



AGENDA

IDAHO WATER RESOURCE BOARD

Special Board Meeting No. 7-24
Monday, July 1, 2024
1:00 p.m. (MT) / Noon (PT)

Idaho Water Center
Conference Room 602 C & D
322 E. Front St.
BOISE

Brad Little
Governor

Jeff Raybould
Chairman
St. Anthony
At Large

Jo Ann Cole-Hansen
Vice Chair
Lewiston
At Large

Dean Stevenson
Secretary
Paul
District 3

Dale Van Stone
Hope
District 1

Albert Barker
Boise
District 2

Brian Olmstead
Twin Falls
At Large

Marcus Gibbs
Grace
District 4

Patrick McMahon
Sun Valley
At Large

Livestream available at <https://www.youtube.com/@iwrp>

1. Roll Call
2. Executive Session: Board will meet pursuant to Idaho Code § 74-206(1) subsection (f) to communicate with legal counsel regarding legal ramifications of and legal options for pending litigation or controversies not yet being litigated but imminently likely to be litigated. Topic: MHAFFB Project Water Rights. Closed to the public.
3. Water Management Account and ARPA Spending Plans*
4. Lewiston Orchards Exchange Project*
5. New York Canal Rehabilitation Project Update*
6. Regional Water Sustainability Project List Update*
7. IWRB Commitment of Storage Water Pursuant to IGWA/SWC Agreement*
8. Non-Action Items for Discussion
9. Next Meeting & Adjourn

* Action Item: A vote regarding this item may be made at this meeting. Identifying an item as an action item on the agenda does not require a vote to be taken on the item. **Americans with Disabilities:** If you require special accommodations to attend, participate in, or understand the meeting, please make advance arrangements by contacting Department staff by email jennifer.strange@idwr.idaho.gov or by phone at (208) 287-4800.

Memorandum

To: Idaho Water Resource Board (IWRB)

From: Cynthia Bridge Clark

Date: June 27, 2024

Re: FY 2025 Water Management Account (WMA) and American Rescue Plan Act Funds (ARPA) Spending Plans



REQUIRED ACTION: IWRB will consider spending plan recommendations from the Finance Committee.

The IWRB has developed spending plans to direct funding appropriated for regional water sustainability projects, grants, and loans. These projects are supported with state general funds, ARPA funds, and other sources. Since the 2019, the Idaho Legislature has appropriated a total of \$325 million (excluding interest) to the IWRB's Water Management Account (WMA) and has set aside approximately \$250 million of the State's ARPA funding to support IWRB approved projects.

The IWRB maintains a Regional Water Sustainability Projects Priority List to help guide spending for projects that support water supply sustainability on a regional, basin, or statewide scale in accordance with legislative direction. In addition, the IWRB has implemented an Aging Infrastructure Grant program that utilizes appropriations to the WMA as directed by the legislature. The IWRB has obligated approximately \$171 million for Regional Water Sustainability projects, awarded over \$68.7 million for Aging Infrastructure Grants, and committed approximately \$20.8 million in loans, for a total of over \$260 million. The IWRB has also received other project proposals for which funding has not yet been approved.

For the anticipated ARPA funding, the IWRB developed a spending plan for over \$238 million and has obligated over \$160 million through IWRB resolutions. Federal ARPA guidance requires that the funds are obligated and under contract by December 31, 2024, and funds must be expended prior to December 31, 2026.

The Finance Committee will meet on July 1, 2024, to revise the plans based on updated project costs and spending schedules and to finalize the obligation of all the anticipated ARPA funding to meet Federal spending requirements.

The IWRB will discuss recommendations from the Finance Committee and consider resolutions to approve updated spending plans and spending authorization.

MEMO



To: Idaho Water Resource Board
From: Neeley Miller, Planning & Projects Bureau
Date: June 27, 2024
Subject: Lower Clearwater Exchange Project

REQUIRED ACTION: Consider resolution to authorize ARPA funding request and terms and conditions for the Lower Clearwater Exchange Project

Background

In July 2021 the IWRB adopted an initial Regional Water Sustainability Priority List to help guide the Idaho Water Resource Board's (IWRB's) spending for large, regional water sustainability projects from American Rescue Plan Act funds, state general funds, or other applicable sources. The initial Regional Water Sustainability Priority list included a project associated with the exchange of Lewiston Orchards Irrigation District's (LOID) surface water. The IWRB chose to keep the Project on the list in response to a November 28, 2022 request from LOID.

On December 4, 2023, LOID submitted a request for \$1,287,000 to fund a 30 percent engineering and design study. LOID representatives provided a presentation on the funding request at the IWRB's January 11, 2023 Finance Committee.

In February 2024 the IWRB passed resolution no. 10-2024, authorizing \$1,287,000 in funding to complete the engineering and design study for the Project. In that resolution, the IWRB specified terms and conditions for the design work.

Next Steps

On May 20th 2024 LOID submitted a letter requesting \$25,000,000 in ARPA funding for the construction of the Lower Clearwater Exchange Project. Total construction costs are estimated at \$60,000,000. LOID has also submitted letters of support from the Bureau of Reclamation (with 50% cost-share commitment) and the Nez Perce Tribe.

A draft resolution to authorize ARPA funding and approve contract terms and conditions for the construction of the Lower Clearwater Exchange Project is attached.

Attachment(s)

LOID Funding Request Letter
BOR Support Letter
NPT Support Letter
Funding Resolution with Terms and Conditions



May 20, 2024

Idaho Water Resource Board
Attn: Neeley Miller
PO Box 83720
Boise, ID 83720

RE: IWRB Regional Water Sustainability Priority List Funding Request

Dear Neeley:

The Lewiston Orchards Irrigation District (LOID) is requesting \$25,000,000 from any remaining available ARPA funds for the construction of the Lewiston Orchards Exchange Project (LOEP).

The concept level cost estimate is \$60,498,000 as reported on page 5-1 of the attached Clearwater River Pump Station Design Concept Technical Report. This cost estimate was developed in 2022, during a period of high volatility in material costs.

A project description along with a J-U-B Engineers, Inc. stamped copy of the complete Clearwater River Pump Station Design Concept Technical Report are attached. The LOID is actively engaged in an engineering design to further refine the costs and obtain the required permits and easements to move forward. The LOID graciously thanks the IWRB for funding \$1,287,000 to move the engineering design to the 30% design level. Work is expected to be completed by winter 2024.

The Lewiston Orchards Exchange Project is on the IWRB's Regional Water Sustainability Priority List. We understand that is not a guarantee of funding; however, LOID would appreciate any funding that helps move this project to completion. The Lewiston Orchards Project (LOP) relies on water that passes through the Nez Perce Reservation, impacting endangered anadromous fish, water quality and tribal needs and uses. LOID delivers this water to patrons within the Irrigation District.

The project includes building a water intake on the lower Clearwater River, a pump station and piping to deliver 18 cfs to Reservoir A (Mann Lake), a storage reservoir on the Reservation, just to the east of Lewiston Orchards. The project is necessary as a replacement water supply for Reclamation's LOP. The previous path of an irrigation well field has proven to be unsustainable.

By providing funding, the Board would help resolve irrigation water supply issues, endangered species issues, tribal trust issues, and reduce the declining impact to the regional aquifer.

Sincerely,

Eugene B. 

Eugene Barney Metz
General Manager
Lewiston Orchards Irrigation District

Attachments

PROJECT BACKGROUND

- The Lewiston Orchards Irrigation District (LOID) manages the Lewiston Orchards Project (LOP) for the Bureau of Reclamation (RECLAMATION).
- The LOP diverts water from the Lapwai Creek watershed, particularly Sweetwater and Webb Creeks, for irrigation of 3848 acres in the Lewiston Orchards and serves approximately 22,000 people.
- Sweetwater Creek is used for spawning and rearing by ESA-listed Snake River A-run steelhead, reintroduced Coho salmon, spring Chinook salmon, and ten resident fish species and runs through the Nez Perce Reservation.
- The Nez Perce Tribe (NPT) sued the RECLAMATION for LOP water diversions from Sweetwater Creek to the Lewiston Orchards under the Endangered Species Act.
- A group of stakeholders was formed to address issues related to the LOP. The group is called the Lower Clearwater Exchange Project (LCEP) stakeholder group and consists of the LOID, the Nez Perce Tribe (Tribe), the County of Nez Perce, Idaho, the City of Lewiston, Idaho, and the Lewis Clark Valley Chamber of Commerce.
- In July 2009, the LCEP stakeholders formalized their project purposes and objectives by signing a Memorandum of Understanding (MOU). The LCEP MOU identifies three key objectives:
 - Creation of a reliable quantity and quality water supply for LOID
 - Permanent resolution of the ESA issues surrounding the LOP
 - Permanent resolution of Federal/Tribal Trust issues surrounding the LOP.
- In 2012, an LCEP appraisal study identified a reliable water exchange source using a pumping station on the lower Clearwater River, a pumping station on the Snake River, and a well field located near Tammany Creek. RECLAMATION proposed a Pilot Well due to incremental funding availability from RECLAMATION, and the ability to leave water in Sweetwater and Webb Creeks incrementally as each well came online.
- The Pilot Well was completed in 2017 and produced 2,000 gallons per minute. As part of the agreement, LOID left 4.5 cfs in the streams for fish. The well performed without any noticeable decline in the aquifer.
- Construction of a second well started in 2018 and began production in June 2022. This well also produced 2,000 gallons per minute, similar to the Pilot Well. Unfortunately, the District experienced an impact. The water level in one of LOID’s domestic wells significantly dropped when the two irrigation wells were in production. This caused the shutdown of a domestic well during a time when the water was greatly needed (during a period of extreme drought).
- With only half of the LOP’s full negotiated water right realized, 4,250 acre feet (the full negotiated replacement water right is 8,500 acre feet), the well field concept may no longer be considered a reliable replacement system for the LOP.
- The LCEP stakeholders would like to return to the original water exchange source of utilizing surface water from the lower Clearwater River.

