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 **ORDER REVISING APRIL 2017 FORECAST SUPPLY AND RESCINDING CURTAILMENT** ***(METHODOLOGY STEPS 5 & 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 the *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 Steps 5 and 6 to the 2017 irrigation season.

2. On November 29, 2016, the Director issued the *Final Order Establishing 2016 Reasonable Carryover – Methodology Step 9* ("November Carryover Order") establishing a reasonable carryover shortfall of 39,500 AF. The Director ordered junior ground water users holding consumptive ground water rights within the Eastern Snake Plain Aquifer ("ESPA") area of common ground water supply with priority dates junior to June 20, 1989, to mitigate for their proportionate share of the reasonable carryover shortfall or be curtailed. *November Carryover Order* at 6.

3. On January 17, 2017, the Director issued the *Final Order Curtailing Ground Water Rights Junior to June 20, 1989* ("January Curtailment Order") curtailing junior ground water rights listed in attachments A and D to the order to address the reasonable carryover shortfall established in the November Carryover Order.

4. On April 13, 2017, the Director issued the *Final Order Regarding April 2017 Forecast Supply (Methodology Steps 1 – 3)* ("April Forecast Supply Order") projecting no demand shortfall to the SWC members for the 2017 irrigation season. *April Forecast Supply Order* at 3.

5. Step 4 of the Methodology Order requires that the Director issue an order curtailing applicable junior ground water users in years in which application of Steps 1 and 2 results in a projected demand shortfall to one or more members of the SWC. *Methodology Order* at 36. Because the Director projected no demand shortfall to the SWC members for the 2017 irrigation season in the April Forecast Supply Order, the Department did not execute Step 4.

6. Step 5 of the Methodology Order addresses the final injury determination to reasonable carryover for members of the SWC. Step 5 states, in part: "If the storage allocations held by members of the SWC fill, there is no reasonable carryover shortfall." *Methodology Order* at 37.

7. Step 6 states:

> 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 [Reasonable In-Season Demand]; (2) issue a revised [Forecast Supply]; and (3) estimate the Time of Need date.

Id. at 37 (footnote omitted).

B. April – June Climate

8. The April 2017 Joint Forecast prepared by the United States Army Corps of Engineers and the United States Bureau of Reclamation predicted 4,800,000 acre-feet of natural flow at the Heise gage for the period of April through July 2017. *April Forecast Supply Order* at 2. The Joint Forecast "is generally as accurate a forecast as is possible using current data gathering and forecasting techniques." *Methodology Order* at 17.

9. Spring precipitation (April- June) was highly variable. According to Natural Resource Conservation Service SNOTEL sites, the Upper Snake received 148%, 44% and 101% of average precipitation in April, May and June, respectively. The National Weather Service's Twin Falls weather station reported 100%, 82% and 88% of normal precipitation in April, May and June, respectively. Twin Falls temperatures were 2.9 degrees below normal for April, 1.6 degrees below normal for May, and 0.6 degrees above normal for June.[1]

[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).

