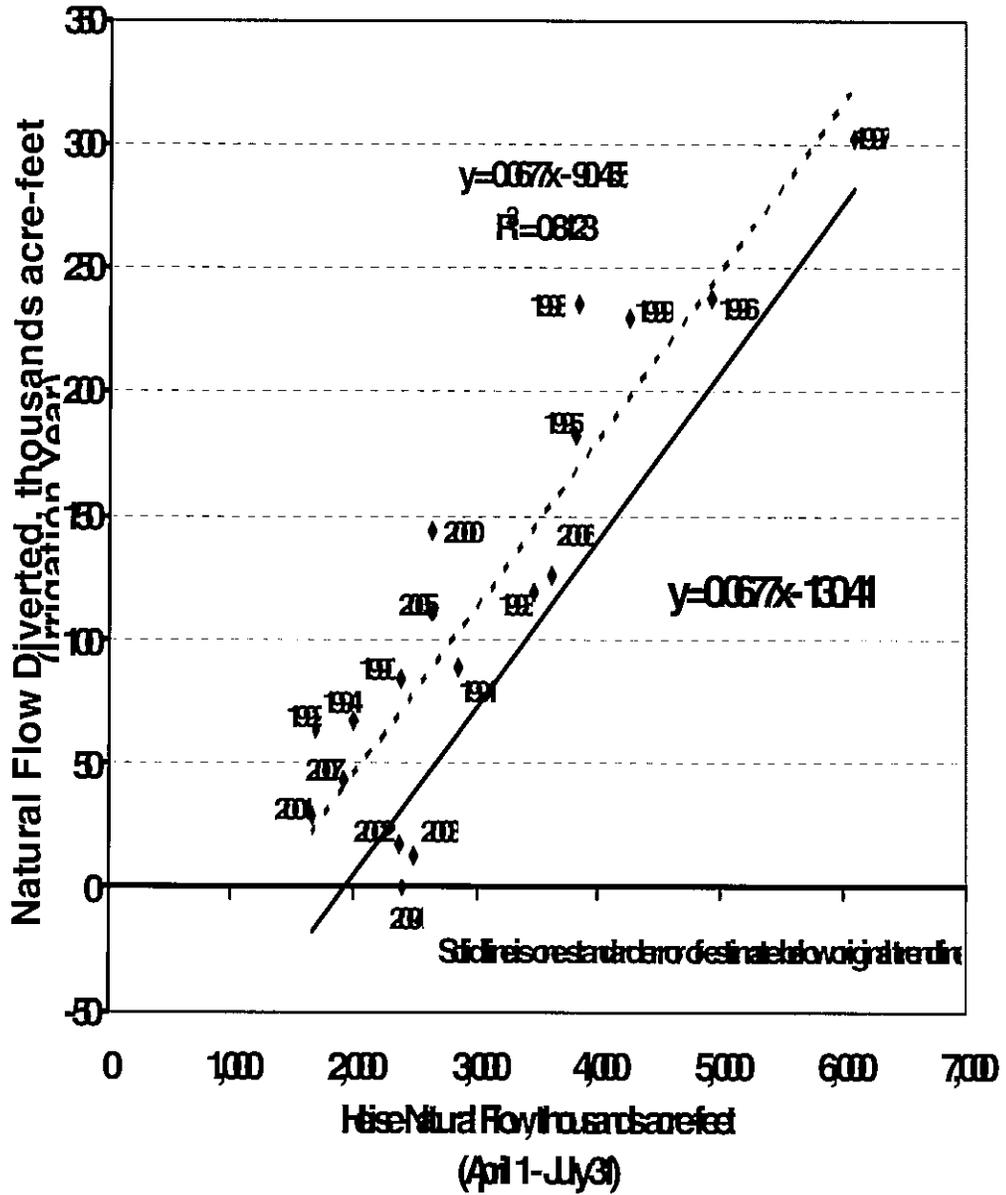
A & B IRRIGATION DISTRICT

Natural Flow Diversions with Heise Inflow



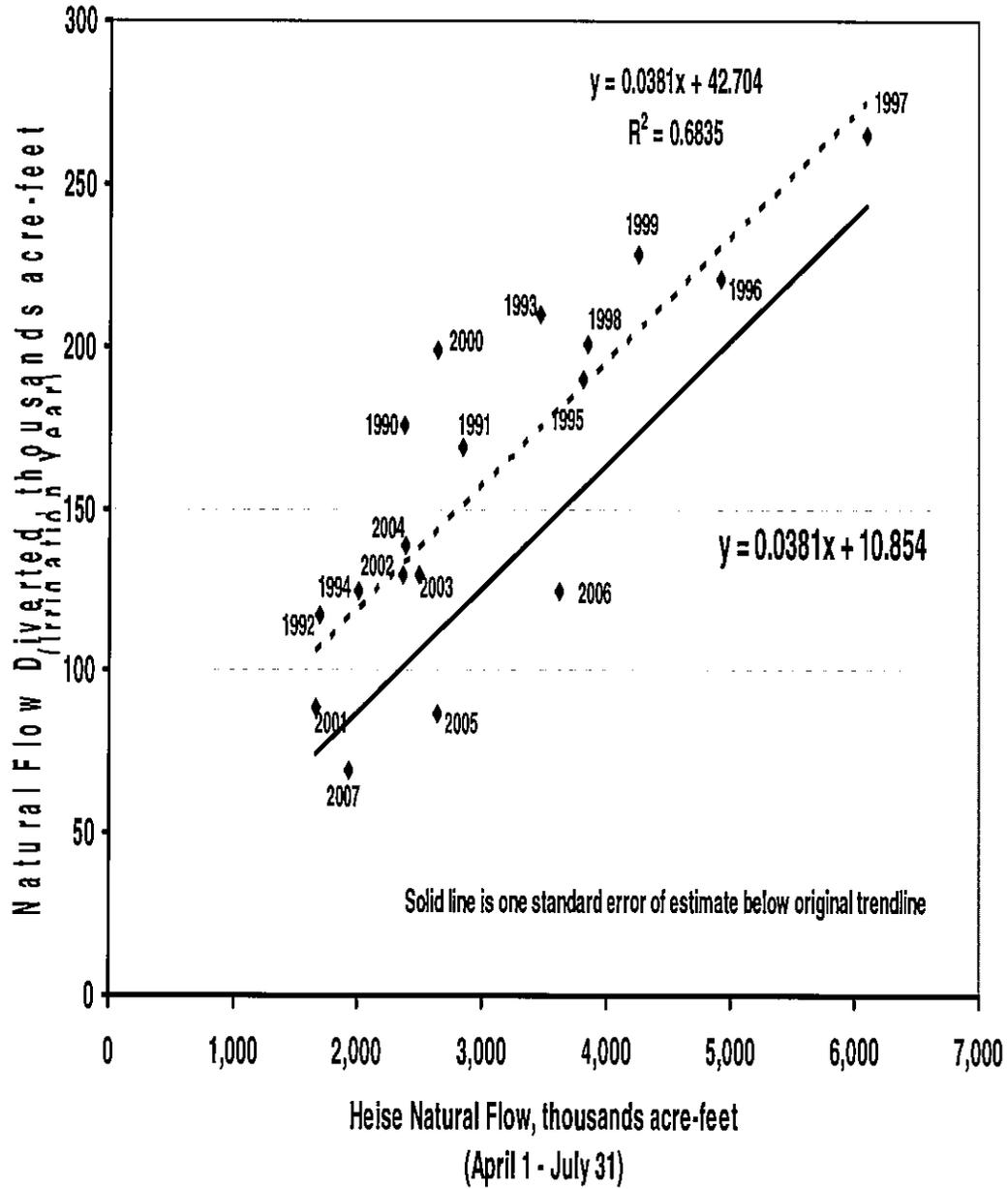
ATTACHMENT B

AMERICAN FALLS IRRIGATION DISTRICT #