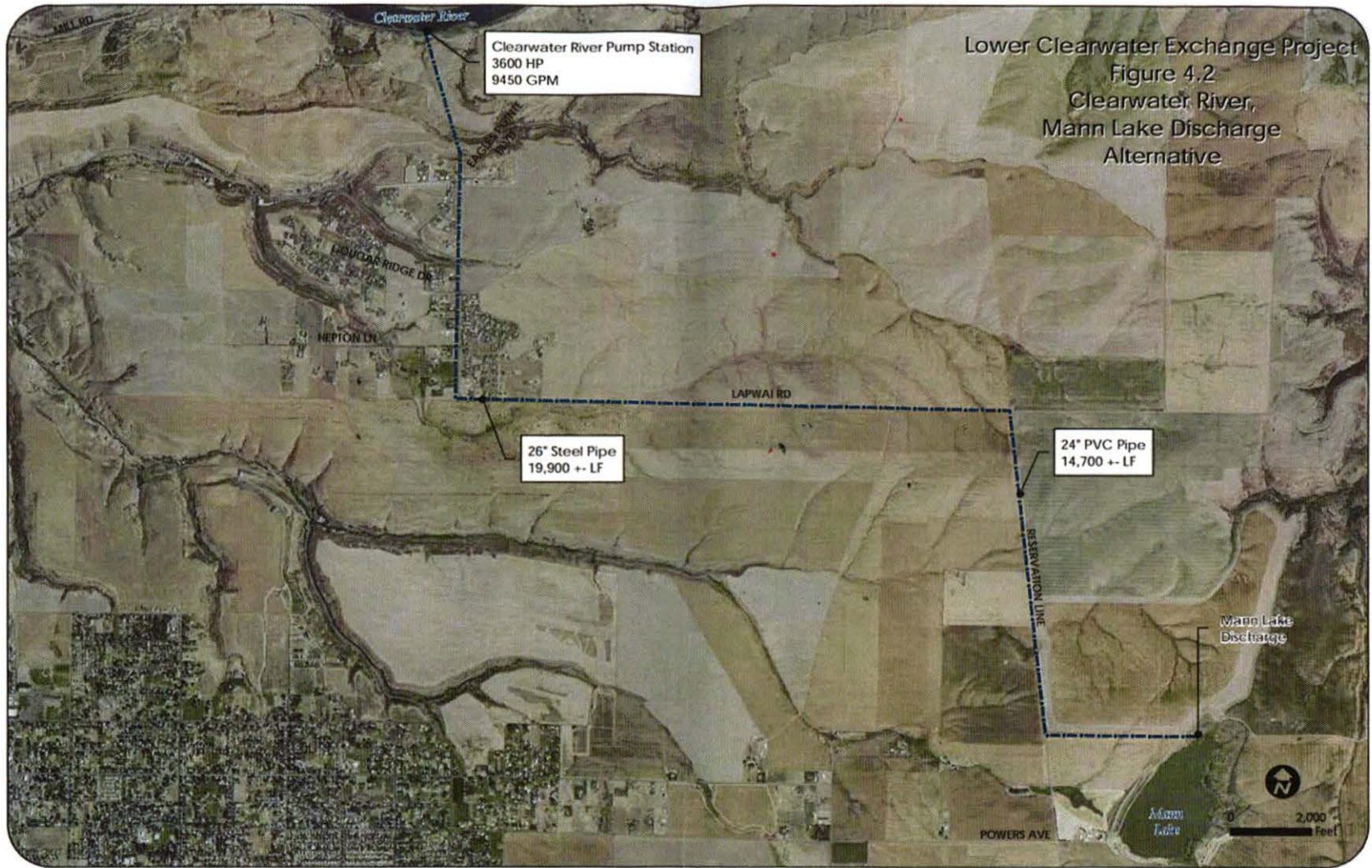
PROJECT SPONSOR

The Lewiston Orchards Irrigation District (LOID) is the project sponsor. LOID is a special government district formed to distribute water to users within the Lewiston Orchards Project (LOP). The LOP is a Bureau of Reclamation Project. As a RECLAMATION project, the LCEP qualifies for the use of ARPA funds.

PROJECT DESCRIPTION

- Pumping station out of the lower Clearwater River.
- Either change the point of diversion for natural flow water right to the Clearwater River or apply for new water right.
- Pump 18 cfs. – 8500 AF per year from the Clearwater River.
- Storage water rights would transfer to the Nez Perce Tribe.
- Install 7.5 miles of 24" pipe to Reservoir A (Mann Lake).
- Reservoir A sits on the NPT Reservation. Ownership of Reservoir A will transfer to the NPT.
- LOID will continue to use Reservoir A as a storage reservoir for the Irrigation District.
- Once the replacement water supply is secure, LOID would participate in a title transfer transaction with RECLAMATION, divesting itself from RECLAMATION.

MAP OF PROJECT AREA



Key Concepts:

- Elimination of adverse effects on ESA-listed Snake River A-run steelhead, and restoration of ESA-designated critical habitat in the Lower Lapwai Creek Basin, tributary to the Clearwater River above Lewiston, Idaho.
- Creation of a drought resistant reliable quality and quantity of water for 22,000 Lewiston Orchards Irrigation District (LOID) patrons.
- Settlement/resolution of legal claims by the Nez Perce Tribe and its people, including long-term impacts to natural resources and to cultural and religious water uses, resulting from the predominant location of the current federal Lewiston Orchards Project (LOP) on the Nez Perce Reservation; as well as unlawful takings of Indian trust lands from the Tribe and its members in the origins of the LOP.
- Elimination of potentially \$30 million in future repairs to aging LOP infrastructure.

Ecological Benefits:

- The Lapwai Creek watershed is currently used for spawning and rearing by ESA-listed Snake River A-run steelhead, Coho salmon, and ten resident fish species. (Chinook salmon juveniles have been captured within the Lapwai Creek watershed, although adult spawning activity has not been recently recorded.)
- The Lewiston Orchards Water Exchange would allow steelhead and salmon to access an additional nineteen miles of spawning and rearing critical habitat currently blocked by a current federal Lewiston Orchards Project (LOP) diversion dam. (In total, 43 stream miles of ESA-designated critical habitat are presently impaired by the existing diversion project and would be restored.) The total watershed acreage presently drained by diversion-affected streams is 61,325 acres.
- Lake Waha, used as part of the LOP system and unique to the lower Clearwater River, has no natural outlet. Instead, the lake provides groundwater connectivity and year-round cold water flows to Sweetwater Springs. Sweetwater Springs is anticipated to contribute 3-10 cubic feet per second (cfs) flows at 50-degrees Fahrenheit, under restored natural lake elevation fluctuations.
- Because of the unique hydrologic characteristics of Sweetwater Springs, with unusually large amounts of discharge of cold water in the summer, the biological value of Sweetwater Creek for steelhead is very high in relation to all other streams in the lower Clearwater River basin.
- Soldiers Meadow Reservoir, total storage capacity 2,370 acre-feet, would be used to maximize ESA-designated critical habitat in Webb, Sweetwater, and Lapwai Creeks. Additionally, water released from Soldiers Meadow Reservoir in the summer averages 50 degree Fahrenheit.

- 10,500 acre-feet of stored water rights in Sweetwater and Webb Creeks will be transferred to uses that will maximize ESA-designated critical habitat in Sweetwater, Webb, and Lapwai Creeks.
- 55 cfs of natural flow diversion to storage will be transferred to uses that will restore Sweetwater Creek and Lapwai Creek.
- A reliable, quality water supply will be provided for 22,000 LOID/Lewiston citizens, covering 3,848 acres.

