

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF WATER)	Docket No. CM-DC-2010-001
TO VARIOUS WATER RIGHTS HELD BY OR FOR)	
THE BENEFIT OF A&B IRRIGATION DISTRICT,)	ORDER REVISING APRIL 2016
AMERICAN FALLS RESERVOIR DISTRICT #2,)	FORECAST SUPPLY AND
BURLEY IRRIGATION DISTRICT, MILNER)	AMENDING CURTAILMENT
IRRIGATION DISTRICT, MINIDOKA IRRIGATION)	ORDER
DISTRICT, NORTH SIDE CANAL COMPANY,)	
AND TWIN FALLS CANAL COMPANY)	(METHODOLOGY STEP 6)
_____)	

The Director (“Director”) of the Idaho Department of Water Resources (“Department”) finds, concludes, and orders as follows:

FINDINGS OF FACT

A. Background

1. On April 19, 2016, the Director issued his *Fourth Amended 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 Surface Water Coalition (“SWC”). This order applies step 6 of the Methodology Order.

2. Step 6 states as follows:

Approximately halfway through the irrigation season, but following the events described in Step 5, the Director will, for each member of the SWC: (1) recalculate RISD [Reasonable In Season Demand]; (2) issue a revised FS [Forecast Supply]; and (3) estimate the Time of Need date.

Methodology Order at 37 (internal footnote omitted).

3. On April 19, 2016, the Director also issued his *Final Order Regarding April 2016 Forecast Supply (Methodology Steps 1 – 3)* (“April Forecast Supply Order”). The April Forecast Supply Order predicted a demand shortfall to the SWC of 44,200 acre-feet for the 2016 irrigation season. *April Forecast Supply Order* at 3. At that time, the only member of the SWC predicted to experience material injury during the 2016 irrigation season was the Twin Falls Canal

Company (“TFCC”). The Director ordered that, by May 3, 2016, ground water users with consumptive water rights “junior to February 8, 1989, 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 [demand shortfall] of 44,200 acre-feet in accordance with an approved mitigation plan.” *Id.* at 6. The Director also ordered that, if a junior ground water user cannot establish they can mitigate for their proportionate share of the predicted demand shortfall in accordance with an approved mitigation plan, “the Director will issue an order curtailing the junior-priority ground water user.” *Id.*

4. On May 18, 2016, the Director issued a *Final Order Curtailing Ground Water Rights Junior to February 8, 1989* (“Curtailment Order”). The Director order that:

[A]t 12:01 a.m. on or before June 3, 2016, ground water users holding water rights bearing priority dates junior to February 8, 1989, within the [Eastern Snake Plain Aquifer area of common ground water supply] listed in Attachment A to this order shall curtail/refrain from diversion and use of ground water pursuant to those water rights unless notified by the Department that the order of curtailment has been modified or rescinded as to their water rights.

Curtailment Order at 6.

B. April – June Climate

5. The April 2016 Joint Forecast prepared by the United States Army Corps of Engineers and the United States Bureau of Reclamation predicted 3,200,000 acre-feet of natural flow at the Heise gage for the period April – July, 2016. *April Forecast Supply Order* at 2. The Joint Forecast “is generally as accurate a forecast as is possible given current data gathering and forecasting techniques.” *Methodology Order* at 17.

6. The months of April and June were dry. According to Natural Resource Conservation Service Snotel sites, the Upper Snake received 69%, 103% and 28% of average precipitation in April, May and June, respectively. The National Weather Service’s Twin Falls weather station reported 110%, 137% and 29% of normal precipitation in April, May and June, respectively. Twin Falls temperatures were 3.3 degrees above normal for April, were 1.1 degrees below normal for May, and were 2.7 degrees above normal for June.¹

C. Reasonable In-Season Demand

7. RISD is the volume of water that would be required to be diverted at the point of diversion during the year of evaluation to grow the specific crops within the service area of the entity. In April, the demand from the 06/08/12 BLY represents the RISD. During the irrigation season, the RISD for the already expired portion of the irrigation season is recalculated by