Natural Flow Diversions with High Flow



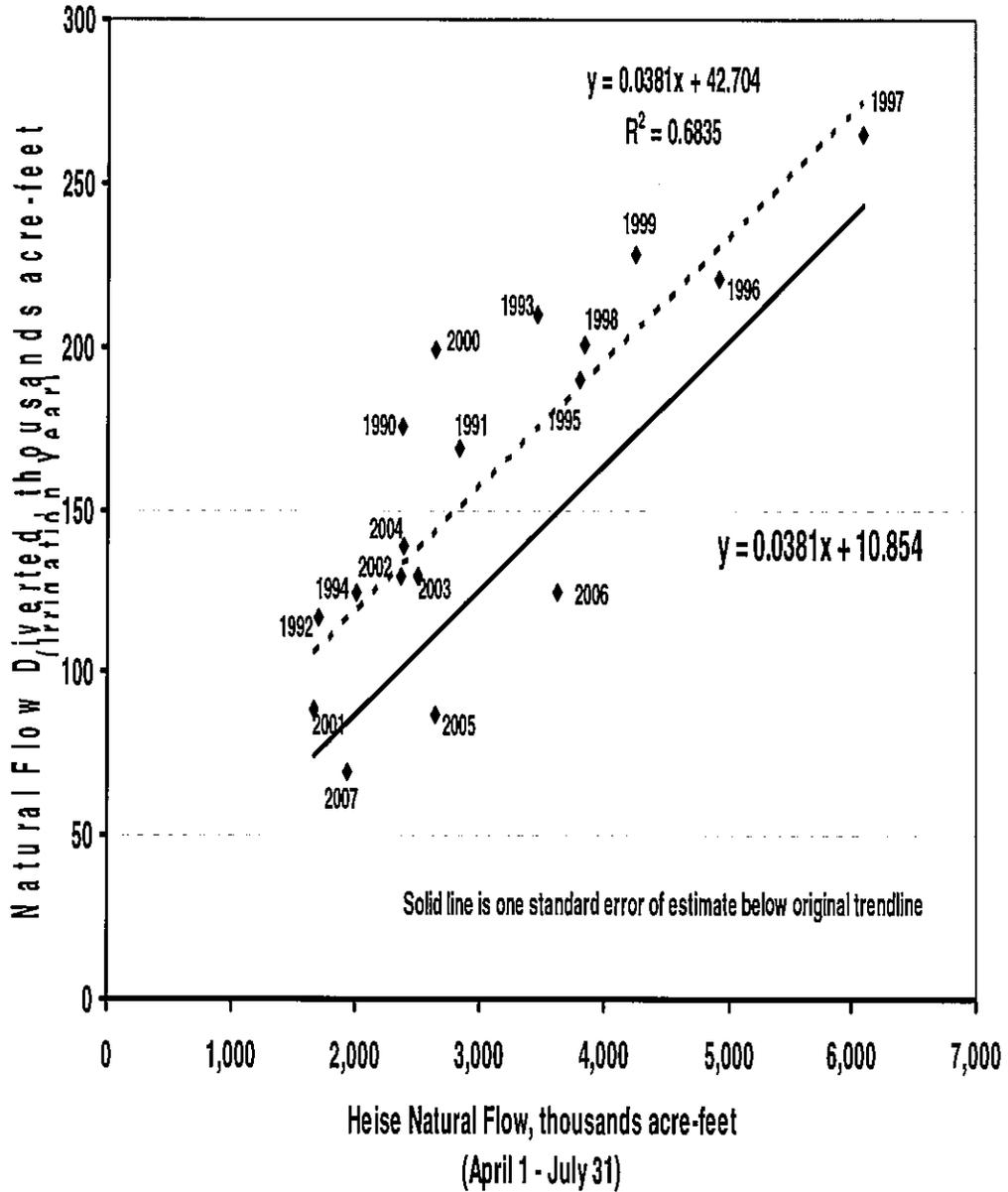
ATTACHMENT C

BURLEY IRRIGATION DISTRICT
Natural Flow Diversions with Heise Inflow



