

**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, )	<b>FINAL ORDER</b>
BURLEY IRRIGATION DISTRICT, MILNER )	<b>ESTABLISHING 2020</b>
IRRIGATION DISTRICT, MINIDOKA IRRIGATION )	<b>REASONABLE CARRYOVER</b>
DISTRICT, NORTH SIDE CANAL COMPANY, )	
AND TWIN FALLS CANAL COMPANY )	<b>(METHODOLOGY STEP 9)</b>
_____ )	

**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 2020 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 2020 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 <sup>1</sup>	Crop Water Need	RISD
A&B	65,828	34,227	58,796
AFRD2	493,827	156,003	467,788
BID	265,305	99,510	239,296
Milner	68,824	30,601	56,725
Minidoka	389,444	184,631	380,450
NSCC	1,054,667	360,319	1,066,973
TFCC	1,206,428	465,580	1,229,088

4. The following table summarizes the final calculated 2020 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 2020 Forecast Supply (Methodology Steps 1-3)* (April 21, 2020) (“April Forecast Supply Order”) and *Order Revising April 2020 Forecast Supply and Amending Curtailment Order (Methodology Step 5 & 6)* (July 14, 2020) (“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. The second column of the summary table contains the total natural flow diversions from April 1 to October 31 for each SWC member.<sup>2</sup> The third column summarizes the natural flow adjustments, which include natural flow delivered for recharge<sup>3</sup> and natural flow delivered to SWID.<sup>4</sup> The fourth column contains the preliminary storage allocations reported from the July 6, 2020, Water District 01 storage report.<sup>5</sup> The fifth column summarizes storage adjustments due to

<sup>1</sup> The “Demand” for each SWC entity is equal to each entity’s 2020 April – October diversions.

<sup>2</sup> 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>.

<sup>3</sup> Natural flow recharge values represent accomplished recharge through the Idaho Water Resource Board’s recharge water rights as of October 31, 2020.

<sup>4</sup> See column titled “Natural Flow Adjustment” in “Attachment A” for further information regarding these adjustments.

<sup>5</sup> The preliminary storage allocations can be found on Water District 01’s website located here: <http://www.waterdistrict1.com/WD01%20Storage%20Report.pdf>.

application of the Minidoka Credit.<sup>6</sup> 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 2020.

Entity	Natural Flow Diverted through 10/31	Natural Flow Adjustment	Preliminary Storage Allocation	In-Season Storage Adjustment	Total Supply	RISD	Demand Shortfall
A&B	26,285	-	135,318	-	161,603	58,796	0
AFRD2	248,213	(44,386)	386,949	1,000	591,776	467,788	0
BID	162,633	(3,146)	222,688	5,130	387,305	239,296	0
Milner	37,966	(2,412)	87,951	-	123,505	56,725	0
Minidoka	218,062	-	360,406	8,370	586,837	380,450	0
NSCC	609,102	(43,000)	845,475	(7,750)	1,403,826	1,066,973	0
TFCC	1,046,656	(389)	241,805	(6,750)	1,281,322	1,229,088	0

5. The following table summarizes the end of season reasonable carryover shortfall calculation for 2020. All values are reported in AF. The second column of the table contains the preliminary storage allocations reported from the July 6, 2020, 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.<sup>7</sup> The fifth column contains the total storage water use reported from the October 31, 2020, Water District 01 water right accounting report.<sup>8</sup> 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 2020.

<sup>6</sup> 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.

<sup>7</sup> See column titled "Storage Use Adjustment" in "Attachment A" for further information regarding these adjustments.

<sup>8</sup> This water right accounting report was published to the Water District 01 webpage on November 2, 2020: <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	135,318	-	-	39,543	95,775	18,500	0
AFRD2	386,949	1,000	(14,000)	304,001	93,948	11,500	0
BID	222,688	5,130	(22,000)	127,819	121,999	0	0
Milner	87,951	-	(8,320)	41,590	54,681	4,800	0
Minidoka	360,406	8,370	-	171,382	197,393	0	0
NSCC	845,475	(7,750)	(1,600)	490,162	349,163	65,500	0
TFCC	241,805	(6,750)	(2,715)	162,098	75,672	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 2020, 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 2020. *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 2020.

5. Because no members of the SWC have a reasonable carryover shortfall for 2020, 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 2020 for use in 2021.

IT IS FURTHER ORDERED that this final order concludes application of the Methodology Order to the climatic, hydrologic, and agronomic facts of the 2020 irrigation season.

DATED this 27<sup>th</sup> day of November 2020.

