

**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

Docket No. CM-DC-2010-001

**ORDER DENYING CITIES' PETITION
FOR RECONSIDERATION OF ORDER
REVISING APRIL 2026 FORECAST
SUPPLY AND CONTINUING MAY 14,
2026 CURTAILMENT ORDER
(METHODOLOGY STEPS 5 & 6)**

BACKGROUND

On July 19, 2023, the Department issued its *Sixth 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”).

On July 21, 2026, the Director issued the *Order Revising April 2026 Forecast Supply and Continuing May 14, 2026 Curtailment Order (Methodology Steps 5-6)* (“*July As-Applied Order*”). The *July As-Applied Order* applied steps 5 and 6 of the *Methodology Order* and continued the effect of the *Final Order Curtailing Ground Water Rights Junior to October 11, 1900* (“*Curtailment Order*”), issued by the Director on May 14, 2026.

Step 5 of the *Methodology Order* addresses the final injury determination to reasonable carryover for members of the SWC. *Methodology Order* at 43. Step 6 of the *Methodology Order* requires the Director, approximately halfway through the irrigation season, to recalculate the reasonable in-season demand (“RISD”), issue a revised forecast supply (“FS”), predict an in-season demand shortfall (“IDS”) if any, and estimate the time of need date. *Id.*

In the *July As-Applied Order*, the Director predicted a July IDS of 741,100 acre-feet. *July As-Applied Order*, at 11. The Director ordered that the May 14, 2026 *Curtailment Order*, as subsequently modified, remain in full force and effect and that unmitigated water rights bearing priority dates junior to October 11, 1900, continue to be curtailed. *Id.* at 11–12.

On August 4, 2026, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (the “Coalition of Cities”), along with the City of Pocatello and City of Idaho Falls, (collectively, the “Cities”), filed the *Cities’ Petition for Reconsideration of Order Revising April 2026 Forecast Supply and Continuing May 14, 2026 Curtailment Order (Methodology Steps 5 & 6)* (“*Cities’ Petition*”). The Cities advance two arguments in their petition. First, the Cities argue “[t]he Director [s]hould [a]mend the *Steps 5-6 Order* [b]ecause the May RISD [d]eterminations are [g]reater

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APRIL 2026 FORECAST SUPPLY AND CONTINUING MAY 14, 2026 CURTAILMENT
ORDER (METHODOLOGY STEPS 5 & 6)—Page 1**

than the [v]olumes the SWC [m]embers [c]an [p]hysically [d]ivert or [h]ave [h]istorically [d]iverted, [r]esulting in [e]rroneous IDS [p]redictions.” *Cities’ Petition*, at 3. Second, the Cities argue the Director “should prospectively cap” future RISD determinations. *Id.* at 5.

Attached to the *Cities’ Petition* was a technical memorandum prepared by Spronk Water Engineers, Inc. (“Spronk Memorandum”). Spronk compared the May 2026 RISD for each SWC member to reported diversion capacity and to the maximum historical monthly diversions. Spronk Memorandum, at 2–3, tbls. 2 & 3. Spronk concluded the calculated May RISD exceeds reported diversion capacity for five SWC members by approximately 201,200 acre-feet and exceeds the maximum historical monthly diversion for all seven SWC members by approximately 250,400 acre-feet. *Id.* Spronk characterized its review as “preliminary.” *Id.* at 1–2. The diversion capacities used in Spronk’s analysis are taken from a 2007 expert report prepared on behalf of the SWC, with an adjustment by Spronk to A&B Irrigation District’s diversion capacity. *Id.* at 2 n.2.

On August 13, 2026, the SWC filed the *Surface Water Coalition’s Response to Cities’ Petition for Reconsideration of Director’s July 21, 2026 Order (Methodology Steps 5 & 6)* (“*SWC Response*”). The SWC argues the Cities lack standing because their ground water rights are protected by an approved mitigation plan. *SWC Response*, at 2–3. The SWC also argues that the Cities are attempting to relitigate the *Methodology Order* through reconsideration of the *July As-Applied Order*. *Id.* at 4–5.

ANALYSIS

Idaho Code § 67-5246(4) governs petitions for reconsideration of final orders. It states:

Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of any final order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

The *Cities’ Petition* raises an issue concerning the relationship between calculated RISD and a SWC member’s physical ability to divert water. The *Cities’ Petition* also raises a procedural issue concerning the distinction between reconsideration of the *July As-Applied Order* and revision of the underlying *Methodology Order*.

1. The Cities have not established that the *July As-Applied Order* should be modified on reconsideration.

The *Cities’ Petition* directly challenges determinations made in the *July As-Applied Order*. Specifically, they challenge the recalculated RISD and, because IDS is calculated using RISD and the FS, the resulting IDS prediction. *Cities’ Petition*, at 2–3. Spronk asserts that the May 2026 RISD calculated under the *Methodology Order* is 995,818 acre-feet. Spronk Memorandum, at 2–3. The Cities argue that this amount “exceed[s] the maximum volumes the

SWC members can physically divert at their respective authorized points of diversion, or alternatively, have diverted historically.” *Id.* at 2.