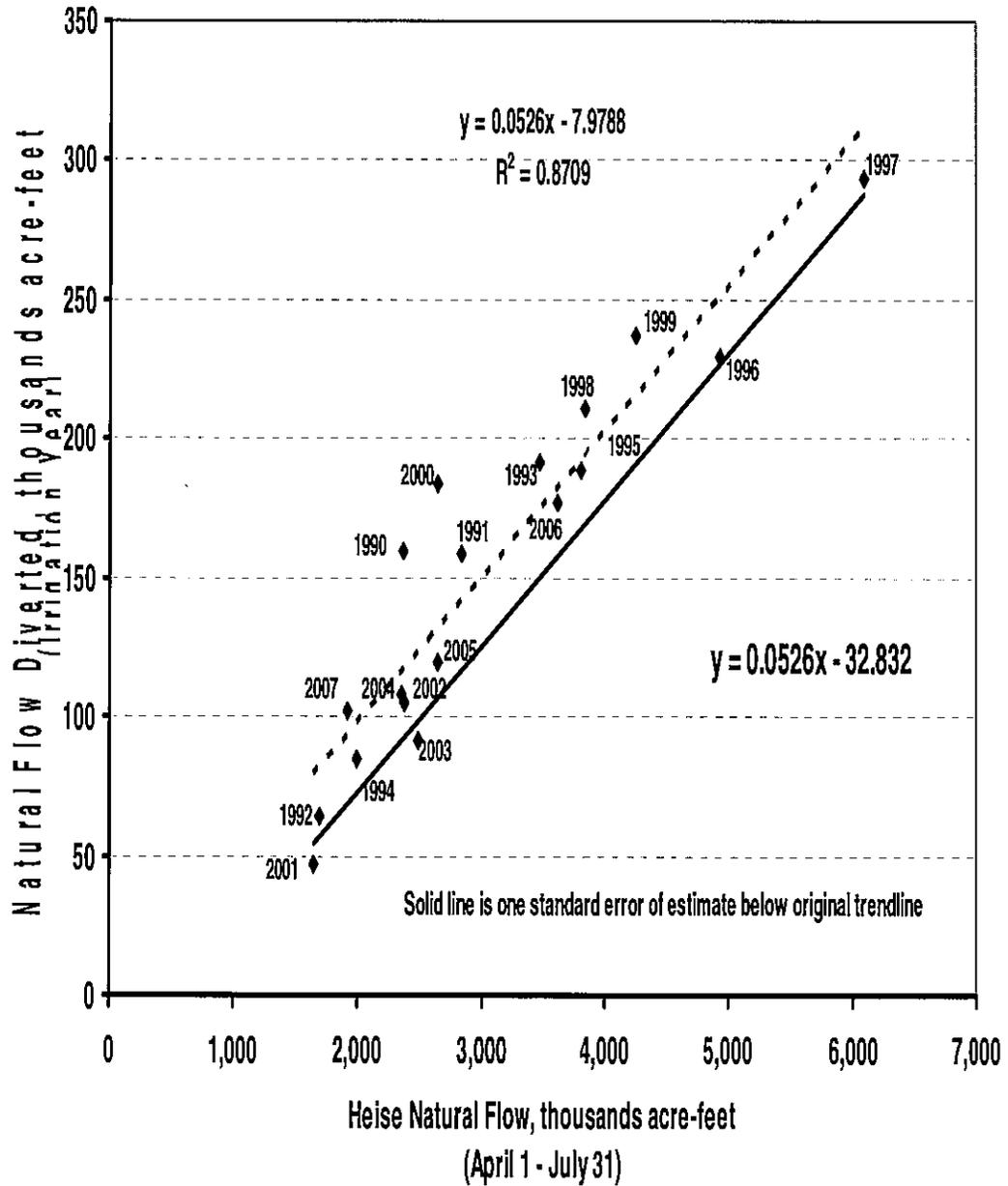
ATTACHMENT D

BURLEY IRRIGATION DISTRICT
Natural Flow Diversions with Heise Inflow



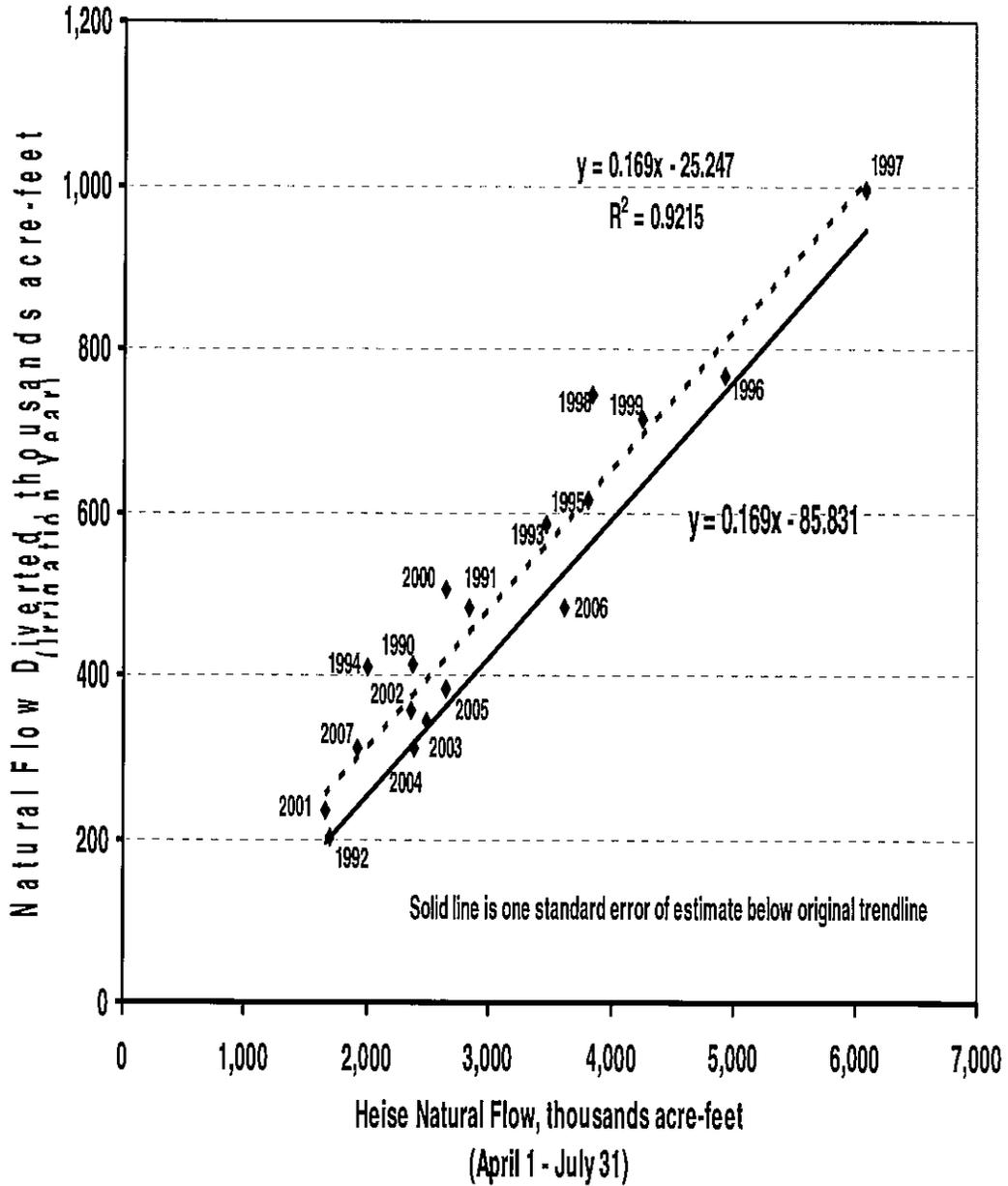
ATTACHMENT E

MINIDOKA IRRIGATION DISTRICT