C. Reasonable In-Season Demand

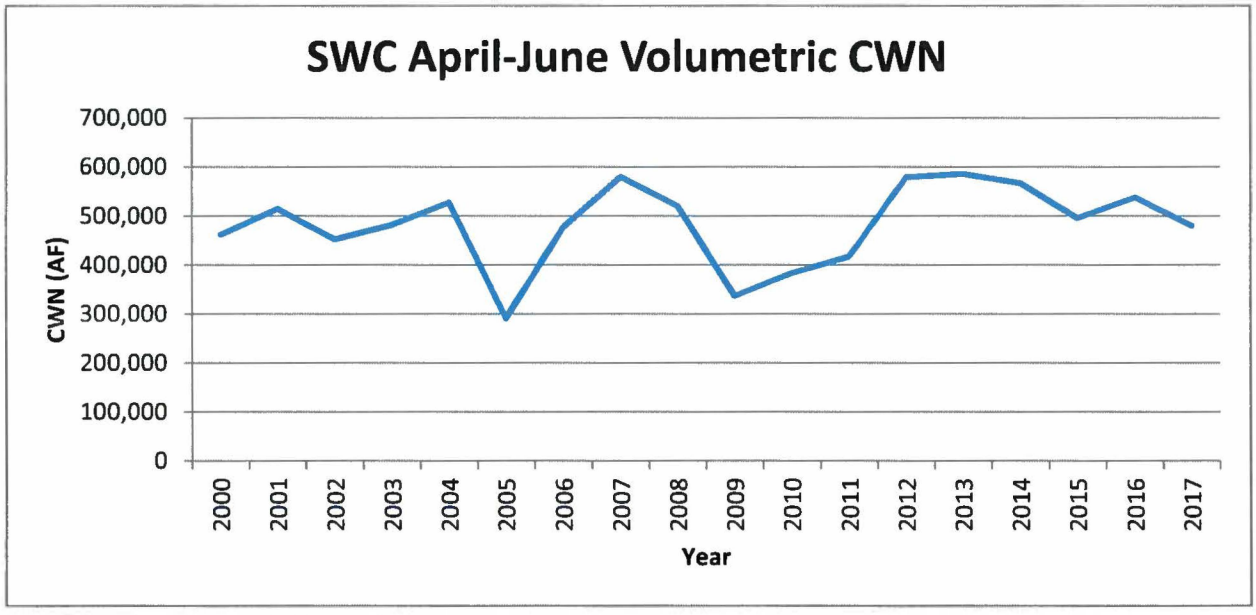
10. Reasonable in-season demand ("RISD") "is the projected annual diversion volume for each SWC entity during the year of evaluation that is attributable to the beneficial use of growing crops within the service area of the entity." *Methodology Order* at 12. In April, the demand from the 06/08/12 BLY defines the RISD. *Id.* at 16. During the irrigation season, the RISD for the completed portion of the irrigation season is recalculated by dividing the actual crop water need ("CWN") for each entity by the project efficiency for that entity. *Id.* at 16, 37. For the remainder of the irrigation season, the RISD is the demand defined by the July-October 06/08/12 BLY. *Id.* RISD is calculated on a monthly timestep.

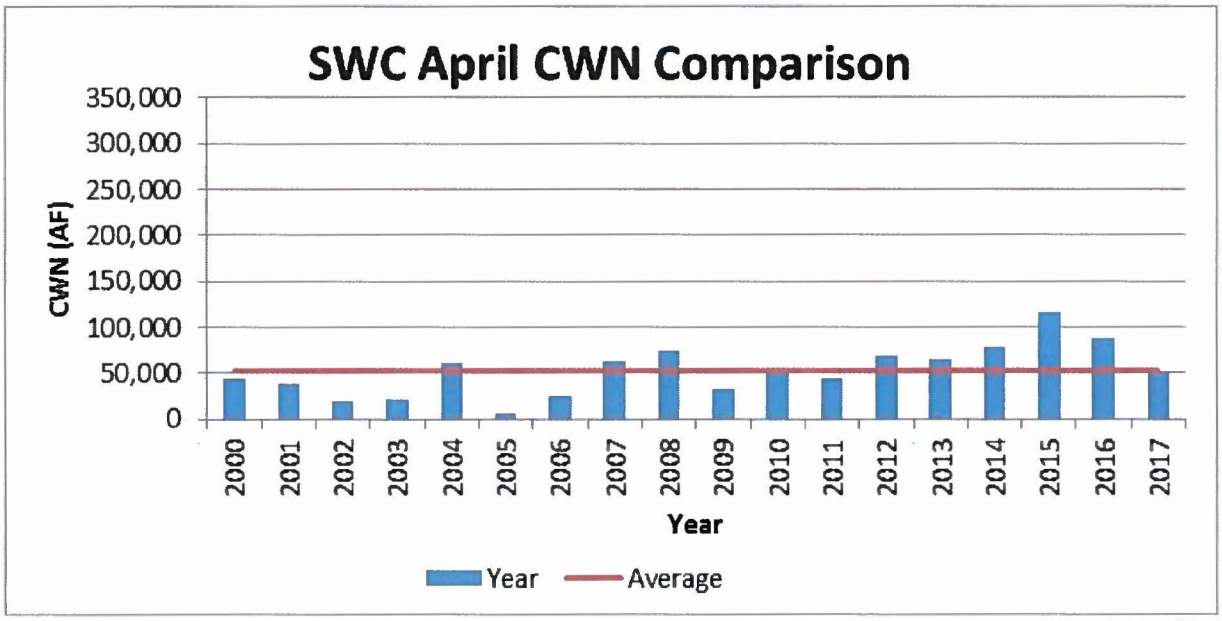
i. Crop Water Need

11. "CWN is the volume of irrigation water required for crop growth within a SWC entity boundary, such that crop growth is not limited by water availability." *Methodology Order* at 14. CWN is the difference between the fully realized consumptive use associated with crop growth, or [evapotranspiration], and effective precipitation . . . ." *Id.*

12. CWN is an input variable for calculating RISD for the completed portion of the irrigation season. *Id.* at 16. 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. *Id.* at 16-17. Demand shortfall is then calculated as the difference between the adjusted forecast supply ("FS") and the RISD. *Id.* at 21.

