BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE 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 GRANTING STIPULATION AND JOINT MOTION TO APPROVE INSERTIONS INTO THE *SIXTH METHODOLOGY ORDER*;** **ORDER APPROVING INSERTIONS; AND** **ORDER VACATING HEARING AND DEADLINES**

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* ("*Sixth Methodology Order*"). The *Sixth Methodology Order* established nine steps for determining material injury to members of the Surface Water Coalition ("SWC").[1]

On August 25, 2026, the Department issued a *Notice of Opportunity for Hearing Pursuant to Idaho Code § 42-1701A(5)* ("*Notice*"), providing notice that prior to the start of the 2027 irrigation season, the Director intends to revise the *Sixth Methodology Order* "to account for the physical configurations of the SWC entities' diversion works that limit the amount of water that can physically be diverted over a specific period." *Notice*, at 1. The *Notice* further stated that the maximum historical daily diversion of each SWC member, as reported by the Water District 01 watermaster, would be used to determine maximum physical diversion capacity and thereby establish an upper limit for reasonable in-season demand ("RISD"). *Id*.

The *Notice* proposed revising the *Sixth Methodology Order* by inserting two new paragraphs, numbered 44 and 45. Proposed paragraph 44 identified maximum historical diversion values and corresponding monthly diversion-potential values for each SWC member for May through September. *Notice*, at 1–2. Proposed paragraph 45 provided that, when calculated CWN/Ep[2] exceeds the applicable maximum diversion capacity, RISD for that month is limited to the maximum diversion capacity. *Id*. The *Notice* advised affected persons that they had through September 1, 2026, to request a hearing on the issuance of an order revising the *Sixth Methodology Order* "as outlined above." *Id*. at 2.

[1] The SWC is comprised 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.

[2] CWN/Ep stands for crop water need divided by project efficiency.

On August 31, 2026, the SWC filed the *Surface Water Coalition's Request for Hearing*. On September 1, 2026, the City of Pocatello, the City of Idaho Falls, and the Coalition of Cities (collectively, the "Cities") filed the *Cities' Joint Request for Hearing*. Also on September 1, 2026, Jerry D. Bingham and Valerie H. Bingham filed *Jerry D. Bingham's and Valerie H. Bingham's Request for Hearing*.

On September 2, 2026, the Idaho Ground Water Appropriators, Inc. ("IGWA") filed *IGWA's Notice of Intent to Participate in Requested Hearings*.

On September 14, 2026, the Director issued an *Order Granting Requests for Hearing and Limiting Scope of Hearing; Notice of Prehearing Conference*. The order granted all three requests for hearing, but limited the scope of the hearing to:

> the proposed revision identified in the [*Notice*], including the factual basis for and appropriateness of the proposed maximum historical diversion and diversion-potential values, the use of maximum historical daily diversion to establish maximum physical diversion capacity, and the operation and effect of proposed paragraphs 44 and 45 on the calculation of RISD.

Order Granting Req. for Hr'g & Limiting Scope of Hr'g; Not. of Prehr'g Conf., at 4.

On September 28, 2026, the Director conducted a prehearing conference. The SWC, the Cities, and IGWA appeared represented by counsel. During the conference, discovery needs were discussed and the Director identified two Department witnesses to testify at the hearing and to be made available to the parties for depositions requested in advance of the hearing—Craig Chandler, Water District 1 Watermaster, and Ethan Geisler, Technical Services Bureau Chief. Additionally, the Director outlined a compressed hearing schedule and no objections to the proposed schedule were raised.

On September 29, 2026, the Director issued an *Order Authorizing Discovery and Limiting Testimony of Department Witnesses; Scheduling Order; Notice of Intent to Take Official Notice; and Notice of Hearing*.

On October 20, 2026, the SWC, Cities, IGWA, and the Binghams (collectively, the "Parties") filed a *Stipulation and Joint Motion to Approve Insertions into the Sixth Methodology Order* ("*Stipulation*") pursuant to IDAPA 37.01.01.612. The *Stipulation* consists of four agreement terms and an attached "Exhibit 1." The four agreement terms set forth the Parties' substantive and procedural agreements. Exhibit 1 contains the Parties' proposed insertions to the *Sixth Methodology Order*.