Natural Flow Diversions with Heise Inflow



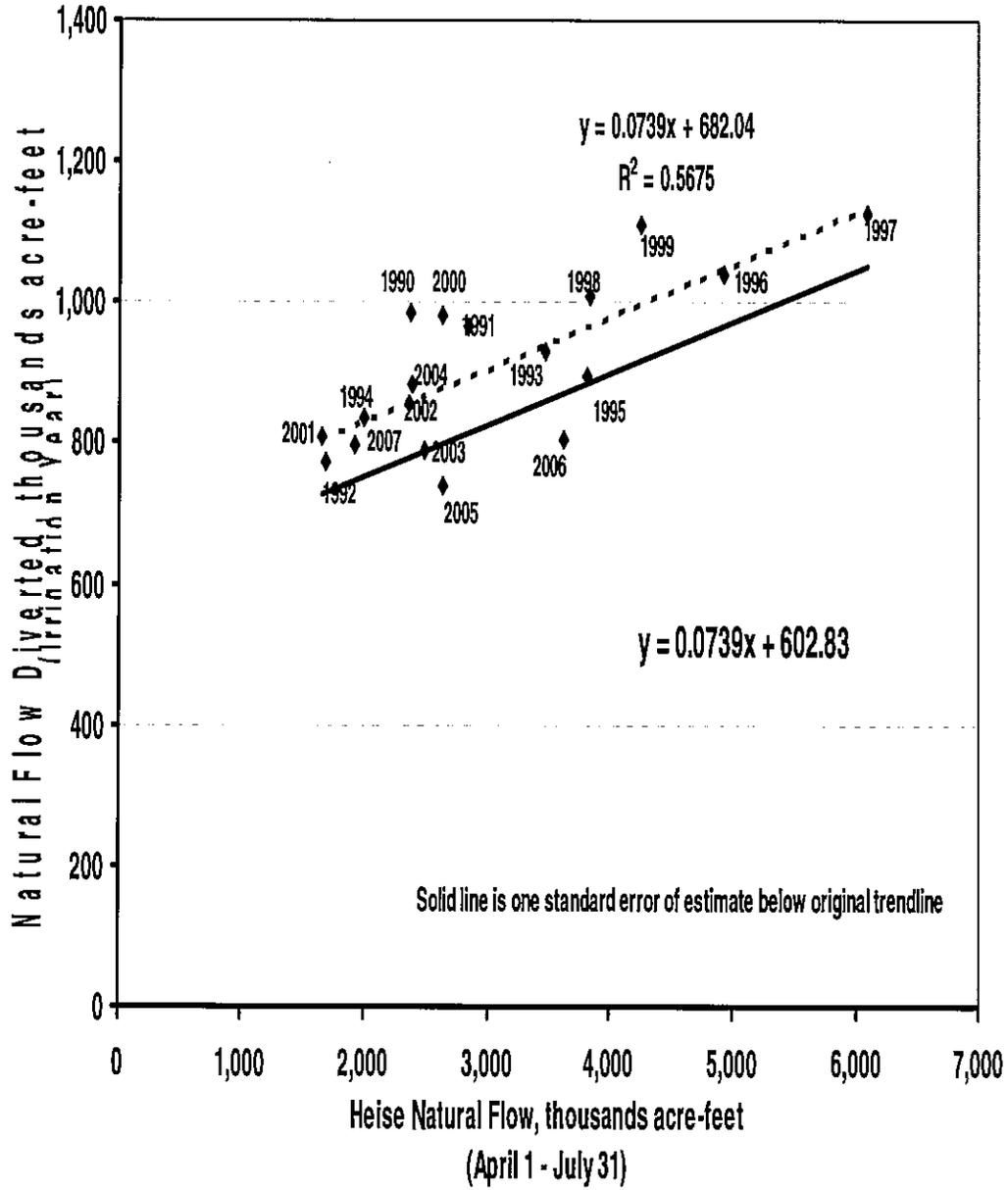
ATTACHMENT F

NORTH SIDE CANAL COMPANY
 Natural Flow Diversions with Heise Inflow



ATTACHMENT G

TWIN FALLS CANAL COMPANY
 Natural Flow Diversions with Heise Inflow



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of May, 2008, the above and foregoing, was served by the method indicated below, and addressed to the following:

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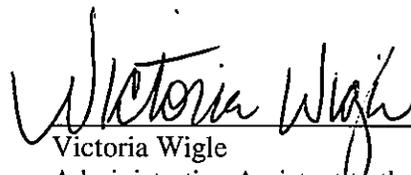
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