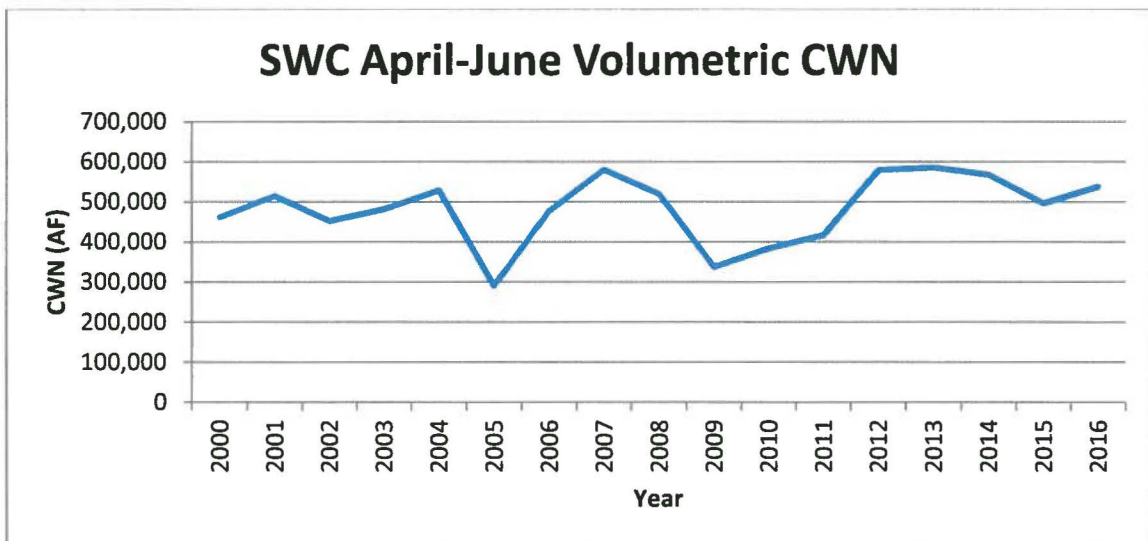
¹ Precipitation and temperature data obtained from the NOAA National Weather Service Preliminary Monthly Climate Data for the Twin Falls 3SE weather station (Twin Falls Airport).

