

**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)	Docket No. CM-DC-2010-001
THE BENEFIT OF A&B IRRIGATION DISTRICT,)	
AMERICAN FALLS RESERVOIR DISTRICT #2,)	FINAL ORDER
BURLEY IRRIGATION DISTRICT, MILNER)	ESTABLISHING 2019
IRRIGATION DISTRICT, MINIDOKA IRRIGATION)	REASONABLE CARRYOVER
DISTRICT, NORTH SIDE CANAL COMPANY,)	
AND TWIN FALLS CANAL COMPANY)	(METHODOLOGY STEP 9)
_____)	

FINDINGS OF FACT

1. On April 19, 2016, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) 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 establishes nine steps for determining material injury to members of the Surface Water Coalition (“SWC”). This order applies step nine, the final step of the Methodology Order, for the 2019 water year.

2. The Methodology Order describes step 9 as follows:

Step 9: Following the end of the irrigation season (on or before November 30), the Department will determine the total actual volumetric demand and total actual [crop water need] for the entire irrigation season. This information will be used for the analysis of reasonable carryover shortfall, selection of future BLY, and for the refinement and continuing improvement of the method for future use.

On or before November 30, the Department will issue estimates of actual carryover and reasonable carryover shortfall volumes for all members of SWC. These estimates will be based on, but not limited to, the consideration of the best available water diversion and storage data from Water District 01, return flow monitoring, comparative years, and [reasonable in-season demand]. These estimates will establish the obligation of junior ground water users in providing water to the SWC for reasonable carryover shortfall. Fourteen (14) days following the issuance by the Department of reasonable carryover shortfall obligations, junior ground water users will be required to establish, to the satisfaction of the Director, their ability to supply a volume of storage water or to conduct other approved mitigation activities that will provide water to the injured members of the SWC equal to the reasonable carryover shortfall for all injured members of the SWC. If junior ground water users cannot provide this information, the Director will issue an order curtailing junior ground water rights.

Methodology Order at 38-39.

3. The following table summarizes the 2019 irrigation season diversions, crop water need, and reasonable in-season demand (“RISD”) volumes for each SWC entity. RISD is calculated for each SWC entity using demand, crop water need, and project efficiency *Methodology Order* at 16. All values are reported in acre-feet (“AF”).

Entity	Demand ¹	Crop Water Need	RISD
A&B	56,115	31,215	51,816
AFRD2	447,722	133,905	372,505
BID	241,188	92,247	215,757
Milner	52,344	26,864	50,010
Minidoka	350,057	163,730	324,827
NSCC	1,071,010	314,842	873,702
TFCC	1,076,011	396,648	1,006,960

4. The following table summarizes the final calculated 2019 in-season demand shortfall values in AF, if any, for each member of the SWC. The values in this table are different from those in the *Final Order Regarding April 2019 Forecast Supply (Methodology Steps 1-3)* (April 11, 2019) (“April Forecast Supply Order”) and *Order Revising April 2019 Forecast Supply and Amending Curtailment Order (Methodology Step 5 & 6)* (July 17, 2019) (“July Order”). The differences are due to changes in total supply and RISD that reflect diversion and ET data not available at the time the April Forecast Supply Order and July Order were issued.² The second column of the summary table contains the total natural flow diversions from April 1 to October 31 for each SWC member.³ The third column summarizes the natural flow adjustments, which include natural flow delivered for recharge⁴ and natural flow delivered to SWID.⁵ The fourth column contains the preliminary storage allocations reported from the July

¹ The “Demand” for each SWC entity is equal to each entity’s 2019 April – October diversions.

² In the April Forecast Supply Order, the Director predicted a demand shortfall of 20,900 AF to the members of the SWC for the 2019 irrigation season and the *Final Order Curtailing Non-enlargement Ground Water Rights Junior to April 12, 1994, and Enlargement Ground Water Rights Junior to March 14, 1971* (“Curtailment Order”) followed on June 7, 2019. However, the Director revised this prediction in the July Order, projecting no mid-season demand shortfall to the SWC for 2019. *July Order* at 8. As a result, the Director rescinded the Curtailment Order on July 29, 2019. *Order Rescinding Final Order Curtailing Non-Enlargement Ground Water Rights Junior To April 12, 1994, and Enlargement Ground Water Rights Junior To March 14, 1971*.