Mediation:

- RECLAMATION agreed to replace the water supply from the Craig Mountain Watershed that fed Sweetwater Creek, the point of diversion for the LOP. In exchange, the LOID would agree to transfer the title of the irrigation works to the NPT.
- In September 2011, an appraisal study was completed by the LCEP stakeholders that identified multiple water supply alternatives, including surface pumping from the Snake and Clearwater Rivers, and wells from the deep Lewiston Basin Aquifer.
- Surface pumping from the Clearwater River was the preferred alternative, but the timeline for the Federal budget process proved to be many years out with little or no guarantees.
- The wellfield alternative allowed for incremental financial support from RECLAMATION, and incremental water replacement. For each 2000 gallon per minute well online, 4.5 cfs could remain in the stream.

Course Correction Needed:

- After two wells came online, the LOID saw impacts to existing domestic water wells in the summer of 2022.
- The wells are expensive and no guarantee that LOID’s water right will be replaced with four wells.
- The wells tap into the regional aquifer that is also used by the City of Lewiston, the Asotin County PUD, and various developments in Nez Perce County.
- A recent decline in the aquifer has been noted per an Idaho Department of Water Resource Hydrogeologist

In short, the wellfield concept is an unreliable source of irrigation water as a replacement system, and the number of wells needed to achieve LOID’s full water right of 8,500 acre feet is unknown. The Clearwater River would provide a reliable and sustainable source of water to the Lewiston Orchards.

Water Sustainability:

The project helps achieve water sustainability in a variety of ways:

- By preserving groundwater in the regional aquifer for domestic water use.

- By keeping cold water in Sweetwater Creek for fish. The water comes out of the ground at 55 degrees year-round, cooling the stream in summer.
- By changing the point of diversion for the water right 85-16 from Sweetwater Creek to the Clearwater River, no additional water needs allocated.
- Water remains in Sweetwater Creek to be used for fish and cultural resources as it travels to the Clearwater River.

Regional Sustainability Benefits:

- Allows the regional aquifer to be used predominately for drinking water.
- Mitigates the decline of the regional aquifer.
- Provides a long-term supply of irrigation water for the LOP.
- Keeps water in the stream for fish.
- Removes the federal assets from the NPT’s reservation.

Public Interest:

- Rather than diverting water from Sweetwater and Webb creeks, essentially draining the streams, water will continue to flow to the Clearwater River, protecting existing water rights.
- By changing the point of diversion to the Clearwater River, the waterflow, previously diverted can now be used for endangered anadromous fish and cultural resources for the Nez Perce Tribe.
- The project should produce a net gain in water accounting as 55 cfs will flow down to the Clearwater River, but only 18 cfs will be pumped back to Reservoir A.
- Water quality improves in Sweetwater Creek and Lapwai Creek due to the influx of cold water from underground springs that feed Sweetwater Creek during the hot summer months when ESA listed steelhead are spawning. A portion of this water is currently diverted to the LOP area.
- A cold water fishery can be maintained in Reservoir A with water from the Clearwater for both Tribal and non-tribal sportsman. The well water surfaces at around 90 degrees Fahrenheit, too warm for a cold water fishery.

Broad Stakeholder Support:

- In July 2009, a Memorandum of Understanding (MOU) was executed by the Lower Clearwater Exchange Project (LCEP) stakeholder group: the LOID, the Nez Perce Tribe (Tribe), the County of Nez Perce, Idaho, the City of Lewiston, Idaho, and the Lewis Clark Valley Chamber of Commerce. Although the MOU is not a legally binding document, it does set forth the direction to solve the issues of the current Lewiston Orchards Project (LOP) system. The LCEP group’s objective is to explore and pursue the potential of constructing an alternate water supply replacing the LOP surface water system to provide the following:
 - Creation of a reliable quantity and quality water supply for LOID
 - Permanent resolution of the ESA issues surrounding the LOP
 - Permanent resolution of Federal/Tribal Trust issues surrounding the LOP.

Resolution of Long-Standing Water Supply Challenges and Conflicts:

- The LOP diverts water that flows through the Nez Perce Reservation. This project will return the use of that water to the Nez Perce Tribe. Once LOID receives its full water right, the LOP will go through a title transfer process and no longer remain as a RECLAMATION project.

Stabilization and Recovery of Groundwater Levels:

- The wellfield concept draws irrigation water from the regional aquifer.
- Hydrologists have noted a decline in the aquifer in the past year after running the two irrigation wells.
- Irrigation usage is significantly greater than domestic usage.
- A pump station from the lower Clearwater River as the primary source of irrigation water for the LOP will help sustain the regional aquifer.

Project Readiness:

- The project is moving forward with the RECLAMATION and the NPT. LOID has found a willing landowner with river access. Discussions are taking place with the Army Corp of Engineers to determine the needed permits and approximate placement of the intake pipe. Contact has also been made to the Camas Railroad to determine the cost of an easement as the pipe will need to pass under the railroad.

COST ESTIMATE AND BUDGET

- From the Clearwater River Pump Station Design Concept, January 11, 2023:

Table 5-1: Cost Estimate

Item	Item Description	Unit	Total Price - Low ^a	Total Price - High
1	Pump Station Intake	1 LS	\$5,636,000	\$10,406,000
2	Pump Station	1 LS	\$10,827,000	\$12,325,000
3	Canyon Transmission	1 LS	\$3,274,000	\$3,571,000
4	Eagle & County Rd Transmission and Outlet Structures	1 LS	\$11,003,000	\$14,040,000
5	Low Pressure Count Rd Transmission (Contractor Installed)	1 LS	\$9,072,000	\$14,306,000
6	Clearwater Power Service	1 LS	\$5,850,000	\$5,850,000
Total Cost^b			\$45,662,000	\$60,498,000

a) The low option includes assumptions that reflect lower cost outcomes on facility locations, low pressure pipe material, and intake structure requirements. These items will not be fully developed until after coordination with the railroad company, USACE, and environmental review, which will occur during final design. This also reflects lower project cost risk assumptions and a lower range of soft costs, which requires a reduced scope.

b) Includes total construction cost, soft costs including final design, and AIS and Davis Bacon Wages.

PROJECT FUNDING SOURCES

LOID currently has a grant open with RECLAMATION for a replacement water supply. The grant was initially written to provide funding for the third well in the proposed wellfield with the ability to transfer funding to a surface water solution. The signed Grant Agreement for Grant Number R22AP00634 is for \$11,010,396 of which RECLAMATION has authorized funds of \$5,800,000. LOID is able to contribute in-kind labor and equipment to install the low-pressure pipe to Reservoir A (Mann Lake).



United States Department of the Interior



BUREAU OF RECLAMATION
1150 North Curtis Road
Boise, ID 83706-1234

IN REPLY REFER TO:

CPN-1000
2.2.4.21

VIA ELECTRONIC MAIL ONLY

Mr. Barney Metz
General Manager
Lewiston Orchards Irrigation District
1520 Powers Avenue
Lewiston, ID 83501
barneymetz@loid.net

Subject: Lewiston Orchards Project Water Exchange Letter of Support

Dear Barney:

The Bureau of Reclamation recognizes the importance of the Lewiston Orchards Water Exchange and Title Transfer project and, as a project partner, remains committed to the development of an off-reservation water supply to meet the 8,500 acre-feet water exchange agreed upon by the Lewiston Orchards Irrigation District. In that regard, Reclamation also remains committed to providing at least a 50 percent cost share for construction of the water exchange components.

Thank you for your continued partnership on this project. If you have any questions, please contact Holly Kunz, Program Manager, at (208) 519-9072 or via email at hkunz@usbr.gov. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

Sincerely,

JENNIFER
CARRINGTON

Digitally signed by
JENNIFER CARRINGTON
Date: 2024.06.24 19:39:28
-06'00'

Jennifer J. Carrington
Regional Director

cc: Bryan Horsburgh
Deputy Area Manager
Snake River Area Office
230 N. Collins Road
Boise, ID 83702
bhorsburgh@usbr.gov

Holly Kunz
Project Manager
Snake River Area Office
230 N. Collins Road
Boise, ID 83702
hkunz@usbr.gov

INTERIOR REGION 9 • COLUMBIA-PACIFIC NORTHWEST

IDAHO, MONTANA*, OREGON*, WASHINGTON

* PARTIAL



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

13 June 2024

Via Electronic Mail Only

Ms. Jennifer Carrington
Regional Director
Bureau of Reclamation
1150 N. Curtis Road
Boise, ID. 83706

***Re: Lewiston Orchards Project Water Exchange and Title Transfer;
Alternative Water Source***

Dear Director Carrington:

The Nez Perce Tribe ("Tribe") writes to state its support for your examination of an alternative water source for the Lewiston Orchards Project Water Exchange and Title Transfer ("LOP Water Exchange" or "Project").