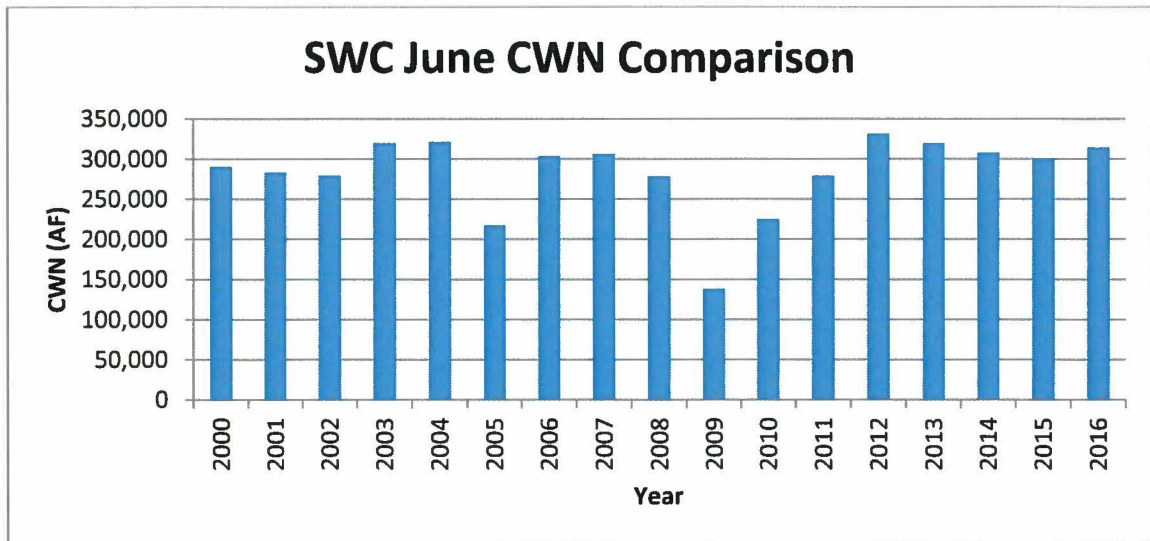
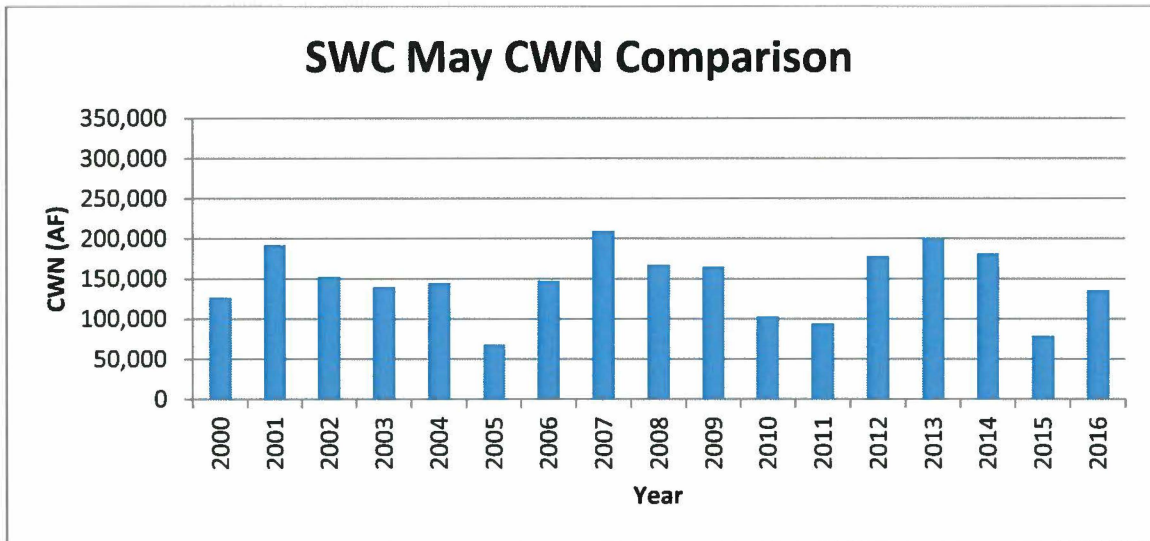
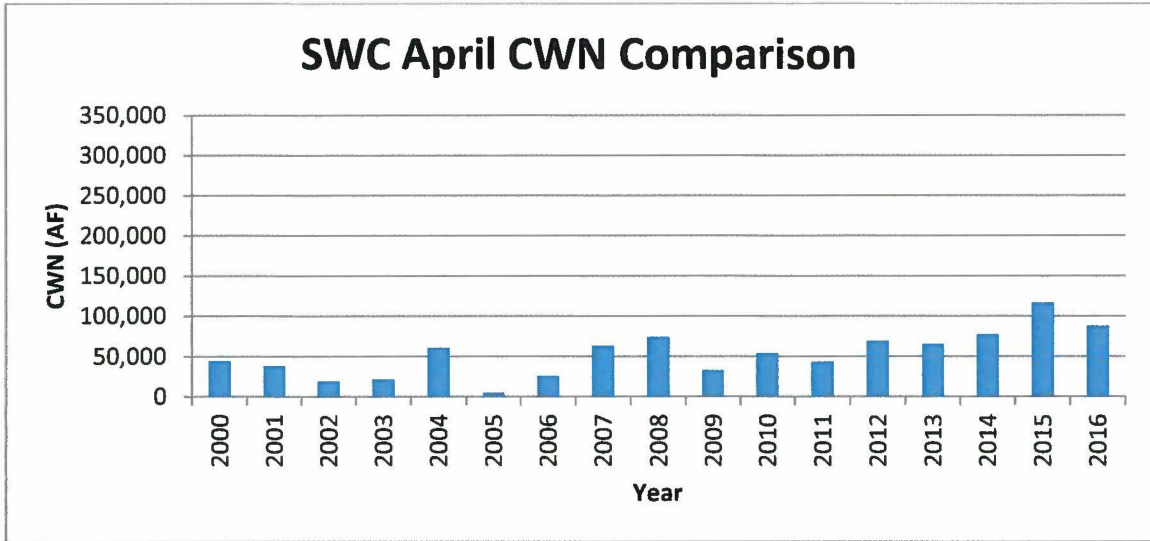
dividing the actual crop water need (“CWN”) for each entity by the project efficiency for that entity. For the future remainder of the irrigation season, the RISD is the demand predicted from the July-October 06/08/12 BLY. RISD is calculated on a monthly timestep.