13. 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 479,920 acre-feet. This volume is 98% of the April 1 – June 30 ten-year average CWN (2007 – 2016) and 91% of the April 1 – June 30 CWN for the 06/08/12 BLY. The following graphs summarize monthly volumetric CWN values:




SWC April CWN Comparison
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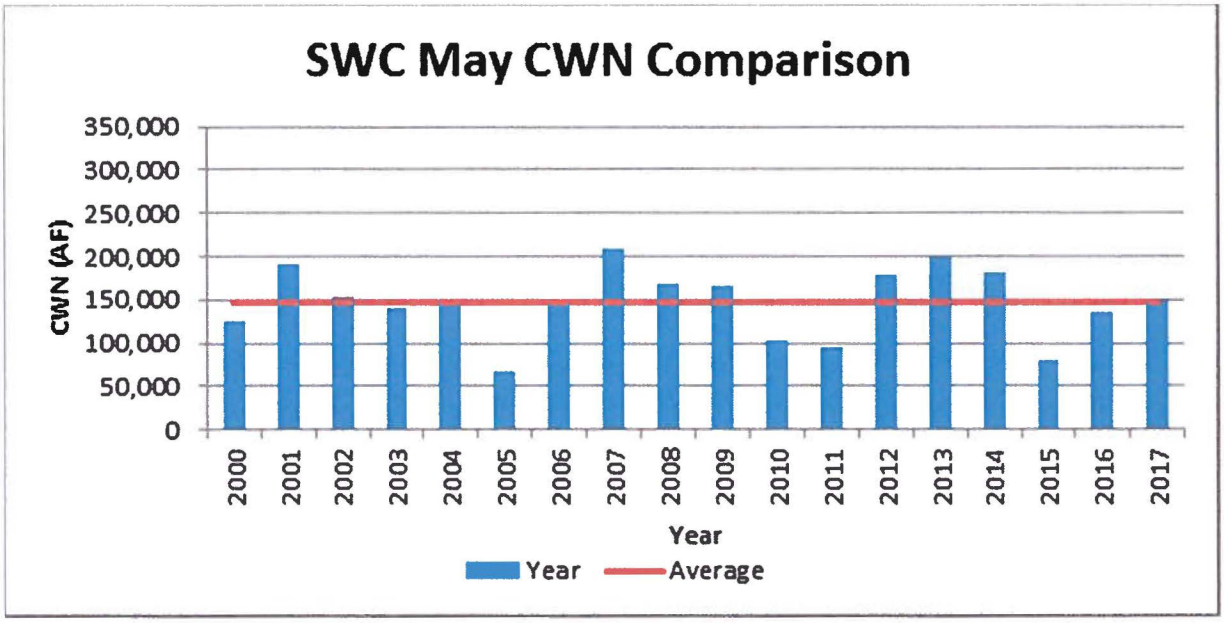
SWC May CWN Comparison
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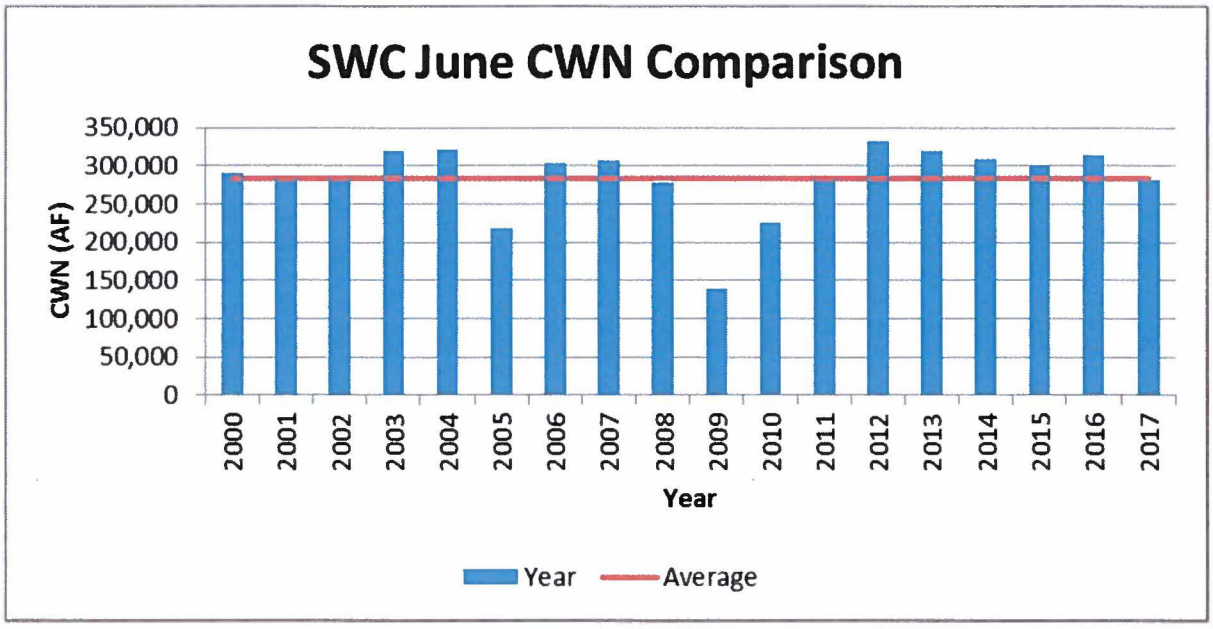