APPLICABLE LAW

The Department's Rule of Procedure 556 provides:

> Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the agency or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The presiding officer may regard a stipulation as evidence or may require additional evidence supporting the facts stipulated. The presiding officer is not required to adopt the facts set forth in a stipulation of the parties, but may do so. If the presiding officer rejects a stipulation, they will do so before issuing a final order, and will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation.

IDAPA 37.01.01.556.

Rule of Procedure 612 provides: "The presiding officer is not bound by settlement agreements and will independently review any proposed settlement. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement." IDAPA 37.01.01.612.

ANALYSIS

Pursuant to Rule of Procedure 612, the Director has independently reviewed the *Stipulation* and the proposed insertions contained in Exhibit 1.

The first agreement term contains the majority of the operative terms to the *Stipulation*. Specifically, the Parties "stipulate and agree to the insertions contained in Exhibit 1 to be included in the *Sixth Methodology Order*." *Stipulation*, at 2 (emphasis omitted). The Parties also "jointly move the Director to adopt the insertions contained in Exhibit 1, substitute said insertions for those contained in the *Notice*, and if such language is accepted and adopted by the Director, to vacate the hearing and all other associated deadlines in the matter." *Id*.

The remaining three agreement terms address other matters. The second agreement term is a "[r]eservation of rights" for the parties. *Id.* The third agreement term is an acknowledgement that the Parties were represented by counsel and did not rely upon any statements or representations of law or fact made by any other party or attorney. *Id.* at 3. The fourth agreement term provides that the *Stipulation* may be executed in counterparts. *Id.* The Parties signed the *Stipulation*, binding them to the terms of the *Stipulation*. *See* IDAPA 37.01.01.556.

Exhibit 1 is included below in its entirety for accessibility:

Exhibit 1

44. May through September RISD Adjustment: In May through September, the calculated RISD, which is equal to the CWN divided by Ep, can overestimate the maximum volume of water an irrigation delivery entity has diverted through its diversion works system. Overestimation occurs when the CWN value for a given month, divided by Ep, exceeds the maximum historical monthly diversion volume for that entity. To account for conditions affecting the usability of the RISD value for May through September, the values may be adjusted for each individual irrigation delivery entity in the SWC as described below.

	Date of Max Historical Diversion (mo./yr.)	Max Historical Monthly Diversion (Acre-feet)	May Diversion Potential (Acre-feet)	June Diversion Potential (Acre-feet)	July Diversion Potential (Acre-feet)	August Diversion Potential (Acre-feet)	September Diversion Potential (Acre-feet)
A&B	6/2021	17,536	18,121	17,536	18,121	18,121	17,536
AFRD2	7/2005	100,090	100,090	96,861	100,090	100,090	96,861
BID	7/1978	81,621	81,621	78,988	81,621	81,621	78,988
Milner	7/1979	19,785	19,785	19,147	19,785	19,785	19,147
Minidoka	7/1978	92,788	92,788	89,795	92,788	92,788	89,795
NSCC	7/1990	233,595	233,595	226,060	233,595	233,595	226,060
TFCC	7/1979	226,143	226,143	218,848	226,143	226,143	218,848

Max SWC Historical Diversion Volume (based on Water District 1 records, and corresponding monthly Max Diversion Potential in Acre-Feet).

45. When the calculation of CWN/Ep results in a value for the months of May through September that is less than or equal to the maximum diversion potential for that month, as outlined in the table above, the RISD for that month is equal to the calculated CWN/Ep volume. When the calculation of CWN/Ep results in a value greater than the maximum diversion potential for that month, the RISD for that month is equal to the maximum diversion potential.

46. If Water District 1 records show a monthly volume diverted in excess of the maximum historical monthly diversion set forth in the table in Paragraph 44, or modifications to the diversion infrastructure decreases the maximum diversion works capacity of an individual irrigation entit(ies), such information may be submitted on or before April 1st of a given year for consideration by the Director in future orders.

Stipulation, at 9.

The Parties' proposed paragraph 44 acknowledges that calculated RISD may at times overestimate the maximum volume of water an irrigation entity has diverted through its diversion works system, and provides a table of maximum SWC historical diversion volumes to be used when overestimation occurs.

The Parties' proposed paragraph 45 provides the mechanism for determining when the maximum diversion potential volumes found in the table should be used. When the calculation of CWN/Ep from May through September is less than or equal to the maximum diversion potential, then the RISD should be used. When the calculation of CWN/Ep is greater than the maximum

diversion potential through that same range of months, the RISD will be the maximum diversion potential found in the table.