i. Crop Water Need

8. CWN is the project wide volume of irrigation water required for crop growth such that crop development is not limited by water availability. CWN is the difference between the fully realized consumptive use associated with crop development, or evapotranspiration, and effective precipitation. CWN is an input variable for calculating reasonable in-season demand (“RISD”) for those months of the irrigation season that are complete. Actual RISD for the completed portion of the irrigation season is combined with monthly predicted baseline demands for the remaining months of the irrigation season to calculate a season-total RISD volume. Demand shortfall is then calculated as the difference between the adjusted forecast supply and the RISD. For specifics regarding determination of CWN, see *Methodology Order* at 14.

9. As calculated from the beginning of the irrigation season (April 1), the SWC’s volumetric CWN for the current water year through the month of June is 537,818 acre-feet. This volume is 108% of the April 1 – June 30 ten-year average CWN (2007 – 2016) and 102% of the CWN for the (2006/2008/2012) BLY. As calculated from April 1 to June 30, from the year 2000 until this year, 2016 has the fifth largest CWN volume of any irrigation season. The following graphs summarize monthly volumetric CWN values.





ii. Extension of BLY

10. The RISD for the future portion of the irrigation season (July –October) is the July-October demand for (2006/2008/2012) BLY. The numeric values are shown in the table in Finding of Fact 11 below.

iii. Calculation of RISD

11. As calculated from the beginning of the irrigation season (April 1), the SWC’s volumetric RISD for 2016 through the month of June is 1,398,154 acre-feet. This volume is 101% of the April 1 – June 30 ten-year average RISD (2007 – 2016) and 107% of the April-June demand for the (2006/2008/2012) BLY. As calculated from April 1 to June 30, from the year 2000 until this year, 2016 has the eighth largest RISD volume of any irrigation season. The recalculated RISD at this point of the 2016 irrigation season by entity is:

	April-June CWN (AF)	E_p (April - June)	April-June RISD (AF)	July-October Demand for 06/08/12 BLY (AF)	Recalculated RISD (AF)
A&B	17,919	0.46 – 1.05	28,392	36,114	64,505
AFRD2	56,739	0.24 – 0.4	171,296	261,740	433,036
BID	49,502	0.33 – 0.53	111,233	136,738	247,970
Milner	12,573	0.44 – 0.78	21,047	28,352	49,399
Minidoka	91,291	0.31 – 0.55	223,848	200,690	424,538
NSCC	130,340	0.25 – 0.42	387,758	584,862	972,619
TFCC	179,454	0.30 – 0.50	454,581	633,715	1,088,296

D. Forecast Supply

12. When determined during the irrigation season, the FS is the sum of the actual natural flow supply from April through June, the predicted natural flow supply from July through October, and the actual storage allocations. *Methodology Order* at 37. Actual natural flow diversions for the already expired portion of the irrigation season are extracted from the Department’s water rights accounting program. The natural flow diversions for the remainder of the irrigation season are estimated by a regression analysis. *Methodology Order* at 18. Storage allocations are determined by Water District 01 on the day of allocation.

