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**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

**SURFACE WATER COALITION'S
PETITION REQUESTING HEARING
ON DIRECTOR'S FINAL ORDER
REGARDING APRIL 2012 FORECAST
SUPPLY (METHODOLOGY STEPS 1-8)
/ MOTION TO AUTHORIZE
DISCOVERY**

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 Canal Company (collectively hereafter referred to as the “Surface Water Coalition”, “Coalition”, or “SWC”), by and through counsel of record, and hereby submit their *Petition Requesting Hearing on Final Order Regarding April 2012 Forecast Supply / Motion to Authorize Discovery* pursuant to Idaho Code § 42-1701A(3) and the Department’s Rules of Procedure (IDAPA 37.01.01. *et seq.*).¹

INITIAL REASONS FOR PETITION

On April 12, 2012 the Interim Director issued the *Final Order Regarding April 2012 Forecast Supply* (“April Forecast Order”). The April Forecast Order purports to implement Steps 1-8 of the *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”).²

With respect to Step 1, the Director notes that no parties other than Minidoka Irrigation District submitted electronic shape files delineating the total irrigated acres to the Department by April 1. Notwithstanding that the Director’s entire methodology is disputed and subject to challenge before the District Court, there was no reason to submit such information to IDWR. First, Step 1 asks the SWC “to confirm in writing that the existing electronic shape file from the previous year has not varied by more than 5%.” Based upon representations by IDWR’s counsel in mid-March, it was the SWC’s understanding that IDWR would use the same shape files that it did in 2011, which were the recommendations for the SWC’s water rights in the SRBA.

Although the rest of the SWC did not confirm this “in writing” in 2011, IDWR used its

¹ Although the Director’s order does not contain the standard reference allowing parties to petition for a hearing under Idaho Code § 42-1701A(3), the Coalition is entitled to request one pursuant to the statute.

² The Director’s Methodology Order is currently on appeal to the Twin Falls County District Court (consolidated cases CV-2010-382 *et al.*). The district court judicial review proceeding is stayed until the Idaho Supreme Court issues a decision in consolidated appeal no. 38191-2010.

recommendations in implementing the Methodology Order in 2011. Based upon IDWR's actions in 2011, and the representations that it would use the same information in 2012, the SWC believed that Step 1 would be implemented the same way without the requirement to provide further information.

With respect to Step 3, the Methodology Order provides the following:

Typically within the first two weeks of April, the USBR and USACE issue their Joint Forecast that predicts an unregulated inflow volume at the Heise Gage for the period April 1 through July 31. Within fourteen (14) days after issuance of the Joint Forecast, the Director will predict and issue an April Forecast Supply for the water year and will compare the April Forecast Supply to the baseline demand ("BD") to determine if a demand shortfall ("DS") is anticipated for the upcoming irrigation season. A separate April Forecast Supply and DS will be determined for each member of the SWC.

Methodology Order at 35.

In the April Forecast Order the Director implements the above-referenced Step 3 as follows:

13. On April 5, 2012, the Joint Forecast was announced, predicting an unregulated inflow of 3,250,000 acre-feet at the Snake River near Heise gage for the period of April through July. The Joint Forecast "is generally as accurate a forecast as is possible using current data gathering and forecasting techniques." *Methodology Order* at 9. The forecasted flow volume equates to 91% percent of average and is most similar to the flow volume experienced in 2006. The Heise forecast was used in regression equations for each SWC entity to predict the natural flow supply. Given the predicted supply, all storage accounts are predicted to fill. The 2011 storage allocation, which included 100 percent fill less the 2011 evaporation, was used as the 2012 predicted storage allocation.

April Forecast Order at 3.

Based upon information and belief, the Director relied upon the wrong, or an outdated joint forecast for the unregulated inflow of the Snake River at Heise (April – July) at the time he issued the April Forecast Order on Friday April 13, 2012. It is the SWC's understanding that the joint forecast used by U.S. Bureau of Reclamation and the U.S. Army Corps of Engineers, as

well as Water District 01, was only 85% of average, not the 91% used by the Director. Accordingly, the predicted natural flow supply is in error. In addition, the Director's reliance upon 2011 storage allocations as representing the 2012 storage allocation may also be incorrect. The April Forecast Order should be revised to use the correct joint forecast, including the most current and accurate information available to the Director at the time he issued the order.

MOTION TO AUTHORIZE DISCOVERY

The SWC hereby moves for order authorizing discovery in this matter pursuant to Rule 521 of the Department's Rules of Procedure. The SWC requests the opportunity to discover the factual basis and analysis performed by the Director in issuing the April Forecast Order.

REQUEST FOR HEARING

The SWC, pursuant to Idaho Code § 42-1701A(3) and Rule 740.02.b of the Department's Rules of Procedure, hereby requests a hearing on the Director's April Forecast Order. The SWC reserves the right to amend this petition as necessary.

DATED this 27th day of April, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2012, I served a true and correct copy of the foregoing *Surface Water Coalition's Petition Requesting Hearing on Final Order Regarding April 2012 Forecast Supply (Methodology Steps 1-8) / Motion to Authorize Discovery* on the following by the method indicated:

<p>Interim Director Gary Spackman c/o Victoria Wigle State of Idaho Dept of Water Resources 322 E Front St Boise ID 83720-0098 *** service by electronic mail</p> <p>facsimile – 208-287-6700 gary.spackman@idwr.idaho.gov victoria.wigle@idwr.idaho.gov</p>	<p>Matt Howard U.S. Bureau of Reclamation 1150 N. Curtis Rd. Boise ID 83706-1234 *** service by electronic mail only</p> <p>mhoward@pn.usbr.gov emcgarry@pn.usbr.gov</p>	<p>IDWR – Eastern Region 900 N. Skyline Dr., Suite A Idaho Falls, ID 83402-1718 *** service by electronic mail only lyle.swank@idwr.idaho.gov</p>
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