The Director concludes the Cities have identified a circumstance that warrants examination. RISD is used to predict whether an SWC member will experience a shortfall. If calculated RISD exceeds the quantity that could physically be diverted, this raises a legitimate question concerning whether the calculated demand accurately represents the SWC members’ shortfall. The Spronk Memorandum indicates that this circumstance may have occurred in May 2026.

The Spronk Memorandum states that the May RISD exceeds reported diversion capacity for five SWC members by approximately 201,200 acre-feet. Spronk Memorandum, at 2, tbl. 2. The present record, however, does not establish revised RISD determinations that should replace those in the *July As-Applied Order* or that the Department made an error in applying steps 5 and 6 of the *Methodology Order*. The Spronk Memorandum expressly describes its review as “preliminary” and states that it does not attempt to calculate revised RISD values or address all aspects of the Department’s methodology. *Id.* at 2. The physical-capacity values used by Spronk are principally derived from a 2007 SWC expert report, with a modification to account for A&B Irrigation District’s pumping plant constructed after the 2007 report. *Id.* at 2 n.2. This illustrates that diversion facility capacities may change over time. The Spronk Memorandum also calculates maximum monthly diversion by converting the reported maximum diversion rate to a volume based upon continuous operation for all thirty-one days of May. *Id.* at 2. But Spronk acknowledges that “[t]his is an idealized operating assumption because sustained operation at full capacity may be constrained by hydraulic limitations in the conveyance system, day-to-day demand variations, maintenance requirements, debris and sediment accumulation, equipment outages, and other operational factors.” *Id.* The Director therefore concludes that the *Cities’ Petition* identifies an issue warranting further examination, but the Cities do not provide an adequate record on which to determine the appropriate physical-diversion limit for each SWC member or to substitute revised RISD and IDS determinations into the *July As-Applied Order*.

The Director also declines the Cities’ alternative request to use maximum monthly diversion as a limitation on RISD. The maximum monthly diversion figures relied upon in the Spronk Memorandum originate from the Department’s DS RISD Calculator, which reflects each SWC member’s maximum cumulative monthly diversion volume between 2000 and 2025. Historical diversion information may be relevant to evaluating whether a calculated demand is reasonable, but the cumulative volume a SWC member has historically diverted over the course of a month does not necessarily establish what that member is physically capable of diverting in any given month.

The Director also declines to modify the *July As-Applied Order* because, as the Cities acknowledge, the requested adjustment will make little or no difference. *Cities’ Petition*, at 5 n.5. Even if the physical-capacity reductions identified by the Spronk Memorandum were applied to the 2026 RISD calculation, the resulting adjustment would not change the October 11, 1900 curtailment date.

The SWC separately argues that the Cities lack standing because their ground water rights are protected by an approved mitigation plan. The Director need not address the SWC's standing argument because, as discussed below, the *Cities' Petition* can be resolved on other grounds.

For these reasons, the Director declines to modify the *July As-Applied Order* on reconsideration.

2. Finality of the *Methodology Order* does not preclude prospective refinement in this case.

The SWC argues that the Cities “are asking the Director to ‘change’ the methodology” and that this is an “impermissible attempt to relitigate” the *Methodology Order*. *SWC Response*, at 4. The current *Methodology Order* was issued following an administrative hearing in 2023 and is a final agency action distinct from the *July As-Applied Order*. The time for obtaining judicial review of the *Methodology Order* has expired. *See City of Idaho Falls v. Idaho Department of Water Resources*, 177 Idaho 239, 587 P.3d 708 (2026). The Director agrees that a party cannot use reconsideration of an as-applied order to challenge methodological determinations embodied in a final methodology order. The fact that a methodology is applied in a later order does not, by itself, reopen the underlying methodology for collateral review each time it is applied.

That conclusion, however, does not mean that the *Methodology Order* must remain unchanged in future years. Finality does not prevent the Director from prospectively refining the *Methodology Order* when subsequent factual information reveals a problem with its operation. That is particularly true where application of the methodology may produce a result inconsistent with an objective physical constraint. The *Methodology Order* establishes the process for calculating RISD; the resulting RISD determinations are made in later as-applied orders. If application of that process attributes to an SWC member a quantity of water that the member could not physically divert during the relevant period, that circumstance may warrant prospective refinement of the *Methodology Order*.¹

This distinction is reflected in Idaho Code § 42-1701A(5), which expressly provides a process for the Director to establish a “new or revised methodology” while also providing that the subsection does not apply to orders that merely “implement or apply the methodology steps.” The statute thus contemplates that an existing final methodology may remain binding as to prior administration while the Director considers whether a revised methodology should govern prospectively.