i. Sum of Actual Natural Flow Diverted

13. Actual natural flow diverted for the period April through June for each SWC member can be found in the table contained within the Summary of Forecast Supply section in Finding of Fact 24 below.

ii. Regression Models to Predict Natural Flow (July – October)

14. Natural flow diversions were predicted for the remainder of the irrigation season by regression analysis. The Methodology Order established the following variables as predictor variables in the regression models: natural flow in the Snake River near Heise as reported by the U.S. Bureau of Reclamation, snow water equivalent data at Two Oceans Plateau SNOTEL site; Spring Creek discharge, and groundwater levels near American Falls Reservoir. Regression models were developed for each SWC member.

15. The Two Oceans Plateau snow water equivalents on June 15 or July 1 were input variables in the regressions models. On May 16, 2016, the Two Oceans Plateau SNOTEL site ceased reporting data and the June 15 and July 1 data were not available for input in the regression models. Two Oceans Plateau was initially selected by a step-wise statistical analysis for each SWC model. The Two Oceans Plateau SNOTEL snow water equivalent data was an optimum variable for several reasons including, it is located above 9,000 ft and typically still has snow late in the runoff season (June 15 and July 1), it is located in the headwaters of the Snake River above Jackson Reservoir, and has a long enough record needed for model development.

In the absence of data, new regression models were developed with snow water equivalent data from the Togwotee Pass SNOTEL site. Several SNOTEL sites located within the Upper Snake River drainage area were considered as an alternative to the Two Oceans Plateau snow water equivalent data. Togwotee Pass was the only site that was located in the basin, high enough in elevation to retain snow later in the season, and had a long enough period of record to develop regression models. Below is a comparison of the models with predictor variables for Two Oceans Plateau snow water equivalent and Togwotee Pass snow water equivalent.

	Models with Two Oceans as a Predictor		Models with Togowtee Pass as a Predictor	
	Adjusted R ²	Standard Error	Adjusted R ²	Standard Error
A&B	0.93	741	0.80	2,274
AFRD2	0.87	7,502	0.75	18,886
BID	0.89	11,480	0.91	10,494
Milner	0.84	2,939	0.68	3,695
Minidoka	0.90	15,720	0.92	14,434
NSCC	0.86	46,930	0.87	44,234
TFCC	0.85	29,270	0.83	30,439

16. Linear regression equations for, A&B Irrigation District (“A&B”), American Falls Reservoir District #2 (“AFRD2”) and Milner Irrigation District (“Milner”) were developed by comparing the July 1 snow water equivalent (inches) at the Togwotee Pass SNOTEL site to the natural flow diversions. The models resulted in a lower adjusted r² with Togwotee Pass as a predictor variable than it did with Two Oceans Plateau snow water equivalent data, however this was the best alternative to the Two Oceans Plateau site.

17. The snow water equivalent on July 1 at Togwotee Pass was 0.1 inches. This data point appears to be an error in instrumentation or a one day precipitation event. From July 14 through June 30, the snow water equivalent was zero inches and after July 1 the snow water equivalent remained zero. For implementation of the *Methodology Order*, the snow water equivalent is assumed to be zero inches on July 1. Consistent with the *Methodology Order* at 19, when the snow water equivalent is zero on July 1, the predicted natural flow supplies for the period July 1 – October 31 for A&B, AFRD2, and Milner are zero acre-feet.

18. Multiple linear regression equations for Burley Irrigation District (“BID”), Minidoka Irrigation District (“Minidoka”), and North Side Canal Company (“NSCC”) were developed to predict natural flow diversions by employing the following predictor variables: (1) the June 15 snow water equivalent (inches) at the Togwotee Pass SNOTEL site, (2) the Snake River near Heise natural flow (April – June), and (3) the March depth to water at well 5S31E27ABA1. The models resulted in slightly higher adjusted r^2 with Togwotee Pass as a predictor variable than with Two Oceans Plateau snow water equivalent data.

