COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Company (collectively hereafter referred to as the “Surface Water
Coalition”, “Coalition”, or “SWC”), by and through counsel of record, and hereby submit their
Petition for Reconsideration and Clarification of the Interim Director’s September 17, 2010
Final Order pursuant to Idaho’s Administrative Procedures Act, I.C. § 67-5201 et seq., and the
Department’s Rules of Procedure (IDAPA 37.01.01. et seq.).

PETITION FOR RECONSIDERATION / CLARIFICATION

The Coalition incorporates by reference its April 21, 2010 Petition for Reconsideration
and Clarification of April 7, 2010 Final Order. The Director’s Step 7 Order continues the same
errors identified in the Coalition’s prior petition and should be reconsidered.

In addition, the Director’s Step 7 Order does not reflect actual events that occurred during
the 2010 irrigation season and contains misstatements regarding IGWA’s failure to comply with
the Final Order Regarding April 2010 Forecast Supply (Methodology Steps 3 & 4); Order on
Reconsideration issued on June 24, 2010 (“As Applied Order”). In the As Applied Order, the
Director ordered the following:

38. Junior ground water users must establish, to the satisfaction of the
Director, their ability to secure 56,600 acre-feet. The Director will review the
executed storage water leases and options to lease storage water and combine
sufficient leases together to provide the 56,600 acre-feet obligation. These leases
should be committed to the Watermaster of Water District 01 by instruction of the
Director solely for the SWC mitigation.

***

IT IS FURTHER ORDERED that the Watermaster of Water District 01
shall not deliver water rented under the above contracts to any other entity other
than the SWC, including the lessor, until further notice by the Director.

As Applied Order at 9-10.

Based upon the above directive, storage water leased by IGWA was to be “committed to
the Watermaster of Water District 01” to be used “solely for the SWC mitigation”. Based upon
weekly reports issued by Water District 01, none of the storage water identified in the As Applied
Order was ever submitted to Water District 01 rental pool to be available for assignment by the Watermaster. Accordingly, this storage water apparently remained in the lessor’s storage accounts during the entire irrigation season and was not precluded from being delivered to the lessor or others as ordered by the Director.

Accordingly, the following findings and conclusions in the Step 7 Order should be clarified or reconsidered:

3. IGWA secured in excess of 57,000 acre-feet of storage water to mitigate for 2010 in-season injury, as well as projected 2011 reasonable carryover shortfalls (Methodology Steps 9 and 10), if any. The Director instructed the watermaster for Water District 01 to not deliver storage water leased by IGWA under specific contracts for SWC mitigation to any entity other than the SWC, including the lessor, until further notice by the Director. The Director ordered dedication of IGWA’s secured water to the SWC mitigation until he could determine the SWC’s in-season injury.

***

4. Because there will be no 2010 in-season shortfalls, the Director notifies the watermaster for Water District 01 to release IGWA’s 57,000 acre-feet of secured water.

***

IT IS FURTHER ORDERED that the watermaster for Water District 01 shall release IGWA’s 57,000 acre-feet of secured storage water.

Step 7 Order at 1, 7.

The above findings wrongly imply that IGWA secured 57,000 acre-feet that was then committed to the Watermaster of Water District 01 through the rental pool, and the rental fees were paid, both of which are required for private leases by the Water District 1 rental pool rules. The findings also wrongly imply that the water was in the control of the Watermaster and was available for assignment by the Watermaster to the SWC “solely” for use as mitigation water. No such assignment to the control of the Watermaster or payment of fees ever took place, therefore the Watermaster did not have control of the storage water for mitigation purposes.
during the 2010 irrigation season. In short, the Watermaster never had control over any mitigation water to “not deliver” or “release” as was directed by the Director’s orders.

In addition, the Director’s Step 7 Order lacks any information or accounting as to whether this “secured” storage water was actually used by any of the lessors during the 2010 irrigation season. Had “secured” water actually been used by a lessor, or committed to some other entity, it is obvious it would not have been available to deliver to SWC “solely” for mitigation as ordered. Since the water was never assigned pursuant to the rental rental pool rules, the Watermaster had no control over the “assigned” water. The factual inaccuracies stated in the Step 7 Order demonstrate a misunderstanding of the procedural requirements of the rental pool rules and the inability of IDWR to control the delivery of mitigation water, control that is lawfully required and mandated by the Orders of the Director if a junior ground water user wants to divert out-of-priority following a finding of material injury.

Since the storage water was not committed to the control of the Watermaster, the water remained in the control of and was available for use by the lessor during the entire irrigation season. The order should be reconsidered or clarified to identify IGWA’s failure to comply with the As Applied Order by failing to submit its private leases to the rental pool and pay fees as required by the Water District 01 rental pool rules. These failures resulted in a lack of control of the mitigation water by the Watermaster and IDWR, as required by law and the Orders of the Director.

DATED this 1st day of October, 2010.

BARKER ROSHOLT & SIMPSON LLP  FLETCHER LAW OFFICE

Travis L. Thompson  W. Kent Fletcher

SWC PETITION FOR RECONSIDERATION
Attorneys for A&B Irrigation District, Burley Irrigation District, Twin Falls Canal Company, North Side Canal Company, and Milner Irrigation District

CAPITOL LAW GROUP PLLC

C. Thomas Arkoosh

Attorneys for American Falls Reservoir District #2
CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of October, 2010, I served a true and correct copy of the foregoing Surface Water Coalition’s Petition for Reconsideration and Clarification of Final Order Revising April Forecast Supply (Methodology Step 7) on the following by the method indicated:

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