The LOP Water Exchange is of extraordinary importance to the Nez Perce Tribe and its people, and at the same time represents a unique regional consensus.¹ It is a partnership of the Tribe and the Bureau of Reclamation ("Reclamation"), the Lewiston Orchards Irrigation District, the City of Lewiston, Nez Perce County, and the Lewis Clark Valley Chamber of Commerce. The Project addresses an extraordinarily broad array of important issues: ESA-designated critical habitat protection; climate change resilience through cold-water refuge protection; Lewiston-area water quantity and quality improvement; and long-delayed tribal and environmental justice for the Tribe, whose Reservation trust lands were illegally taken to construct a water diversion system that has dewatered Reservation streams and harmed Nez Perce cultural and natural resources for over 115 years.

¹ The Nez Perce Tribe appreciated the express mention of the Project by the Secretary of the Interior during a March 2023 government-to-government consultation with Columbia Basin Tribes on Columbia Basin Salmon Restoration. The Tribe also appreciated President Biden's September 2023 Presidential Memorandum on "Restoring Healthy and Abundant Salmon," which prioritized a "sustained national effort," across Administration agencies, to restore salmon populations in the Columbia River Basin.

Ms. Jennifer Carrington
June 13, 2024
Page 2

The Tribe's support of your alternative water source examination is significantly based on the fact that a Clearwater River surface source was the original concept of the 2009 Lower Clearwater Exchange Project Memorandum of Understanding and Partnership, which remains in effect with the Tribe as a partner; and was also analyzed as Alternative "C" in Reclamation's 2017 Final Environmental Assessment ("FEA") for the Project. The Tribe supports an examination that would advance a concept with no significant deviations from Alternative "C" as analyzed in the 2017 FEA.

Qe'ciyéw'yew' (thank you), Director Carrington, for your dedicated support for ensuring completion of this important Project.

Sincerely,

Ryan Oatman

For: Mr. Shannon F. Wheeler

cc: Bryan Horsburgh, Deputy Area Manager, Bureau of Reclamation
Barney Metz, Manager, Lewiston Orchards Irrigation District
Jerry Klemm, Chairman, Lower Clearwater Exchange Project

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE REGIONAL WATER
SUSTAINABILITY PRIORITY LIST

RESOLUTION TO APPROVE ARPA FUNDS AND
CONTRACT TERMS & CONDITIONS FOR THE
CONSTRUCTION OF THE LOWER
CLEARWATER EXCHANGE PROJECT

1 WHEREAS, The American Rescue Plan Act (ARPA), Pub. L. 117-2 subtitle M (2021), appropriated
2 \$219,800,000,000 to the Coronavirus State and Local Fiscal Recovery Fund (SLFRF) for making payments
3 to the States to mitigate the fiscal effects stemming from the public health emergency in response to the
4 Coronavirus disease; and

5
6 WHEREAS, The SLFRF funds may be used to, among other things, make necessary investments in
7 water, sewer, or broadband infrastructure. Pub L. 117-2 sec. 602(c)(1)(D), 42 U.S.C. § 802(c)(D); and

8
9 WHEREAS, Pursuant to 42 U.S.C. § 802(c)(4), SLFRF funds may be used to satisfy any non-federal
10 matching requirement for an authorized Bureau of Reclamation (Reclamation) project; and

11
12 WHEREAS, The Idaho Legislature in 2022 and 2023 passed legislation setting aside funds from the
13 American Rescue Plan Act (ARPA) for the Idaho Water Resource Board (IWRB) to use on projects including
14 those that have been identified by the IWRB as high priority water sustainability projects; and

15
16 WHEREAS, in July 2021 the IWRB adopted an initial Regional Water Sustainability Priority List to
17 help guide the IWRB's spending for large, regional water sustainability projects from ARPA funds, state
18 general funds, or other applicable sources. The Lower Clearwater Exchange Project (LCEP) was included
19 on the Regional Water Sustainability Priority List; and

20
21 WHEREAS, in February 2024 the IWRB passed Resolution No. 10-2024 approving \$1,287,000 in
22 funding from the Water Management Account to Lewiston Orchards Irrigation District (LOID) to complete
23 30 percent engineering and design for the Lower Clearwater Exchange Project (LCEP). This resolution also
24 authorized Terms and Conditions for the 30 percent engineering and design work; and

25
26 WHEREAS, in May 2024 LOID submitted a request for \$25,000,00 in ARPA funding to complete
27 construction of the Lower Clearwater Exchange Project; and

28
29 WHEREAS, staff has developed proposed the Terms and Conditions for a contract between the
30 IWRB and LOID to complete construction of the Lower Clearwater Exchange Project, included as
31 Attachment A to this resolution; and

32
33 NOW, THEREFORE BE IT RESOLVED the IWRB approves the Terms and Conditions for the
34 Construction of the Lower Clearwater Exchange Project as specified in Attachment A to this resolution.

36 NOW, THEREFORE BE IT FURTHER RESOLVED the IWRB approves \$ _____ in ARPA funds
37 for the construction of the Lower Clearwater Exchange Project.

38
39 NOW, THEREFORE BE IT FURTHER RESOLVED the contract for this project will also contain
40 standard IWRB contract conditions, ARPA funding contract provisions, and other project-specific Terms
41 and Conditions not identified in this resolution.

42
43 NOW, THEREFORE IT BE FURTHER RESOLVED, that the IWRB authorizes its chairman or designee
44 to execute the necessary agreements or contracts for the purpose of this resolution.

45
DATED this 1st day of July, 2024.

Jeff Raybould, Chairman
Idaho Water Resource Board

ATTEST _____
Dean Stevenson, Secretary

ATTACHMENT A: Terms & Conditions

Lower Clearwater Exchange Project

Background: The Lower Clearwater Exchange Project (LCEP) was initiated to evaluate alternatives to reduce or remove the Lewiston Orchards Irrigation District's (LOID) dependence on surface water diverted and transported on or through the Nez Perce Reservation. The LCEP study was funded through the Bureau of Reclamation (BOR) Water Supply Program and identified four primary alternatives: No Action Alternative, Clearwater River Action Alternative, Snake River Action Alternatives, and Tammany Well Field Alternative. The Tammany Well Field Alternative was ultimately selected by the BOR. The well field alternative assumed four deep-aquifer wells could be drilled and pumped at approximately 2,000 gpm per well in the west part of the LOID system. The wells would pump cross/through the irrigation distribution system to Mann Lake (reservoir "A") for seasonal storage. Well No. 5 and Well No. 6 (the first two wells of the well field) have since been designed and constructed. During the new well operation, evidence has been collected showing a negative groundwater impact on LOID Well No. 3 and No. 4. Wells No. 3 and No. 4 are major domestic supply wells for the LOID. Due to the negative impact on the domestic supply, LOID is reassessing the LCEP and has pivoted to a Clearwater River Action Alternative.

The LOID is bringing the Clearwater River Action Alternative to 30 percent design. This work also includes negotiations for easements and access permissions from the Army Corps of Engineers, railroad, and landowners. The 30 percent design will also provide information to initiate any necessary environmental and cultural resource work.

Next Steps: Construction of a replacement water supply for the Lewiston Orchards Irrigation District from the Clearwater River would consist of five primary milestones : 1) preconstruction work including any needed environmental studies and engineering to final design 2) construction of the river intake structure; 3) construction of a pump station; 4) construction of pipeline to Reservoir A including the disbursement infrastructure, and 5) the power required to operate the finished pump station from the power provider.

Work on these activities is scheduled to commence at the conclusion of the 30 percent engineering design and with the acquisition of all needed permits, easements and rights of way. The finished project would deliver LOID's negotiated water right, to the Lewiston Orchards Project, a Bureau of Reclamation project.

After coordinating with the Project Sponsors, IDWR and Deputy Attorney General's Office, staff propose the following contract framework:

- Execute a contract between IWRB and LOID.
- Funding shall be disbursed in installments with the final installment being paid before December 31, 2026.

- IWRB will require invoices before it makes payments.
- Contract term will run the life of the Project, though all funding will be disbursed by December 31, 2026. Reporting requirements will continue through the life of the contract.
- Project Sponsors will provide annual reports detailing project expenditures and work completed.
- Project Sponsors will comply with the IWRB's standard contract terms and ARPA related terms.

MEMO



To: Idaho Water Resource Board
From: Neeley Miller, Planning & Projects Bureau
Date: June 27, 2024
Subject: New York Canal Rehabilitation Project

REQUIRED ACTION: Consider resolution to authorize ARPA funding and contract terms & conditions for the New York Canal Rehabilitation Project

Background

At the March 21, 2024 the IWRB authorized \$25,000,000 in ARPA funds (resolution no. 22-2024) for the New York Canal Rehabilitation Project.

Next Steps

On May 10th 2024 the Boise Project Board of Control submitted a letter requesting an additional \$50,000,000 in ARPA funding for the New York Canal Rehabilitation Project. The total construction costs are estimated at \$81,000,000

A draft resolution to authorize ARPA funding and approve contract terms and conditions for the New York Canal Rehabilitation Project is attached.

