

RECEIVED

JAN 17 2014

DEPARTMENT OF
WATER RESOURCES

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Facsimile: (208) 878-2548

Attorneys for American Falls Reservoir District No. 2

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF)	
WATER TO VARIOUS WATER RIGHTS)	Docket No. CM-DC-2010-001
HELD BY OR FOR THE BENEFIT OF A & B)	
IRRIGATION DISTRICT, AMERICAN)	AFRD2'S RESPONSE AND
FALLS RESERVOIR DISTRICT #2,)	OBJECTION TO IGWA'S
BURLEY IRRIGATION DISTRICT, MILNER)	AMENDED NOTICE OF
IRRIGATION DISTRICT, MINIDOKA)	STORAGE WATER SUPPLY
IRRIGATION DISTRICT, NORTH SIDE)	RE 2013 METHODOLOGY
CANAL COMPANY, AND TWIN FALLS)	ORDER (STEP 10)
CANAL COMPANY,)	
-----)	

American Falls Reservoir District No. 2 (AFRD2) responds and objects to Idaho Ground Water Appropriators, Inc.'s (IGWA's) Amended Notice of Storage Water Supply Re 2013 Methodology Order (Step 10) (Amended Notice) on the following grounds:

1. In response to Orders issued by the Director, IGWA filed the Amended Notice. In its Amended Notice IGWA represents that a source of its supply of mitigation water is 1,045 acre

feet of storage in the name of North Fork Reservoir Company. In support its assertion, IGWA attached a letter dated January 10, 2014 signed by Randall C. Budge on behalf of IGWA and the President of the North Fork Reservoir Company.

2. The letter, which it is assumed should be interpreted to be a private lease of storage water, has not been filed with Water District 1. Rather, the letter provides that “IGWA may make this assignment in its discretion to comply with the Order by notifying Water District 1 Water Master Lyle Swank to make the assignment and providing North Fork Reservoir Company notice thereof.” (Emphasis added)

3. In addition, the letter provides “Within thirty days of the date the assignment is made, IGWA will pay to North Fork Reservoir Company \$20 per AF on the water assigned up to the maximum of 1,045 AF, and will also pay all administrative fees thereon to Water District 1.” (Emphasis added)

4. Pursuant to paragraphs 17 and 18 of the Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover dated June 16, 2010 (Methodology Order), “junior ground water users will be required to establish, to the satisfaction of the Director, their ability to provide a volume of storage water equal to the reasonable carryover shortfall for all injured members of the SWC.”

5. Water District 1 Rental Pool Procedure 6.1 provides: “all leases must be transacted through the rental pool...”.

6. Water District 1 Rental Pool Procedure 4.3.102 provides: “applications are not deemed accepted until received by the Water Master together with the appropriate fees required under Rules 5.5 (rentals) or 6.4 (leases).”

7. AFRD2 asserts that the letter attached as Exhibit C to the Amended Notice does not comply with the Methodology Order in that it does not provide certainty of the ability to provide a volume of storage water as required by the Director due to the fact that the letter violates the terms of the Water District 1 Rental Pool Procedures. AFRD2 asserts that the letter violates the Water District 1 Rental Pool Procedures for the following reasons:

7.1. The letter has not been filed with Water District 1.

7.2. The administrative fees and board surcharge have not been paid.

7.3. IGWA does not have the right, as asserted in its January 10, 2014 letter, to pay administrative fees within thirty days of the date of the assignment of storage.

7.4. IGWA’s assertion that “IGWA may make this assignment in its discretion to comply with the Order...” does not provide reasonable certainty that the storage water will be provided; it is not within IGWA’s discretion to provide the storage water if IGWA desires to use storage water for mitigation.

WHEREFORE, AFRD2 requests that the Director order that if IGWA desires to use a private lease of storage water to satisfy the Director’s ordered mitigation obligations, IGWA must comply with the Water District 1 Rental Pool Procedures. A non-discretionary, binding assignment of storage water must be made available for assignment in order to satisfy IGWA’s

mitigation obligations so that junior water right holders may irrigate out of priority during a time of injury.

DATED this 17 day of January, 2014.

FLETCHER LAW OFFICE



W. Kent Fletcher

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of January, 2014, I served a copy of the foregoing AFRD2'S RESPONSE AND OBJECTION TO IGWA'S AMENDED NOTICE OF STORAGE WATER SUPPLY RE 2013 METHODOLOGY ORDER (STEP 10) upon the following:

Original by Regular Mail and Email to:

Gary Spackman, Director
c/o Deborah Gibson
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
Deborah.gibson@idwr.idaho.gov
garrick.baxter@idwr.idaho.gov
chris.bromley@idwr.idaho.gov

Copies by email to:

Randall C. Budge
Thomas J. Budge
Racine, Olson, Nye, Budge & Bailey, Chartered
P.O. Box 1391
Pocatello, Idaho 83204-1391
rcb@racinelaw.net
tjb@racinelaw.net

John A., Rosholt
Travis L. Thompson
Paul L. Arrington
Barker, Rosholt & Simpson, LLP
195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029
jar@idahowaters.com
flt@idahowaters.com
pla@idahowaters.com

Kathleen Marion Carr
US Department of the Interior
960 Broadway, Suite 400
Boise, Idaho 83706
kathleenmarion.carr@sol.joi.gov

David W. Gehlert
Natural Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th St. South Terrace, Suite 370
Denver, Colorado 80202
david.gehlert@usdoj.gov

Matt J. Howard
US Bureau of Reclamation
Pacific Northwest Region
1150 N. Curtis Road
Boise, Idaho 83706-1234
mhoward@pn.usbr.gov

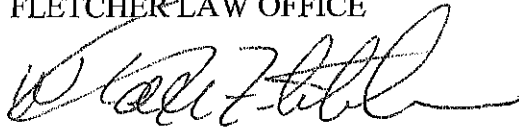
Sarah H. Klahn
Mitra Pemberton
White Jankowski, LLP
511 16th St., Suite 500
Denver, Colorado 80202
sarahk@white-jankowski.com

Michael C. Creamer
Jeffrey C. Fereday
Givens Pursley LLP
P.O. Box 2720
Boise, Idaho 83701-2720
mcc@givenspursley.com
jcf@givenspursley.com

Dean Tranmer
City of Pocatello
P.O. Box 4169
Pocatello, Idaho 83205
dtranmer@pocatello.us

William A. Parsons
Parsons, Smith, Stone, Loveland & Shirley, LLP
P.O. Box 910
Burley, Idaho 83318
wparsons@pmt.org

FLETCHER LAW OFFICE



W. Kent Fletcher