14. As calculated from the beginning of the irrigation season (April 1), the SWC's volumetric RISD for 2017 through the month of June is 1,306,172 acre-feet. This volume is 96% of the April 1 – June 30 ten-year average RISD (2008 – 2017) and 100% of the April-June demand for the 06/08/12 BLY. The recalculated RISD at this point of the 2017 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	14,722	0.45 – 0.96	25,706	36,126	61,832
AFRD2	51,868	0.22 – 0.40	171,471	261,723	433,194
BID	42,616	0.33 – 0.53	102,268	138,089	240,357
Milner	11,067	0.43 – 0.65	20,103	28,438	48,541
Minidoka	78,797	0.31 – 0.56	188,657	204,567	393,224
NSCC	117,154	0.25 – 0.42	370,492	588,735	959,227
TFCC	163,696	0.29 – 0.51	427,475	633,715	1,061,190

D. Forecast Supply

15. 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 completed 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. *Id.* at 18, 37. Storage allocations are determined by Water District 01 on the Day of Allocation. *Id.* at 37.

i. Sum of Actual Natural Flow Diverted

16. Actual natural flow diverted in April through June for each SWC member is shown in the table contained in Finding of Fact 28 below, within the "Summary of Forecast Supply" section.

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

17. 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 ("SWE") data at Two Oceans Plateau SNOTEL site, Spring Creek discharge, and groundwater levels near American Falls Reservoir. *Methodology Order* at 19. Unique regression models with unique predictor variable groups are established in the Methodology Order for each SWC member.

18. Either June 15 or July 1 SWE values for the Two Oceans Plateau SNOTEL site are used as input variables in each of the regression models developed in the Methodology Order. Two Oceans Plateau SWE data was selected as a predictor variable in the Methodology Order based upon step-wise statistical analysis carried out in the development of each regression model. The Two Oceans Plateau SWE data is an optimum predictor variable for several reasons including: its elevation (the site is located above 9,000 ft and typically still has snow late in the runoff season (June 15 and July 1); its location (the site is in the headwaters of the Snake River above Jackson Reservoir); and its period of record, which is sufficiently long enough to support model development.

19. In 2016, the Two Oceans Plateau SNOTEL site malfunctioned and failed to report SWE data. In response to the lack of data in 2016, the Department developed regression models with substitute SWE data from the Togwotee Pass SNOTEL site. At the time, several SNOTEL sites located within the Upper Snake River drainage area were considered as a substitute for the Two Oceans Plateau SWE data. Togwotee Pass was the only site considered in the basin that was high enough in elevation to retain snow late into the runoff season and had a long enough period of record to develop regression models.