³ The natural flow diverted was calculated from the preliminary daily water right accounting records located here: <http://www.idwr.idaho.gov/water-data/water-rights-accounting/research.html>.

⁴ Natural flow recharge values represent accomplished recharge through the Idaho Water Resource Board’s recharge water rights as of October 31, 2019.

⁵ See column titled “Natural Flow Adjustment” in “Attachment A” for further information regarding these adjustments.

23, 2019, Water District 01 storage report.⁶ The fifth column summarizes storage adjustments due to application of the Minidoka Credit.⁷ The sixth column contains the total supply available to each SWC member and is calculated by summing columns two through five. The seventh column contains the calculated RISD. The demand shortfall in the last column is calculated by subtracting the RISD from the total supply. The demand shortfall is zero when the total supply is greater than the RISD. No members of the SWC have a demand shortfall for 2019.

Entity	Natural Flow Diverted through 10/31	Natural Flow Adjustment	Preliminary Storage Allocation	In-Season Storage Adjustment	Total Supply	RISD	Demand Shortfall
A&B	18,081	-	129,037	-	147,118	51,816	0
AFRD2	219,514	(64,512)	385,563	1,000	541,565	372,505	0
BID	147,219	(3,714)	219,388	5,130	368,023	215,757	0
Milner	20,099	(3,011)	85,894	-	102,982	50,010	0
Minidoka	204,979	-	351,272	8,370	564,622	324,827	0
NSCC	676,740	(1,779)	825,597	(7,750)	1,492,807	873,702	0
TFCC	945,368	(534)	238,009	(6,750)	1,176,093	1,006,960	0

5. The following table summarizes the end of season reasonable carryover shortfall calculation for 2019. All values are reported in AF. The second column of the table contains the preliminary storage allocations reported from the July 23, 2019, Water District 01 storage report. The third column summarizes adjustments for storage water due to application of the Minidoka Credit. The fourth column summarizes adjustments for water delivered through the SWC member's canals for use by non-SWC members.⁸ The fifth column contains the total storage water use reported from the October 31, 2019, Water District 01 water right accounting report.⁹ The sixth column contains the actual carryover volumes as defined by the Methodology Order (*Methodology Order* at 38) and is calculated by subtracting the sum of columns four and five from the sum of columns two and three. The seventh column contains the reasonable carryover volumes established in the Methodology Order. *Methodology Order* at 28. The reasonable carryover shortfall in the last column is zero when the actual carryover is greater than the reasonable carryover, otherwise it is calculated as the difference between reasonable carryover and the actual carryover volume for each member of the SWC. No members of the SWC have a reasonable carryover shortfall for 2019.

⁶ The preliminary storage allocations can be found on Water District 01's website located here: <http://www.waterdistrict1.com/WD01%20Storage%20Report.pdf>.

⁷ See column titled "In-Season Storage Adjustment" in "Attachment A." The Minidoka Credit is a long existing exchange of stored water among AFRD2, BID, MID, NSCC, and TFCC that has been incorporated into an agreement of those entities and accepted by the SRBA district court.

⁸ See column titled "Storage Use Adjustment" in "Attachment A" for further information regarding these adjustments.