Attachment(s):

Boise Project Funding Request Letter
Funding Resolution with Terms and Conditions

FRED BUTLER
CHAIRMAN OF THE BOARD

RICHARD MURGOITIO
VICE CHAIRMAN OF THE BOARD

ROBERT D. CARTER
PROJECT MANAGER

THOMAS RITTHALER
ASSISTANT PROJECT MANAGER

APRYL GARDNER
SECRETARY-TREASURER

MARY SUE CHASE
ASSISTANT SECRETARY-TREASURER

BOISE PROJECT BOARD OF CONTROL

(FORMERLY BOISE U.S. RECLAMATION PROJECT)

2465 OVERLAND ROAD
BOISE, IDAHO 83705-3155

OPERATING AGENCY FOR 167,000
ACRES FOR THE FOLLOWING
IRRIGATION DISTRICTS

NAMPA-MERIDIAN DISTRICT
BOISE-KUNA DISTRICT
WILDER DISTRICT
NEW YORK DISTRICT
BIG BEND DISTRICT

May 10, 2024

TEL: (208) 344-1141
FAX: (208) 344-1437

Idaho Water Resource Board
Attn: Neeley Miller
PO Box 83720
Boise, ID 83720

Dear Neeley:

In November 2022, Boise Project applied for the Sustainability Priority List requesting \$50,000,000 to modernize and rehabilitate six miles of canal lining in the New York Canal. Boise Project was fortunate enough to be selected to receive \$25,000,000 from ARPA funds.

As we move through the process of the project, the anticipated costs to complete the six-mile project have increased due to inflation and the cost of living. Please see below for the updated estimated costs:

<u>Mile</u>	<u>Year</u>	<u>Costs</u>
One	2024	\$11,394,650
Two	2025	\$12,192,275
Three	2026	\$13,045,734
Four	2027	\$13,958,936
Five	2028	\$14,936,061
Six	2029	\$15,981,585
Total Costs		<u>\$81,509,241</u>

The above estimate is based on a bid received (attached) on May 3, 2024, for the work to be performed on Mile One in the Fall/Winter of 2024/2025. A 7% escalation cost has been added for Miles Two – Six.

Boise Project Board of Control is requesting an additional **\$50,000,000** from any remaining availability of ARPA funds. This project is “Shovel-Ready” with construction of Mile One scheduled to begin at the end of irrigation season in October 2024.

Idaho Water Resource Board
Page Two

Boise Project Board of Control appreciates IDWR in providing this opportunity to obtain additional funding to rehabilitate and improve our aging water infrastructure. Should you have any questions or need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Carter". The signature is fluid and cursive, with the first name "Robert" and last name "Carter" clearly distinguishable.

Robert Carter
Project Manager

bc:mse

Enclosures

Project BPBC - NEW YORK CANAL LINING PROJECT 2024/25
 Bid Opening 5/3/2024, 2:00 pm



Item	Description	Unit	Quantity	IMCO	
				Price	Total
201.4.1.D.1	REMOVAL OF EXISTING CANAL LINER (CONCRETE AND/OR ASPHALT)	SY	48,500	\$16.00	\$776,000.00
202.4.1.A.1	EXCAVATION (PLAN QUANTITY)	CY	19,800	\$25.00	\$495,000.00
202.4.6.A.1	BORROW	CY	2,500	\$8.50	\$21,250.00
307.4.1.E.1	TYPE C SURFACE RESTORATION (GRAVEL ROADWAY)	SY	14,100	\$21.00	\$296,100.00
702.4.2.A.1	REINFORCING STEEL	LB	206,790	\$1.25	\$258,487.50
702.4.2.B.1	WELDED WIRE FABRIC	SF	211,480	\$0.40	\$84,592.00
703.4.1.B.1	CONCRETE (CAST-IN-PLACE) CLASS 40	SY	48,930	\$120.00	\$5,871,600.00
801.4.1.B.1	3" MINUS UNCRUSHED AGGREGATE BASE	TON	200	\$50.00	\$10,000.00
802.4.1.B.1	¾" MINUS CRUSHED AGGREGATE FOR BASE, TYPE 1	TON	11,420	\$40.00	\$456,800.00
1001.4.1.A.1	SEDIMENT CONTROL	LS	1	\$300,000.00	\$300,000.00
2010.4.1.A.1	MOBILIZATION	LS	1	\$1,075,000.00	\$1,075,000.00
SP-01	CANAL LINER	SY	48,930	\$19.00	\$929,670.00
SP-02	RESTORE DELIVERY STRUCTURE	EA	5	\$3,000.00	\$15,000.00
SP-03	PVC WATER STOP SEAL	LF	58,900	\$8.50	\$500,650.00
SP-04	SOFT SPOT REPAIR	SY	5,100	\$45.00	\$229,500.00
SP-05	CONSTRUCTION SURVEY	LS	1	\$75,000.00	\$75,000.00
				\$11,394,649.50	100.00

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE REGIONAL WATER
SUSTAINABILITY PRIORITY LIST

RESOLUTION TO APPROVE ARPA FUNDS AND
CONTRACT TERMS & CONDITIONS FOR THE
NEW YORK CANAL REHABILITATION PROJECT

1 WHEREAS, The American Rescue Plan Act (ARPA), Pub. L. 117-2 subtitle M (2021), appropriated
2 \$219,800,000,000 to the Coronavirus State and Local Fiscal Recovery Fund (SLFRF) for making payments
3 to the States to mitigate the fiscal effects stemming from the public health emergency in response to the
4 Coronavirus disease; and

5
6 WHEREAS, The SLFRF funds may be used to, among other things, make necessary investments in
7 water, sewer, or broadband infrastructure. Pub L. 117-2 sec. 602(c)(1)(D), 42 U.S.C. § 802(c)(D); and

8
9 WHEREAS, Pursuant to 42 U.S.C. § 802(c)(4), SLFRF funds may be used to satisfy any non-federal
10 matching requirement for an authorized Bureau of Reclamation (Reclamation) project; and

11
12 WHEREAS, The Idaho Legislature in 2022 and 2023 passed legislation setting aside funds from the
13 American Rescue Plan Act (ARPA) for the Idaho Water Resource Board (IWRB) to use on projects including
14 those that have been identified by the IWRB as high priority water sustainability projects; and

15 WHEREAS, Boise Project Board of Control (Boise Project) submitted a request for IWRB Regional
16 Water Sustainability Funds to cover six miles of rehabilitation work to be completed on the New York
17 Canal Rehabilitation Project (Project); and

18 WHEREAS, on March 21, 2024 the IWRB authorized \$25,000,000 in ARPA funds (resolution no. 22-
19 2024) for the New York Canal Rehabilitation Project. Resolution no. 22-2024 also authorized terms and
20 conditions associated with that funding; and

21
22 WHEREAS, in May 2024 the Boise Project submitted a request for \$50,000,000 in additional ARPA
23 funding to complete the New York Canal Rehabilitation Project; and

24
25 WHEREAS, staff has developed updated Terms and Conditions for a contract between the IWRB and
26 the Boise Project to complete the New York Canal Rehabilitation Project, included as Attachment A to this
27 resolution; and

28
29 NOW, THEREFORE BE IT RESOLVED the IWRB approves the Terms and Conditions for the New York
30 Canal Rehabilitation Project as specified in Attachment A to this resolution.

31
32 NOW, THEREFORE BE IT FURTHER RESOLVED the IWRB approves \$ _____ in ARPA funds
33 for the New York Canal Rehabilitation Project.

35 NOW THEREFORE BE IT FURTHER RESOLVED the contract for this project will also contain standard
36 IWRB contract conditions, ARPA Funding contract provisions, and other project specific Terms and
37 Conditions not specified in this resolution.

38
39 NOW, THEREFORE IT BE FURTHER RESOLVED, that the IWRB authorizes its chairman or designee
40 to execute the necessary agreements or contracts for the purpose of this resolution.

41

DATED this 1st day of July, 2024.

Jeff Raybould, Chairman
Idaho Water Resource Board

ATTEST _____
Dean Stevenson, Secretary

ATTACHMENT A: Terms & Conditions

New York Canal Rehabilitation Project

The Boise Project Board of Control (Boise Project) is located in southwestern Idaho and a portion of eastern Oregon. The canal has been re-lined numerous times throughout the decades with either concrete and/or asphalt, with many areas remaining as earthen lining. The purpose of the project is to rehabilitate and improve this aging infrastructure over a six-year period.

The New York Canal has been designated as an Urban Canal of Concern by the Bureau of Reclamation due to its age and public safety. Rehabilitating and improving the New York Canal has become a high priority for Boise Project. Since 2014, Boise Project has designed, and performed the construction management and installation of nearly 4,000 lineal feet of an innovative geocomposite lining that consists of polyester nonwovens bonded to a polyethylene geomembrane. The liner is inert to biological degradation and naturally encountered chemicals, alkalis and acids. It was selected for its puncture resistance and interface friction properties that allow the liner to be deployed directly in contact with existing soils and steepened side slopes. The life expectancy of the liner is 50 years. The project area was selected based on the age of the canal, public safety risk due to the significant change in elevation from the canal and its embankment to the home properties immediately adjacent to the canal and water conservation.