The Director's decision to consider a prospective revision does not reopen the record underlying the *Methodology Order*, alter the legal effect of that order, or provide a party with

¹ This distinction is consistent with the Director's prior orders. In the Bingham matter, the Binghams did not challenge a factual determination made in the *July As-Applied Order*, but instead challenged the structure of the underlying methodology. *See Order Den. Jerry D. & Valerie H. Bingham's Pet. for Recons. & Req. for Hr'g*, at 3 (Aug. 24, 2026). In the A&B matter, A&B sought to relitigate a proportionate-share calculation issue it had expressly raised during the 2023 proceeding and later failed to pursue through judicial review. *See Final Order Den. A&B Irr. Dist.'s Exceptions to Prelim. Order*, at 6–12 (Apr. 17, 2026).

another opportunity to litigate whether the *Methodology Order* was lawful when issued. Rather, it reflects the continuing administration of an ongoing delivery call in which the methodology is applied to new hydrologic conditions or new information.

Here, the 2026 calculations and the analysis submitted with the *Cities' Petition* have, for the first time, focused attention on circumstances in which calculated monthly RISD may exceed physical diversion capability. Finality does not require the Director to disregard subsequent administrative experience when determining how the SWC Delivery Call should be administered prospectively.

3. The Director will consider the physical-diversion issue prospectively under Idaho Code § 42-1701A(5).

The Idaho Supreme Court has recognized that the Director may employ a baseline methodology in conjunctive administration provided, among other things, that it comports with Idaho's prior appropriation doctrine and is "promptly updated to take into account changing conditions." *In Matter of Distribution of Water to Various Water Rts. Held By or For Ben. of A & B Irrigation Dist.*, 155 Idaho 640, 653, 315 P.3d 828, 841 (2013). The *Methodology Order* likewise recognizes the Director's continuing responsibility to review and refine the process of predicting and evaluating material injury using the best available information and best available science. *Methodology Order*, at 36–37.

The information presently before the Director raises a sufficient question concerning the relationship between calculated RISD and physical diversion capability to justify further review. The Director does not determine in this order what the proper physical-diversion limits are, whether the capacities identified by Spronk should be adopted, or precisely how a physical limitation should be incorporated into RISD. Those issues require consideration of current information concerning the SWC diversion facilities and an opportunity for affected parties to address the relevant information.

Idaho Code § 42-1701A(5) establishes the process applicable when the Director proposes to issue an order establishing a new or revised methodology for determining material injury in a delivery call. The statute requires notice to affected parties and an opportunity to request a hearing before issuance of a new or revised methodology order.

Accordingly, separately from the Cities' request for reconsideration, the Director has determined that the physical-diversion issue should be considered through the process established in Idaho Code § 42-1701A(5). Simultaneously with this order, the Director is issuing notice concerning a proposed revision to the methodology addressing physical diversion limitations. That process will allow the Director to consider current information maintained by Water District 01 concerning SWC diversion facilities and their physical capacities. It will also allow the Director to address how any physical diversion limitation should be incorporated into the *Methodology Order*.

ORDER

IT IS HEREBY ORDERED that the *Cities' Petition for Reconsideration of Order Revising April 2026 Forecast Supply and Continuing May 14, 2026 Curtailment Order (Methodology Steps 5 & 6)* is DENIED.

Dated this 25th day of August 2026.



MATHEW WEAVER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of August 2026, the above and foregoing was served by the method indicated below, and addressed to the following:

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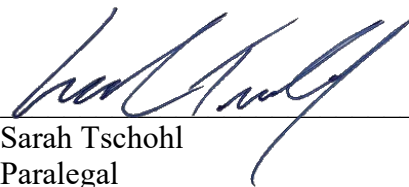
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EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION OF A FINAL ORDER

(To be used in connection with Final Orders, reconsideration of which is now denied,
issued by the Director or the Board)

The accompanying document is an **Order Denying Petition for Reconsideration** of the "**Final Order**" issued previously in this proceeding by the agency head of the Idaho Department of Water Resources ("Department") or the Idaho Water Resource Board ("Board") pursuant to Idaho Code § 67-5246.

The following statements describe the procedures and time limits for seeking appeal of the final order previously issued in this proceeding:

APPEAL TO DISTRICT COURT

(See Idaho Code §§ 67-5270 through 67-5279)

Within twenty-eight (28) days after the service date of the presiding officer's denial of a petition for reconsideration, any party may file a petition for judicial review of the final order with a district court. Filing an appeal to a district court does not in itself stay the effectiveness or enforcement of the final order appealed.

FILING AND SERVICE

(See I.R.C.P. 84)

Any petition for judicial review filed in connection with an appeal of the final order shall be served on the agency and all parties to the administrative proceeding in accordance with Idaho Rule of Civil Procedure 84.