  
GARY SPACKMAN  
Director

## Attachment A 2020 SWC Adjustments

Adjustments		Description	Natural Flow Adjustment	In-Season Storage Adjustment	Storage Use Adjustment
<b>A&amp;B</b>	(870.6)	Supplemental Pool			
		<b>Total A&amp;B</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>AFRD2</b>	3,500.0	Minidoka Irrigation District (Northsnake GWD)			Yes
	3,500.0	Snake River Valley (Magic Valley GWD)			Yes
	3,500.0	Snake River Valley (Magic Valley GWD)			Yes
	3,500.0	New Sweden (North Snake GWD)			Yes
	1,000.0	Minidoka Credit		Yes	
	(44,386.2)	IWRB Recharge	Yes		
		<b>Total AFRD</b>	<b>(44,386)</b>	<b>1,000</b>	<b>14,000</b>
<b>BID</b>	10,000.0	Common Pool (Magic Valley GWD)			Yes
	2,000.0	Falls Irrigation District (Southwest Irrigation District)			Yes
	10,000.0	City of Pocatello (Southwest Irrigation)			Yes
	5,130.0	Minidoka Credit		Yes	
	(3,146.0)	SWID Natural Flow	Yes		
		<b>Total BID</b>	<b>(3,146)</b>	<b>5,130</b>	<b>22,000</b>
<b>Milner</b>	150.0	Scott Breeding			Yes
	170.0	Minidoka Irrigation District (Water Mitigation Coalition)			Yes
	4,000.0	Milner Irrigation District (Southwest Irrigation District)			Yes
	(4,000.0)	Milner Irrigation (Southwest Irrigation District)			
	4,000.0	Milner Irrigation (Southwest Irrigation District)			Yes
	(2,412.0)	SWID Natural Flow	Yes		
		<b>Total Milner</b>	<b>(2,412)</b>	<b>0</b>	<b>8,320</b>
<b>MID</b>	(4,352.9)	Supplemental Pool			
	(3,500.0)	AFRD2 (North Snake GWD)			
	(8,330.0)	IWRB (Water Mitigation Coalition)			
	(170.0)	Milner Irrigation (Water Mitigation Coalition)			
	(1,500.0)	Northside Canal (Water Mitigation Coalition)			
	(1,000.0)	TFCC (Southwest Irrigation District)			
	(4,000.0)	Milner Irrigation (Southwest Irrigation District)			
	(11,500.0)	Unassigned (North Snake GWD)			
	8,370.0	Minidoka Credit		Yes	
		<b>Total MID</b>	<b>0</b>	<b>8,370</b>	<b>0</b>
<b>NSCC</b>	100.0	Arthur Henry Farms			Yes
	(1,088.2)	Supplemental Pool			
	1,500.0	Minidoka Irrigation District (Water Mitigation Coalition)			Yes
	(7,750.0)	Minidoka Credit		Yes	
	(43,000.0)	IWRB Recharge	Yes		
		<b>Total NSCC</b>	<b>(43,000)</b>	<b>(7,750)</b>	<b>1,600</b>
<b>TFCC</b>	(1,088.0)	Supplemental Pool			
	1,000.0	Milner Irrigation District (Southwest Irrigation District)			Yes
	1,075.0	Artesian (Southwest Irrigation District)			Yes
	640.0	Artesian (Southwest Irrigation District)			Yes
	(6,750.0)	Minidoka Credit		Yes	
	(388.9)	IWRB Recharge	Yes		
		<b>Total TFCC</b>	<b>(389)</b>	<b>(6,750)</b>	<b>2,715</b>

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27<sup>th</sup> day of November 2020, the above and foregoing, was served by the method indicated below, and addressed to the following:

John K. Simpson Travis L. Thompson BARKER ROSHOLT & SIMPSON, LLP P. O. Box 63 Twin Falls, ID 83303-0063 <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a> ; <a href="mailto:tlr@idahowaters.com">tlr@idahowaters.com</a> <a href="mailto:nls@idahowaters.com">nls@idahowaters.com</a> ; <a href="mailto:jf@idahowaters.com">jf@idahowaters.com</a>	<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 <a href="mailto:wkf@pmt.org">wkf@pmt.org</a>	<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 <a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a> <a href="mailto:tjb@racinelaw.net">tjb@racinelaw.net</a>	<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 <a href="mailto:kathleenmarion.carr@sol.doi.gov">kathleenmarion.carr@sol.doi.gov</a>	<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 <sup>th</sup> St., South Terrace, Suite 370 Denver, CO 80202 <a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a>	<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 <a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a>	<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 <a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a> <a href="mailto:dthompson@somachlaw.com">dthompson@somachlaw.com</a>	<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 <a href="mailto:kibybee@pocatello.us">kibybee@pocatello.us</a>	<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 <sup>th</sup> Street, Suite 103 Boise, ID 83702 <a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a> <a href="mailto:cmchugh@mchughbromley.com">cmchugh@mchughbromley.com</a>	<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 <a href="mailto:rewilliams@wmlattys.com">rewilliams@wmlattys.com</a>	<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 <a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a>	<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 <a href="mailto:rfife@idahofallsidaho.gov">rfife@idahofallsidaho.gov</a>	<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 <a href="mailto:Tony.Olenichak@idwr.idaho.gov">Tony.Olenichak@idwr.idaho.gov</a>	<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 <a href="mailto:corey.skinner@idwr.idaho.gov">corey.skinner@idwr.idaho.gov</a> <a href="mailto:nathan.erickson@idwr.idaho.gov">nathan.erickson@idwr.idaho.gov</a>	<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
<b>COURTESY COPY TO:</b> William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318 <a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a>	<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

  
Caitlin McCoy