The project includes replacement of approximately six miles of the existing concrete and asphalt lining with a prefabricated multi-layer geocomposite membrane and concrete cap, over a six-year period.

After coordinating with the Project Sponsors, IDWR and Deputy Attorney General's Office, staff propose the following contract framework:

- Execute a contract between IWRB and Boise Project.
- Funding shall be disbursed in installments with the final installment being paid before December 31, 2026.
- IWRB will require invoices before it makes payments.
- Contract term will run the life of the Project, though all funding will be disbursed by December 31, 2026. Reporting requirements will continue through the life of the contract.
- Project Sponsors will provide annual reports detailing project expenditures and work completed.
- Project Sponsors will comply with the IWRB's standard contract terms and ARPA related terms.

Memorandum

To: Idaho Water Resource Board
From: Neeley Miller, Planning & Projects Bureau
Date: June 28, 2024
Re: Regional Water Sustainability Priority List



Action: No action required at this time

Staff will discuss updates to the Regional Water Sustainability Priority List.

Memorandum

To: Idaho Water Resource Board (IWRB)

From: Cynthia Bridge Clark

Date: June 28, 2024

Re: IWRB Commitment of Storage Water Pursuant to 2024 Stipulation between the Surface Water Coalition (SWC) and the Idaho Ground Water Appropriators (IGWA)



REQUIRED ACTION: IWRB will consider a resolution to commit funds to lease storage water in accordance with the 2024 Stipulation between the Surface Water Coalition and the

On June 20, 2024, the Director of the Idaho Department of Water Resources, Mathew Weaver, issued an order granting the SWC and IGWA's *Joint Motion for Order Approving 2024 Stipulation (2024 Stipulation)*, which established to the satisfaction of the Director that the Ground Water Districts are operating in accordance with a Department-approved mitigation plan for 2024.

The 2024 Stipulation provides that, for the 2024 irrigation season, all Eastern Snake Plain Ground Water Districts will conform to the mitigation plan approved in 2016 by then IDWR Director, Gary Spackman. Under the 2016 mitigation plan, the Ground Water Districts will collectively conserve 240,000 acre-feet of ground water and deliver 50,000 acre-feet of storage water to the SWC. In return, all members of Ground Water Districts will be protected from curtailment.

In consideration of the IGWA and SWC's agreement to the 2024 Stipulation, the Idaho Water Resource Board agreed to provide 5,000 of IGWA's 50,000 acre-feet storage obligation to the SWC. A letter from Chairman Raybould was submitted to the Director confirming the IWRB's commitment to providing the 5,000 acre-feet. The order approving the 2024 Stipulation clarifies that while the Director is satisfied that the Districts are in compliance with the storage component of the 2016 mitigation plan for 2024, it should not be interpreted that the IWRB shall carry a share of the 50,000 acre-foot storage obligation in future years.

The IWRB will review a resolution to authorize expenditure of funds to secure the 5,000 acre-feet of storage water at the July 1, 2024 IWRB meeting.



IDAHO WATER RESOURCE BOARD

Brad Little
Governor

June 19, 2024

Jeff Raybould
Chairman
St. Anthony
At Large

Mathew Weaver, Director
Idaho Department of Water Resources
322 East Front Street
Boise, Idaho 83720

Jo Ann Cole-Hansen
Vice Chair
Lewiston
At Large

Dear Mat,

Pursuant to the terms of the 2024 settlement agreement between the Surface Water Coalition and the ESPA ground water districts, the Idaho Water Resource Board confirms its commitment to provide 5,000 acre-feet of storage water.

Dean Stevenson
Secretary
Paul
District 3

Please let me know if you should have any questions.

Dale Van Stone
Hope
District 1

Sincerely,

A handwritten signature in blue ink that reads "Jeff Raybould".

Albert Barker
Boise
District 2

Jeff Raybould, Chairman
Idaho Water Resource Board

Brian Olmstead
Twin Falls
At Large

Marcus Gibbs
Grace
District 4

Patrick McMahon
Sun Valley
At Large

**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
CM-MP-2016-001

**ORDER APPROVING 2024
STIPULATION AS COMPLIANCE
WITH APPROVED MITIGATION
PLAN**

BACKGROUND

In 2015, the Surface Water Coalition (“SWC”)¹ and certain members of the Idaho Ground Water Appropriators, Inc. (“IGWA”)² entered into the *Settlement Agreement Entered into June 30, 2015 Between Participating Members of the Surface Water Coalition and Participating Members of the Idaho Ground Water Appropriators, Inc. (“2015 Settlement Agreement”)*.

The parties amended and clarified the *2015 Settlement Agreement* by executing the *Addendum to Settlement Agreement (“First Addendum”)*, the *Agreement* dated October 7, 2015 (“*A&B-IGWA Agreement*”), and the *Second Addendum to Settlement Agreement (“Second Addendum”)*. The SWC and IGWA submitted these documents to the Director of the Idaho Department of Water Resources (“Department”) as a stipulated mitigation plan in response to the SWC’s delivery call (Docket No. CM-DC-2010-001).

The Director approved the mitigation plan and its amendment in his *Final Order Approving Stipulated Mitigation Plan* dated May 2, 2016, and the *Final Order Approving Amendment to Stipulated Mitigation Plan* dated May 9, 2017.

Therefore, six documents are collectively referred to as the *2016 Mitigation Plan* (Docket No CM-MP-2016-001):

1. The *2015 Settlement Agreement*
2. The *First Addendum*
3. The *A&B-IGWA Agreement*
4. The *Second Addendum*
5. The *Order Approving Mitigation Plan*
6. The *Order Approving Amendment to Mitigation Plan*

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 For purposes of this order, references to IGWA include only the following eight ground water districts, which are the signatories to the *2016 Mitigation Plan*: American Falls-Aberdeen Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Carey Valley Ground Water District, Henry’s Fork Ground Water District Jefferson Clark Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, and North Snake Ground Water District.

In the *2015 Settlement Agreement*, the SWC and IGWA agreed that “[t]otal ground water diversion shall be reduced by 240,000 ac-ft annually.” *2015 Settlement Agreement* § 3.a.i. This is commonly referred to as the “conservation obligation” or the “reduction obligation.” The SWC and IGWA also agreed that IGWA would annually deliver storage water to the SWC: “IGWA will provide 50,000 ac-ft of storage water through private lease(s) of water from the Upper Snake Reservoir system, delivered to SWC 21 days after the date of allocation, for use to the extent needed to meet irrigation requirements.” *Id.* § 3.b.i. Finally, the SWC and IGWA agreed “[n]o ground water user participating in this Agreement will be subject to a delivery call by the SWC members as long as the provisions of the Agreement are being implemented.” *Id.* § 5.

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 SWC.

On April 18, 2024, the Director issued the *Final Order Regarding April 2024 Forecast Supply (Methodology Steps 1-3)* (“*As-Applied Order*”), which applied steps 1, 2, and 3 of the *Methodology Order*. The Director predicted an April in-season demand shortfall (“IDS”) of 74,100 acre-feet. *As-Applied Order*, at 3, No. CM-DC-2010-001. The Director ordered that, by May 2, 2024, ground water users with consumptive water rights “bearing priority dates junior to March 31, 1954, within the Eastern Snake Plain Aquifer area of common ground water supply shall establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted April IDS of 74,100 acre-feet in accordance with an approved mitigation plan.” *Id.* at 6. The Director also ordered that, if such a junior ground water user cannot establish that they can mitigate for their proportionate share of the predicted IDS “in accordance with an approved mitigation plan, the Director will issue an order curtailing the junior-priority ground water user.” *Id.*

Historically, IGWA, acting on behalf of its member ground water districts, filed a notice of mitigation with the Department to establish that the ground water districts can mitigate for their proportionate share of the predicted IDS in accordance with an approved mitigation plan. However, this year, individual ground water districts submitted their own mitigation notices. Between May 2 and May 6, 2024, Bonneville-Jefferson, Jefferson-Clark, Magic Valley together with North Snake, Henry’s Fork together with Madison, Bingham, Carey Valley, and American Falls-Aberdeen ground water districts (collectively, the “Districts”) filed mitigation notices with the Department.

On May 10, 2024, the Director issued an *Order Determining Deficiency in Notices of Secured Water* (“*Order Determining Deficiency*”). In the *Order Determining Deficiency*, the Director found that the mitigation notices filed by the Districts “are deficient and fail to demonstrate that they are operating in accordance with an approved mitigation plan.” *Order Determining Deficiency*, at 11, No. CM-DC-2010-001.