20. On February 9, 2017, the Two Oceans Plateau SNOTEL site malfunctioned and again failed to report SWE data. As a result, June 15 and July 1 SWE data from Two Oceans Plateau were not available for input into the regression models. Accordingly, the regression equations developed in 2016 with Togwotee Pass SWE as a predictor variable were updated to include 2016 data and implemented this year. Below is a comparison of the models with predictor variables for Two Oceans Plateau SWE and Togwotee Pass SWE:

	Models with Two Oceans as a Predictor		Models with Togwotee Pass as a Predictor	
	Adjusted R^2	Standard Error (AF)	Adjusted R^2	Standard Error (AF)
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	10,252
Milner	0.84	2,939	0.68	3,695
Minidoka	0.90	15,720	0.92	14,104
NSCC	0.86	46,930	0.89	40,381
TFCC	0.85	29,270	0.83	31,021

21. Linear regression equations for A&B Irrigation District ("A&B"), American Falls Reservoir District #2 ("AFRD2") and Milner Irrigation District ("Milner") compare the July 1 SWE values (inches) at the Togwotee Pass SNOTEL site to the natural flow diversions. Substitution of Togwotee Pass SWE data for Two Oceans Plateau SWE data resulted in regression models with lower adjusted r^2 values, however Togwotee Pass SWE data performed the best of the alternate SNOTEL sites considered for substitution. The SWE on July 1 at Togwotee Pass was 0.1 inches.

22. Multiple linear regression equations for Burley Irrigation District ("BID"), Minidoka Irrigation District ("Minidoka"), and North Side Canal Company ("NSCC") predict natural flow diversions by employing the following predictor variables: (1) the June 15 SWE value (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 SWE data.

23. The predictor variables for BID, Minidoka, and NSCC in 2017 included: (1) 17.9 inches of the SWE on June 15, 2017, at Togwotee Pass; (2) 4,463,00 acre-feet of natural flow runoff at the Snake River near Heise (April – June); and (3) 19.96 feet depth to water at well 5S31E27ABA1 on March 23, 2017.

24. The multiple linear regression equation for TFCC was based on the following predictor variables: (1) the June 15, 2017, SWE value (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 with Two Oceans Plateau SWE data.

25. The predictor variables for TFCC in 2017 included: (1) 17.9 inches of the SWE on June 15 at Togwotee Pass, (2) 4,463,00 acre-feet of natural flow runoff at the Snake River near Heise (April – June) , and (3) 88,773 acre-feet total discharge at Spring Creek (January – May).

iii. Storage Allocations

26. Preliminary storage allocation values for each member of the SWC were published in Water District 01's *Initial Storage Report* on July 11, 2017.[2] Each SWC member received a full preliminary storage allocation for the 2017 irrigation season. Preliminary storage allocations for each of the SWC members are reported in the table in Finding of Fact 28 below.

iv. Adjustments to Total Supply

27. The natural flow and storage water supplies were both adjusted as shown in the table in Finding of Fact 28 below. Adjustments to natural flow include wheeled water to Southwest Irrigation District through BID and Milner, 2,311 acre-feet and 1,861 acre-feet, respectively. Adjustments to natural flow also included 46,136 acre-feet and 8,346 acre-feet of wheeled water as a part of the Idaho Water Resource Board's water right to AFRD2 and TFCC, respectively. Preliminary adjustments to the storage water supply as of July 11, 2017, used in this analysis were obtained from Water District 01. The only adjustments to the stored water supply in the table below were for the Minidoka Credit. Water supplied to or from the rental pool was not included in the adjustments because such adjustments would artificially increase or decrease the shortfall obligation.

v. Summary of Forecast Supply

28. The following table 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)	FS (AF)
A&B	24,203	1,356		135,638		161,196
AFRD2	182,006	11,652	(46,136)	387,866	1,000	536,388
BID	106,418	132,442	(2,311)	223,216	5,130	464,894
Milner	26,367	2,704	(1,861)	88,159		115,369
Minidoka	152,189	193,144		361,260	8,370	714,963
NSCC	401,296	480,785	(8,346)	847,478	(7,750)	1,713,462
TFCC	409,079	576,305		242,378	(6,750)	1,221,012

[2] The *Initial Storage Report* can be viewed on-line at the following link: http://www.waterdistrict1.com/WD01%20Storage%20Report.pdf.