19. The predictor variables for BID, Minidoka, and NSCC in 2016 included: (1) zero inches of the snow water equivalent on June 15, 2016, at Togwotee Pass, (2) 2,280,00 acre-feet of natural flow runoff at the Snake River near Heise (April – June), and (3) 26.39 feet depth to water at well 5S31E27ABA1 on March 23, 2016.

20. The multiple linear regression equation for TFCC was based on the following predictor variables: (1) the June 15, 2016 snow water equivalent (inches) at the Togwotee Pass SNOTEL site, (2) the Snake River near Heise natural flow (April – June), and (3) Spring Creek total discharge (January – May). The model for TFCC resulted in slightly lower adjusted r^2 with Togwotee Pass as a predictor variable than it did with Two Oceans Plateau snow water equivalent data.

21. The predictor variables for TFCC in 2016 included: (1) zero inches of the snow water equivalent on June 15 at Togwotee Pass (2) 2,280,00 acre-feet of natural flow runoff at the Snake River near Heise (April – June) , and (3) 81,478 acre-feet total discharge at Spring Creek (January – May).

iii. Storage Allocations

22. Preliminary storage allocations for each of the SWC members are found in the table in Finding of Fact 24 below.

iv. Adjustments to Total Supply

23. The natural flow and storage water supplies were both adjusted as shown on the table in Finding of Fact 24 below. Adjustments to natural flow include 3,091 acre-feet of natural flow wheeled to Southwest Irrigation District through BID and Milner. Preliminary adjustments to the storage water supply as of July 12, 2016, that were used in this analysis were obtained from Water District 01. The only adjustments made to the stored water supply in the table below were for the Minidoka Credit. Adjustments for wheeled storage water that were published in the

weekly reports were not included as an adjustment because wheeled water does not actually increase the amount of water available for use by the SWC. Water supplied to or from the rental pool was not included in the adjustments. An adjustment for water supplied to or from the rental pool would artificially increase or decrease the shortfall obligation.

v. **Summary of Forecast Supply**

24. The table below contains the individual components of the FS for each of the SWC members.

	Natural Flow Diverted 4/1 to 6/30 (AF)	Predicted Natural Diversions Flow 7/1 to 10/31 (AF)	Natural Flow Adjustment (AF)	Preliminary Storage Allocation (AF)	Minidoka Credit Adjustment (AF)	Forecast Supply (AF)
A&B	8,013	0	0	134,288		142,302
AFRD2	103,204	0		384,006	1,000	488,210
BID	88,178	10,183	(1,707)	220,994	5,130	322,778
Milner	14,861	0	(1,384)	87,282		100,758
Minidoka	126,522	14,583		324,780	8,370	474,255
NSCC	337,816	85,530		839,044	(7,750)	1,254,641
TFCC	409,080	424,729		239,966	(6,750)	1,067,024

E. **Revised Shortfall Prediction**

25. DS, or Demand Shortfall, is calculated as the difference between RISD and the FS.

26. Based on the above, and as summarized in the table below, the Director predicts, at this time, that TFCC is expected to experience material injury.

	Forecast Supply (AF)	RISD (AF)	Shortfall (AF)
A&B	142,302	64,505	0
AFRD2	488,210	433,036	0
BID	322,778	247,970	0
Milner	100,758	49,399	0
Minidoka	474,255	424,538	0
NSCC	1,254,641	972,619	0
TFCC	1,067,024	1,088,296	21,300
		Total	21,300

27. At this time, the current, predicted shortfall to the SWC’s RISD is 21,300 acre-feet.

28. The Time of Need was established by predicting when TFCC remaining storage balance was equal to their reasonable carryover volume of 25,200 acre-feet. An analogous year was chosen to predict the storage use for TFCC for the remainder of this season. The analogous year, 2003, was selected based similar Blackfoot to Milner reach gains. Anticipating that TFCC's storage use to for the remainder of the 2016 season will be similar to the storage use in 2003, the Time of Need is predicted to occur on August 22, 2016.