Accordingly, the Director gave the Districts until May 17, 2024, “to submit additional notice that demonstrates to the satisfaction of the [D]irector that they have secured storage water in compliance with either the *2009 Storage Water [Mitigation] Plan* or the *2016 Settlement Mitigation Plan*.” *Id.*

On May 17, 2024, IGWA submitted *IGWA’s Notice of Storage Water Leases* (“*IGWA’s Notice*”) for the purpose of demonstrating that adequate storage water leases were secured to mitigate material injury caused by ground water use within Bonneville-Jefferson, Jefferson-Clark, Magic Valley, North Snake, Henry’s Fork, Madison, Bingham, and Carey Valley ground water districts, in compliance with the *2009 Storage Water Mitigation Plan*.

The same day, American Falls-Aberdeen requested the Director reconsider the *Order Determining Deficiency* to remove any obligation on behalf of the ground water districts to provide proof that 50,000 acre-feet of storage water has been secured under the *2016 Mitigation Plan. Mot. for Recons. of Order Determining Deficiency in Notices of Secured Water*, at 5–7, No. CM-DC-2010-001.

The Director ultimately agreed with American Falls-Aberdeen that under the plain language of the *2016 Mitigation Plan* it was complying with the requirements of the plan. Consequently, on May 28, 2024, in the *Amended Order Determining Deficiency in Notices of Secured Water* (“*Amended Order Determining Deficiency*”) the Director concluded: “At this time, American Falls-Aberdeen is the only ground water district that has told the Director that it continues to uphold and seek protection under the *2016 Settlement Mitigation Plan* and has demonstrated that it continues to comply with all elements of the plan.” *Amended Order Determining Deficiency*, at 10–11, No. CM-DC-2010-001.

In contrast, when the Director evaluated *IGWA’s Notice*, the Director found it to be deficient “because it fail[ed] to demonstrate that Bonneville-Jefferson, Jefferson-Clark, Magic Valley, North Snake, Henry’s Fork, Madison, Bingham, and Carey Valley ground water districts are operating in accordance with an approved mitigation plan.” *Order Denying IGWA’s Second Pet. for Recons.; Order Determining Deficiency in IGWA’s May 17, 2024 Notice of Storage Water Leases*, at 8, No. CM-DC-2010-001. Therefore, the Director ordered:

Any ground water district that previously sought protection under the *2009 Storage Water Mitigation Plan* that now wishes to seek protection under the *2016 Settlement Mitigation Plan* has until Wednesday, May 29, 2024, at 5:00 p.m. (MT) to inform the Director of their intention to do so and to demonstrate they are in compliance with the *2016 Settlement Mitigation Plan*.

Id.

Only Henry’s Fork and Madison ground water districts filed satisfactory notice. Therefore, the Director concluded in the *Final Order Curtailing Ground Water Rights Junior to March 31, 1954* (“*Curtailment Order*”), issued May 30, 2024, that American Falls-Aberdeen, Henry’s Fork, and Madison ground water districts demonstrated that they were operating in accordance with the *2016 Mitigation Plan* so junior ground water users who were members of those districts would not be subject to curtailment during the 2024 irrigation season. *Curtailment Order*, at 7, No. CM-DC-2010-001.

As a result of their deficient notices, the Director concluded that Magic Valley, North Snake, Bingham, Bonneville-Jefferson, Jefferson Clark, and Carey Valley ground water districts were not operating in accordance with a Department approved mitigation plan and would be subject to curtailment during the 2024 irrigation season. *Curtailment Order*, at 7–8.

The *Curtailment Order* required ground water users within the Eastern Snake Plain Aquifer area of common ground water supply, whose rights have a priority date after March 31, 1954, and who have not already established to the satisfaction of the Director that they are operating in accordance with a Department-approved mitigation plan, to cease diverting ground water under those rights. *Curtailment Order*, at 9.

On June 6, 2024, the Director issued the *Order Amending Curtailment List* (“*Amended Curtailment Order*”), which removed all water rights of members of Magic Valley and North Snake from the curtailment list as they established to the satisfaction of the Director that they

were operating in accordance with a Department-approved mitigation plan. *Amended Curtailment Order*, at 1, No. CM-DC-2010-001.

On June 19, 2024, the SWC and IGWA submitted a *Joint Motion for Order Approving 2024 Stipulation*, requesting that the Director issue an order accepting the *2024 Stipulation*, attached as Exhibit A to the motion, as compliance with the *2016 Mitigation Plan* for the 2024 irrigation season. *Joint Motion for Order Approving 2024 Stipulation*, at 2.³

Concurrently, the Director received a letter from Jeff Raybould, Chairman of the Idaho Water Resource Board (“IWRB”), confirming IWRB’s commitment to provide 5,000 acre-feet of storage water pursuant to the terms of the *2024 Stipulation*.

ANALYSIS

In a delivery call under the Department’s Rules for Conjunctive Management of Surface and Ground Water Resources (“CM Rules”), out-of-priority diversion of water by junior priority ground water users is allowable only “pursuant to a mitigation plan that has been approved by the Director.” IDAPA 37.03.11.040.01.b. Junior-priority ground water users “covered by an approved and effectively operating mitigation plan” are protected from curtailment under CM Rule 42. IDAPA 37.03.11.042.02. In other words, only those junior ground water users complying with an approved mitigation plan are protected from a curtailment order.

The *2016 Mitigation Plan* obligates IGWA to reduce its total consumptive use volume or recharge the equivalent of 240,000 ac-ft every year and to deliver 50,000 ac-ft of storage water annually. Each IGWA member is annually responsible for their proportionate share of that total. But the Mitigation Plan is structured in such a way that the analysis of IGWA’s mitigation efforts from one year are delayed until the following year. These delays are inherent in the Steering Committee process the parties agreed to in the *Second Addendum*.

Because the parties stipulated to the *2016 Mitigation Plan*, the Director allowed significant latitude to the agreeing parties in accepting the provisions of the mitigation plan. Despite the parties’ stipulated agreement to the terms of the *2016 Mitigation Plan*, following the drought years of 2021 and 2022, much disagreement and litigation arose between the parties regarding the interpretation, implementation, and enforceability of the plan. *See 2024 Stipulation*, at 1.

In administrative proceedings conducted pursuant to the Steering Committee process, the Director concluded that certain IGWA members failed to satisfy their proportionate mitigation obligations in 2021 and 2022, respectively, and were therefore not operating in accordance with a Department-approved mitigation plan. *Amended Final Order Regarding Compliance with Approved Mitigation Plan (“2021 Compliance Order”)*, at 16-17, No. CM-MP-2016-001; *Final Order Regarding IGWA’s 2022 Mitigation Plan Compliance (“2022 Compliance Order”)*, at 8, No. CM-MP-2016-001. To resolve the deficiency in 2021, the SWC and IGWA entered into a *Remedy Agreement*, which the Director approved as an appropriate contingency for

³ The *2024 Stipulation* is entered into and executed by: Idaho Ground Water Appropriators, Inc., North Snake Ground Water District, Magic Valley Ground Water District, Carey Valley Ground Water District, Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, and Henry’s Fork Ground Water District (collectively, the “Groundwater Users”), and Twin Falls Canal Company, North Side Canal Company, American Falls Reservoir District No. 2, Milner Irrigation District, Burley Irrigation District, A&B Irrigation District, and Minidoka Irrigation District (collectively, the “SWC”). *2024 Stipulation*, at 1.

noncompliance. *2021 Compliance Order*, at 17-20. Administrative proceedings addressing the 2022 noncompliance are ongoing before an independent hearing officer.

Rather than continue to litigate their disagreements, the SWC and IGWA have entered into the *2024 Stipulation*, which “prescribe[es] the mutually agreeable terms by which the Groundwater Users will comply with the 2016 [Mitigation] Plan for the 2024 irrigation season.” *Joint Motion for Order Approving 2024 Stipulation*, at 3.

By submitting the *2024 Stipulation* to the Department, the parties request the Director “issue an order accepting the *2024 Stipulation* as compliance with the 2016 [Mitigation] Plan for the 2024 irrigation season, and issue an order amending the curtailment list to protect all patrons of the Groundwater Users from curtailment during the 2024 irrigation season under the terms provided in the stipulation.” *Id.*

For the ground water districts to be protected from curtailment by operating under the *2016 Mitigation Plan*, they must demonstrate that they continue to comply with all elements of the plan. The two main elements of the plan are the conservation obligation (including curing the 2022 deficiency and fulfilling the 2024 obligation), and the storage water delivery obligation.

A. The 2024 Conservation Obligation

As stated above, the *2016 Mitigation Plan* requires IGWA members to reduce their proportionate share of total diversions or recharge the equivalent of 240,000 ac-ft every year. To demonstrate their continued commitment to this element of the plan for the 2024 irrigation season, the ground water districts agree in the *2024 Stipulation* that:

[T]he ground water districts will collectively conserve 240,000 acre-feet of groundwater as compared to their average annual diversions during the time period 2010-2014. A 205,000 acre-feet portion is allocated among the ground water districts as it has been historically set forth in Appendix A attached hereto. The remaining 35,000 acre-feet portion is allocated based on steady-state impacts to the Near Blackfoot to Neely reach of the Snake River as set forth in Appendix A. Each district shall be independently responsible to satisfy its respective groundwater conservation obligations as set forth in Appendix A.