E. Revised Shortfall Projection

29. Demand shortfall is calculated as the difference between RISD and the FS.

30. Based on the above, and as summarized in the table below, the Director projects no demand shortfall to the SWC.

	FS (AF)	RISD (AF)	Shortfall (AF)
A&B	161,196	61,832	0
AFRD2	536,388	433,194	0
BID	464,894	240,357	0
Milner	115,369	48,541	0
Minidoka	714,963	393,224	0
NSCC	1,713,462	959,227	0
TFCC	1,221,012	1,061,190	0
		Total	0

F. Time of Need and SWC Storage Use

31. Step 6 of the Methodology Order requires that the Director estimate the Time of Need. *Methodology Order* at 37-38. "The calendar day determined to be the Time of Need is established by predicting the day in which the remaining storage allocation will be equal to reasonable carryover." *Id.* at 37. Remaining storage allocations for SWC members were published by Water District 01 on July 25, 2017. Reasonable Carryover is equal to the difference between the 06/08/12 average demand and the 02/04 supply. *See Methodology Order* at 28. The July 31 remaining storage allocation values and reasonable carryover values for each member of the SWC are summarized in the table below.

	Remaining Storage as of 7/31/2017 (AF)	Reasonable Carryover (AF)
A&B	128,433	18,500
AFRD2	341,504	11,500
BID	223,216	0
Milner	82,732	4,800
Minidoka	333,505	0
NSCC	783,106	65,500
TFCC	236,735	25,200

32. The average Day of Allocation for years 1990 through 2016 is June 24. This year, the Day of Allocation occurred later than normal on July 10. When the Day of Allocation is delayed, there are fewer days when storage uses are charged to the irrigators. Due to the above average spring runoff and later than normal Day of Allocation, it is anticipated that the total storage use by SWC members will be below normal. Analysis of historical storage use from 1990 – 2016 for each SWC member shows that, even if each SWC member diverts the maximum historical storage use for the remainder of the season, there will be no carryover shortfall. The estimated carryover volumes based on average and maximum storage use for the remainder of the season are summarized in the following table.

	Estimated Carryover based on Average Storage Use (1990 - 2016) (AF)	Estimated Carryover based on Maximum Storage Use (1990-2016) (AF)	Reasonable Carryover (AF)
A&B	108,901	105,171	18,500
AFRD2	178,351	127,314	11,500
BID	158,304	137,337	0
Milner	63,491	58,660	4,800
Minidoka	239,919	212,447	0
NSCC	482,352	419,866	65,500
TFCC	152,175	66,838	25,200

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. As stated above, the Director established a reasonable carryover shortfall of 39,500 AF in the November Carryover Order. In response to the determination of reasonable carryover injury, the Director issued the January Curtailment Order curtailing unmitigated ground water rights junior to June 20, 1989.

4. The Director projected no demand shortfall to members of the SWC in the April Forecast Supply Order.

5. Step 5 of the Methodology Order states "there is no reasonable carryover shortfall" when "the storage allocations held by members of the SWC fill." *Methodology Order* at 37. On July 11, 2017, Water District 01 issued its *Initial Storage Report* establishing full storage allocations for all members of the SWC. Accordingly, the Director's January Curtailment Order should be rescinded.

6. Execution of Step 6 of the Methodology Order demonstrates there is no mid-season demand shortfall. Due to an abundance of natural flow and the overall large water supply this year, it is improbable that the SWC members will divert enough storage water to trigger a Time of Need determination. Because there is no mid-season demand shortfall and because there will be no Time of Need this year, it is unnecessary to execute Step 7 of the Methodology Order. At the end of the irrigation season, the Director will issue an order applying Step 9 of the Methodology Order.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that there is no demand shortfall for the SWC members in 2017.

IT IS FURTHER ORDERED that, because SWC members received a full storage allocation, the January Curtailment Order is rescinded. Junior ground water rights within the ESPA area of common ground water supply bearing priority dates junior to June 20, 1989, listed in attachments A and D of the January Curtailment Order are no longer curtailed.

IT IS FURTHER ORDERED that watermasters for the water districts within the ESPA area of common ground water supply who regulate ground water are directed to review the water rights listed in attachments A and D to the January Curtailment Order and inform water users holding water rights bearing priority dates junior to June 20, 1989, that they are no longer curtailed.

Dated this 3rd day of August 2017.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of August 2017, the above and foregoing was served on the following by the method(s) indicated below:

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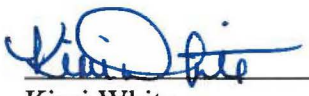

Kimi White

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.