⁹ This water right accounting report was published to the Water District 01 webpage on November 1, 2019: <http://www.waterdistrict1.com/SNKWRA.pdf>

	Preliminary Storage Allocation	In- Season Storage Allocation Adjustment	Storage Use Adjustment	Storage Use	Actual Carryover	Reasonable Carryover	Reasonable Carryover Shortfall
A&B	129,037	-	-	38,034	91,003	18,500	0
AFRD2	385,563	1,000	(13,800)	306,520	66,243	11,500	0
BID	219,388	5,130	(10,000)	104,143	110,375	0	0
Milner	85,894	-	(10,307)	42,552	33,035	4,800	0
Minidoka	351,272	8,370	(200)	145,004	214,439	0	0
NSCC	825,597	(7,750)	(24,600)	419,606	373,641	65,500	0
TFCC	238,009	(6,750)	(3,360)	134,703	92,926	25,200	0

6. The above determinations are based on water diversion and storage data from Water District 01. Although these preliminary numbers are subject to revision by Water District 01 during final accounting for 2019, revisions will not become available until after issuance of this order. For this reason, these estimates establish the final obligation of junior ground water users in supplying water to the SWC for reasonable carryover shortfall. The above determination of reasonable carryover shortfall is carried forward from the Methodology Order and takes into account the best available water diversion and storage data, comparative water years, and RISD. *Methodology Order* at 38-39.

CONCLUSIONS OF LAW

1. The Methodology Order states that, on or before November 30, the Director will estimate the SWC's reasonable carryover shortfall, if any, for 2019. *Methodology Order* at 38-39. If a reasonable carryover shortfall is established, junior-priority ground water users shall have fourteen days to demonstrate, to the satisfaction of the Director, "their ability to provide a volume of storage water or to conduct other approved mitigation activities that will provide water to the injured members of the SWC equal to the reasonable carryover shortfall for all injured members of the SWC." *Id.* at 39.

2. The evidentiary standard to apply in conjunctive administration of hydraulically connected water rights is clear and convincing. *A&B Irr. Dist. v. Idaho Dept. of Water Resources*, 153 Idaho 500, 524, 284 P.3d 225, 249 (2012).

3. "Clear and convincing evidence refers to a degree of proof greater than a mere preponderance." *Idaho State Bar v. Topp*, 129 Idaho 414, 416, 925 P.2d 1113, 1115 (1996) (internal quotations removed). "Clear and convincing evidence is generally understood to be '[e]vidence indicating that the thing to be proved is highly probable or reasonably certain.'" *State v. Kimball*, 145 Idaho 542, 546, 181 P.3d 468, 472 (2008) citing *In re Adoption of Doe*, 143 Idaho 188, 191, 141 P.3d 1057, 1060 (2006); see also *Idaho Dept. of Health & Welfare v. Doe*, 150 Idaho 36, 41, 244 P.3d 180, 185 (2010).

4. Consistent with Finding of Fact 5, the Director concludes by clear and convincing evidence that no members of the SWC have a reasonable carryover shortfall for 2019.

5. Because no members of the SWC have a reasonable carryover shortfall for 2019, junior ground water users do not need to establish “their ability to supply a volume of storage water or to conduct other approved mitigation activities that will provide water to the injured members of the SWC equal to the reasonable carryover shortfall for all injured members of the SWC.” *Methodology Order* at 39. Therefore, the Director will not “issue an order curtailing junior ground water rights.” *Id.*

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that no member of the SWC is owed reasonable carryover storage in 2019 for use in 2020.

IT IS FURTHER ORDERED that this final order concludes application of the Methodology Order to the climatic, hydrologic, and agronomic facts of the 2019 irrigation season.

DATED this 27th day of November 2019.