The Parties proposed paragraph 46 provides that if Water District 01 shows a monthly volume diverted in excess of the values found in the table, or modifications to diversion infrastructure decreases the maximum diversion works capacity of an irrigation entity, such information may be submitted on or before April 1 of any given year for consideration by the Director in future orders.

Upon review, the Director finds the Parties' proposed language, as well as the table including the Max SWC Historical Diversion Volumes, appropriate for inclusion in the *Sixth Methodology Order*. Accordingly, the Director will grant the Parties' motion and approve inclusion of the language of the proposed insertions contained in Exhibit 1. In the interest of avoiding potential confusion when reviewing prior references to the *Sixth Methodology Order*, the order will be amended to incorporate the Parties' proposed insertions as Findings of Fact 90, 91, and 92, instead of 44, 45, and 46, as proposed in Exhibit 1.[3] Additionally, Finding of Fact 43 will be amended to include an explanatory reference to Findings of Fact 90, 91, and 92. To implement these changes, the Director will contemporaneously issue an *Order Amending Sixth Methodology Order as to Findings of Fact 43, 90, 91, and 92* as a separate final order.

Further, the Director finds that the *Stipulation* is fully executed by all parties who sought participation in a hearing on the Director's proposed revisions to the *Sixth Methodology Order*, as provided in the *Notice*. Because the Director is approving the Parties' proposed insertions and incorporating their language into the *Sixth Methodology Order*, in lieu of the proposed revisions set forth in the *Notice*, the hearing scheduled for November 3–4, 2026, is now moot and will be vacated along with all other associated deadlines in this contested case, consistent with the Parties' request to vacate the hearing. *See Stipulation*, at 2.

ORDER

For the reasons discussed above:

IT IS HEREBY ORDERED that the *Stipulation and Joint Motion to Approve Insertions into the Sixth Methodology Order* is GRANTED.

IT IS FURTHER ORDERED that the language of the insertions contained in Exhibit 1 to the *Stipulation* is APPROVED for incorporation into the *Sixth Methodology Order*. The Director will issue an *Order Amending Sixth Methodology Order as to Findings of Fact 43, 90, 91, and 92*, incorporating these insertions as Finding of Fact 90, 91, and 92 and referencing them in Finding of Fact 43. The *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* will remain in full force and effect, as amended by the *Order Amending Sixth Methodology Order as to Findings of Fact 43, 90, 91, and 92*.

[3] The language of the Parties' proposed insertions will be incorporated verbatim into the *Sixth Methodology Order*, except that the internal cross-reference to Paragraph 44 in new Paragraph 92 will be updated to reference Paragraph 90.

IT IS FURTHER ORDERED that the hearing scheduled for November 3–4, 2026, and any remaining deadlines associated with this contested case are VACATED.

Dated this 30th day of October 2026.



MATHEW WEAVER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October 2026, the above and foregoing was served by the method indicated below, and addressed to the following:

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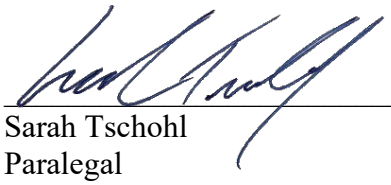
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EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with Final Orders issued by the Director when a hearing was held or when decided on summary judgment and all Final Orders issued by the Board)

The accompanying document is a "**Final Order"** issued 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 reconsideration or other administrative relief as required by Idaho Code § 67-5248:

PETITION FOR RECONSIDERATION

(*See* Idaho Code § 67-5246(4))

Any party may file a petition for reconsideration of this 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 filed with the Agency within this fourteen (14) day period.** The presiding officer will issue a written order disposing of the petition for reconsideration within twenty-one (21) days of its filing, or the petition will be considered denied by operation of law.

APPEAL TO DISTRICT COURT

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

Within twenty-eight (28) days after: (a) the service date of this final order, (b) the service date of the presiding officer's decision on a petition for reconsideration, or (c) the failure of the presiding officer to dispose of a petition for reconsideration within twenty-one (21) days, any party may file a petition for judicial review of this 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* IDAPA 37.01.01.053; I.R.C.P. 84(d))

All documents filed with the Department or Board in connection with a petition for reconsideration of this final order shall be filed and served in accordance with the Rules of Procedure of the Department and the Board.

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