2024 Stipulation, at 2 ¶ 5.

Although the *2016 Mitigation Plan* requires 240,000 acre-feet of annual conservation, when the ground water districts failed to achieve the 2023 sentinel well benchmark the SWC requested that the Director specify the additional actions the ground water districts must take as part of ongoing adaptive management requirements. In response, the Director issued the *Final Order Specifying Additional Actions* (“*Additional Actions Order*”) on May 3, 2024. In the *Additional Actions Order*, the Director concluded that:

[I]t is appropriate that the Districts increase their proportionate share of the total annual ground water use reduction of 240,000 acre-feet by an additional 5% (12,000 acre-feet) during the 2024 irrigation season and then increase their proportionate share of the total annual ground water reduction of 240,000 acre-feet by an additional 12,000 acre-feet each year thereafter until the 2023 benchmark is achieved or the Steering Committee fulfills its obligations set forth in § 2.c.ii of the *Second Addendum* and recommends alternative actions.

Additional Actions Order, at 5. Subsequently, IGWA filed a petition for reconsideration and requested a hearing on the *Additional Actions Order*. In the *2024 Stipulation*, the parties express an intent to stay all litigation between them until October 1, 2024 “to enable the parties to focus their attention on cooperative negotiations.” *2024 Stipulation*, at 2–3 ¶ 9. The stipulated stay includes Docket No. CM-MP-2016-001, which contains the *Additional Actions Order*.

To further the parties’ goals to “work cooperatively and collaboratively to determine groundwater management and mitigation measures for 2025 and future years that resolve past disagreements and are mutually beneficial to the parties” and to encourage the parties to negotiate their own alternative additional actions, the Director hereby stays the *Additional Actions Order* until October 1, 2024, pursuant to Department Rule of Procedure 780. *2024 Stipulation*, at 1 ¶ F; IDAPA 37.01.01.780.

Accordingly, the Director concludes that the ground water districts’ commitment to conserving 240,000 acre-feet made in the *2024 Stipulation* is consistent with the conservation obligation required in the *2016 Mitigation Plan*. As compliance with this requirement is measured after the irrigation season is complete, at this time the Director is satisfied that the ground water districts’ commitment to the 240,000 acre-foot obligation demonstrates their compliance with this element of the plan for 2024.

B. The 2022 Breach of the Conservation Obligation

In August of 2023, the Director found that certain ground water districts did not satisfy their proportionate share of IGWA’s conservation obligation in 2022 and were therefore not in compliance with the *2016 Mitigation Plan* in 2022. See *2022 Compliance Order*. Administrative proceedings followed and were ongoing prior to the Department’s receipt of the *2024 Stipulation*. In the *2024 Stipulation*, the parties resolve the deficient performance in 2022 as follows:

In consideration of reaching an agreement for 2024 mitigation and accommodating continued negotiations, and recognizing conservation actions taken in 2023, SWC forgives any remaining obligations for the outstanding 2022 breach previously found by IDWR for Bingham Ground Water District, Bonneville-Jefferson Ground Water District, and Jefferson-Clark Ground Water District. This provision resolves issue 4 identified in the *Notice of Hearing* issued December 29, 2023, in IDWR Docket No. CM-MP-2016-001....

2024 Stipulation, at 2 ¶ 7. Because the SWC and IGWA agree to forgiveness of the 2022 deficiency in exchange for reaching an agreement in 2024, accommodating continuing negotiations, and recognizing conservation performed in 2023 well in excess of the 240,000-acre-foot requirement, the Director accepts the stipulated forgiveness as compliance with the *2016 Mitigation Plan* for the 2024 season. As a result, the Director concludes that Bingham Ground Water District, Bonneville-Jefferson Ground Water District, and Jefferson-Clark Ground Water District are no longer in breach of the *2016 Mitigation Plan* for the 2024 season and will be removed from the curtailment list.

While the Director accepts that the stipulated forgiveness is sufficient to consider the ground water districts in compliance with the *2016 Mitigation Plan* for the 2024 season such that they can be removed from the curtailment list, Hearing Officer Roger S. Burdick is currently presiding over a proceeding that involves issues related to the 2022 breach. The outstanding issues in that proceeding are as follows:

- 1) Did the Director error by not issuing an order specifying the actions needed to cure the 2022 breach of the 2016 Mitigation Plan by certain ground water districts?
- 2) Did the Director error by not immediately issuing an order curtailing ground water districts that breached the 2016 Mitigation Plan in 2022?
- 3) Can the 2009 mitigation plan be used to cure the ground water districts' 2022 breach of the 2016 Mitigation Plan?
- 4) What action must be taken by the ground water districts to cure their 2022 breach of the 2016 Mitigation Plan?

Order Authorizing Discovery; Scheduling Order; Order Suspending IDAPA 37.01.01.354; Notice of Prehearing Conference and Hearing, at 4, No. CM-MP-2016-001. These four legal issues are still before Hearing Officer Burdick and answers to those will come from Hearing Officer Burdick. In the *2024 Stipulation*, the parties stipulate to stay Docket No. CM-MP-2016-001, which includes Hearing Officer Burdick's case. Should Hearing Officer Burdick issue a recommended order before the parties "jointly file stipulate[d] motions to stay litigation until October 1, 2024," the Director will stay review of the recommended order until October 1, 2024. *2024 Stipulation*, at 3 ¶ 9.

C. Storage Water Delivery in 2024

In addition to the conservation obligation, the *2016 Mitigation Plan* also obligates IGWA to deliver 50,000 ac-ft of storage water annually. As explained in the *Amended Order Determining Deficiency*:

[T]he 50,000 acre-foot obligation does not come due until 21 days after the day of allocation. Furthermore, the *2016 Settlement Mitigation Plan* does not require documentation of securing the water.... In addition, the *2016 Settlement Mitigation Plan* specifically spells out a dispute resolution process if the Districts breach the 50,000 acre-foot obligation. Only if that dispute resolution process fails does the Director get involved.

Amended Order Determining Deficiency, at 9 (internal citations omitted).

In the *2024 Stipulation*, the parties agree that "[f]or the 2024 irrigation season, the Groundwater Users will deliver 65,000 acre-feet of storage water to the SWC as set forth in Appendix B. 50,000 acre-feet will be delivered in accordance with the 2016 Plan, and 15,000 acre-feet will be delivered in accordance with the 2021 Remedy Agreement." *2024 Stipulation*, at 2 ¶ 6.

The 50,000-acre-foot storage water delivery term is IGWA's obligation, however, Appendix B identifies that the Idaho Water Resource Board will provide 5,000 of the 50,000 acre-feet. Nevertheless, in consideration of the parties' agreement, supported by the Raybould Letter confirming IWRB's commitment to providing the 5,000 acre-feet, and in light of the *2016 Mitigation Plan*'s dispute resolution process, the Director is satisfied that the Districts are in compliance with the storage water delivery element of the *2016 Mitigation Plan* for 2024. The Director's acceptance of the IWRB delivering 5,000 acre-feet of the 50,000 storage water delivery obligation in 2024 should not be interpreted as an amendment to the requirements of the *2016 Mitigation Plan* or agreement to allowing the IWRB to carry a share of the obligation in future years.

CONCLUSION

Pursuant to section 3 of the *2024 Stipulation*, the Director approves the *2024 Stipulation* as evidence of compliance with the *2016 Mitigation Plan* for the 2024 irrigation season. Put differently, the parties' *2024 Stipulation* establishes to the satisfaction of the Director that the ground water districts are operating in accordance with a Department-approved mitigation plan for 2024. A *Seconded Order Amending Curtailment* list removing Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Jefferson-Clark Ground Water District, and Carey Valley Ground Water District from the curtailment list will be issued concurrently with this Order.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the SWC and IGWA's *Joint Motion for Order Approving 2024 Stipulation* is GRANTED. The Director's May 3, 2024 *Final Order Specifying Additional Actions* is STAYED until October 1, 2024.

Dated this 20th day of June 2024.



MATHEW WEAVER
Director

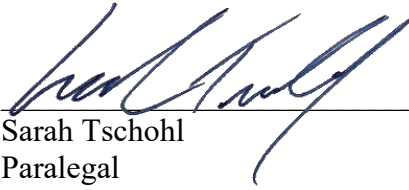
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of June 2024, the above and foregoing, was served by the method indicated below, and addressed to the following:

<p>John K. Simpson MARTEN LAW LLP PO Box 2139 Boise, ID 83701-2139 jsimpson@martenlaw.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
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<p>W. Kent Fletcher FLETCHER LAW OFFICE PO Box 248 Burley, ID 83318 wkf@pmt.org</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
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<p>COURTESY COPY TO: Corey Skinner IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033 corey.skinner@idwr.idaho.gov</p>	<input checked="" type="checkbox"/> Email
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Sarah Tschohl
Paralegal

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.