GARY SPACKMAN
Director

Attachment A 2019 SWC Adjustments

	Adjustments	Description	Natural Flow Adjustment	In-Season Storage Adjustment	Storage Use Adjustment
A&B	(2,886)	Idaho Power			
		Total A&B	0	0	0
AFRD2	5,000	New Sweden (Magic Valley GWD)			Yes
	5,800	Snake River Valley (Magic Valley GWD)			Yes
	1,500	(North Snake GWD)			Yes
	1,500	New Sweden (North Snake GWD)			Yes
	1,000	Minidoka Credit		Yes	
	(64,512)	IWRB Recharge	Yes		
		Total AFRD	(64,512)	1,000	(13,800)
BID	(10,821)	Idaho Power			
	10,000	City of Pocatello (LCSC Enterprises)			Yes
	5,130	Minidoka Credit		Yes	
	(3,714)	SWID Natural Flow	Yes		
		Total BID	(3,714)	5,130	(10,000)
Milner	(1,443)	Idaho Power			
	200	Scott Breeding			Yes
	5,000	City of Pocatello (Southwest Irrigation)			Yes
	4,000	Milner Irrigation District Pump (Southwest Irrigation)			Yes
	(4,000)	Milner Irrigation District Pump (Southwest Irrigation)			
	1,107	Artesian			Yes
	(3,011)	SWID Natural Flow	Yes		
		Total Milner	(3,011)	0	(10,307)
MID	(7,500)	Northside Canal (North Snake GWD)			
	(2,500)	(North Snake GWD)			
	(8,500)	Northside Canal (Water Mitigation Coalition)			
	(1,500)	(Water Mitigation Coalition)			
	200	Minidoka Irrigation District (Wickel Farms)			Yes
	(200)	Minidoka Irrigation District (Wickel Farms)			
	8,370	Minidoka Credit		Yes	
		Total MID	0	8,370	(200)
NSCC	100	Arthur Henry Farms			Yes
	(8,657)	Idaho Power			
	5,000	(North Snake GWD)			Yes
	3,500	New Sweden Canal (North Snake GWD)			Yes
	7,500	Minidoka Irrigation District (North Snake GWD)			Yes
	8,500	Minidoka Irrigation District (Water Mitigation Coalition)			Yes
	(7,750)	Minidoka Credit		Yes	
	(1,779)	IWRB Recharge	Yes		
		Total NSCC	(1,779)	(7,750)	(24,600)
TFCC	(5,050)	Idaho Power			
	1,630	Artesian			Yes
	2,000	(Southwest Irrigation)			Yes
	(6,750)	Minidoka Credit		Yes	
	(534)	IWRB Recharge	Yes		
		Total TFCC	(534)	(6,750)	(3,630)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of November 2019, the above and foregoing, was served by the method indicated below, and addressed to the following:

John K. Simpson Travis L. Thompson Nicole L. Swafford BARKER ROSHOLT & SIMPSON, LLP P. O. Box 63 Twin Falls, ID 83303-0063 jks@idahowaters.com ; tlt@idahowaters.com nls@idahowaters.com ; jf@idahowaters.com	<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
W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318 wkf@pmt.org	<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
Randall C. Budge Thomas J. Budge RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 rcb@racinelaw.net tjb@racinelaw.net	<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
Kathleen Marion Carr US Dept. Interior 960 Broadway Ste 400 Boise, ID 83706 kathleenmarion.carr@sol.doi.gov	<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
David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18 th St., South Terrace, Suite 370 Denver, CO 80202 david.gehlert@usdoj.gov	<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
Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@usbr.gov	<input 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
Sarah A Klahn Somach Simmons & Dunn 2033 11th Street, Ste 5 Boulder, Co 80302 sklahn@somachlaw.com dthompson@somachlaw.com	<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

Kirk Bybee City of Pocatello P.O. Box 4169 Pocatello, ID 83205 kibybee@pocatello.us	<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
Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4 th Street, Suite 103 Boise, ID 83702 cbromley@mchughbromley.com cmchugh@mchughbromley.com	<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
Robert E. Williams WILLIAMS, MESERVY, & LOTHSPREICH, LLP P.O. Box 168 Jerome, ID 83338 rewilliams@wmlattys.com	<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
Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405 rharris@holdenlegal.com	<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
Randall D. Fife City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 rfife@idahofallsidaho.gov	<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
Tony Olenichak IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 Tony.Olenichak@idwr.idaho.gov	<input 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
Corey Skinner Nathan Erickson IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033 corey.skinner@idwr.idaho.gov nathan.erickson@idwr.idaho.gov	<input 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
COURTESY COPY TO: William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318 wparsons@pmt.org	<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



Kimberle English

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.