CONCLUSIONS OF LAW

1. Idaho Code § 42-602 authorizes the Director to supervise water distribution within water districts:

The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director. The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

2. Idaho Code § 42-607 provides the watermaster, under the direction of the Director, shall regulate diversions “when in times of scarcity of water it is necessary so to do in order to supply the prior rights of others in such stream or water supply”

3. Based on Findings of Fact 5 through 28 above, it is reasonably certain that TFCC will be materially injured. The predicted shortfall to TFCC is 21,300 acre-feet.

4. In the April Forecast Supply Order, the Director predicted a demand shortfall to the SWC of 44,200 acre-feet. Because the Step 6 revised mid-season prediction is less than the shortfall predicted in the April Forecast Supply Order, the curtailment date established in the Curtailment Order must be adjusted.

5. Using the Enhanced Snake Plain Aquifer Model (“ESPAM”) 2.1, the new curtailment date is April 12, 1991.²

² The Director must utilize the best available technology for determining the impact of junior ground water diversions. *See Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 816, 252 P.3d 71, 97 (2011). ESPAM 1.1 was the model version utilized in SWC delivery call proceedings. ESPAM 2.1 is the latest version of the ESPAM model and superseded ESPAM 1.1. The Director has determined that ESPAM 2.1 is the best available scientific tool for predicting the effects of ground water pumping. *See In re Water to Water Right Nos. 36-02551 & 36-07694 (Rangen, Inc.) IDWR Docket CM-DC-2011-004*, No. 42775, 2016 WL 1130276, at *4 (Idaho Mar. 23, 2016). Because no trim line has been determined utilizing ESPAM 2.1 in the SWC delivery call matter, in an exercise of discretion, the Director did not apply a trim line in determining the February 8, 1989, priority date.

6. It is necessary to amend the Curtailment Order so that ground water users holding water rights listed in Attachment A to the Curtailment Order bearing priority dates senior to April 12, 1991, are no longer curtailed. Ground water users holding water rights listed in Attachment A to the Curtailment Order bearing priority dates equal or junior to April 12, 1991, should remain curtailed unless they are mitigating in accordance with an approved mitigation plan.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that effective immediately, all ground water users holding water rights listed in Attachment A to the May 18, 2016, Curtailment Order bearing priority dates senior to April 12, 1991, are no longer curtailed. However, all ground water users holding water rights listed in Attachment A to the May 18, 2016, Curtailment Order bearing priority dates equal or junior to April 12, 1991, shall continue to be curtailed from diversion and use of ground water pursuant to those water rights unless they are mitigating in accordance with an approved mitigation plan or are notified by the Department that the order of curtailment has been modified or rescinded as to their water rights. This order shall apply to consumptive ground water rights, including but not limited to, agricultural, commercial, industrial, and municipal uses. Both the May 18, 2016, Curtailment Order and this order exclude ground water rights used for *de minimis* domestic purposes where such domestic use is within the limits of the definition set forth in Idaho Code § 42-111 and ground water rights used for *de minimis* stock watering where such stock watering use is within the limits of the definitions set forth in Idaho Code § 42-1401A(l 1), pursuant to IDAPA 37.03.11.020.11.

IT IS FURTHER ORDERED that watermasters for the water districts within the ESPA ACGWS who regulate ground water are directed to review the water rights listed in Attachment A to the May 18, 2016, Curtailment Order and inform water users holding water rights bearing priority dates senior to April 12, 1991, that they are no longer curtailed.

Dated this 22nd day of July, 2016.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July 2016, the above and foregoing was served on the following by the method(s) indicated below:

<p>John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON, LLP P.O. Box 63 Twin Falls, ID 83303-0063 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
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Deborah Gibson
Administrative Assistant, IDWR

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.