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Attorneys for Petitioner American Falls Reservoir District #2

**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

**PETITION FOR
RECONSIDERATION OF FINAL
ORDER ESTABLISHING 2012
REASONABLE CARRYOVER
(METHODOLOGY STEP 9)**

COMES NOW, Petitioner, American Falls Reservoir District #2 (“AFRD#2”), by and through counsel of record, and pursuant to Rule 740.02(a) of the Department’s Rules of Procedure (IDAPA 37.01.01 *et seq.*) and hereby files this *Petition for Reconsideration of Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9)* (hereinafter “*Final Order*”). The issue identified for reconsideration and the supporting basis is set forth below.

I. The Water Master's Failure to Properly Account for Diversions under Water Right 1-6 Resulted in Erroneous Determinations of Storage Allocations and Carryover.

On May 1, 2012, the Snake River Basin Adjudication District Court ("SRBA") issued a partial decree for water right 1-6 to the Bureau of Reclamation ("Reclamation"). That was right authorizes the diversion of 1,700 c.f.s from the Snake River for irrigation and storage. Importantly, the water right includes the following condition under the "Quantity" element of the Partial Decree which authorizes diversions of water under the right to either natural flow or storage:

The right to divert as natural flow during each irrigation season under this water right, having a March 30, 1921, priority, as follows: From May 1 of each irrigation season continuing during that season so long as there is natural flow available for that priority, the first 1,700 cubic feet per second of flow to be available one-half (1/2) to American Falls Reservoir District No. 2 and one-half (1/2) to American Falls Reservoir, except that in any year in which American Falls Reservoir is full to capacity on April 30 or fills after that date, taking into account any water that may be temporarily stored to its credit in upstream reservoirs, all water diverted by American Falls Reservoir District No. 2 within the maximum of 1,700 cubic feet per second during the year prior to the initial storage draft on American Falls Reservoir after the reservoir finally fills in that year shall be considered as natural flow under water right No. 1-6. Nothing herein shall prevent American Falls Reservoir District No. 2 from diverting water under said license prior to May 1 of a given irrigation season but all such diversion shall be charged as storage in the event the reservoir is not full on April 30 of that season or does not fill after April 30 of that season.

This condition requires a unique administration process for diversions under water right 1-6. In particular, the condition recognizes that water available under water right 1-6 will accumulate to both natural flow and storage account(s) under certain circumstances.

Notwithstanding this provision, the Water master for Water District 01 failed to properly account for water right 1-6. In particular, accounting records show that, at certain times of the

2012 irrigation season, the water district was not accumulating diversions to storage in American Falls Reservoir under water right 1-6 to storage even though portions of water right 1-6 were being diverted as natural flow. Yet, accumulation to storage is required by the plain language of water right 1-6. As a result, the Director's *Final Order* incorrectly identifies the material injury suffered by AFRD#2 for reasonable carryover.¹

CONCLUSION

The Water Master's failure to properly account for diversions under water right 1-6 has resulted in an erroneous determination of reasonable carryover for AFRD#2 and, very likely, other Spaceholders in American Falls Reservoir. Without proper accounting, the *Final Order*'s determination of material injury is flawed and should be reconsidered.

DATED this 10th day of December, 2012.

ARKOOSH EIGUREN PLLC



C. Tom Arkoosh
Attorneys for AFRD#2

¹ Other spaceholders accounts in American Falls may also have been affected by this error.

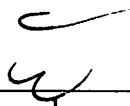
CERTIFICATE OF MAILING

I hereby certify that on this 10th day of December, 2012, the above and foregoing, was sent to the following in the manner indicated below:

<p>Gary Spackman, Director – Original c/o Deborah Gibson Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720 Deborah.gibson@idwr.idaho.gov Garrick.baxter@idwr.idaho.gov Chris.bromley@idwr.idaho.gov</p>	<p style="text-align: center;"> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> </p>	<p>U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email</p>
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