

**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 2022
FORECAST SUPPLY AND AMENDING
CURTAILMENT ORDER**

(METHODOLOGY STEPS 5 & 6)

The 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 5 and 6 of the Methodology Order.

2. Step 5 of the Methodology Order addresses the final injury determination to reasonable carryover for members of the SWC. Step 5 states:

If the storage allocations held by members of the SWC fill, there is no reasonable carryover shortfall. If the storage allocations held by members of the SWC do not fill, within fourteen (14) days following the publication of Water District 01’s initial storage report . . . the volume of water secured by junior ground water users to fulfill the reasonable carryover shortfall shall be made available to injured members of the SWC.

Methodology Order at 37. On December 21, 2021, the Director issued his *Final Order Establishing 2021 Reasonable Carryover* which found a carryover shortfall. Junior ground water users were given 14 days to provide a volume of water to fulfill the carryover shortfall. No water users secured water. While the SWC’s storage allocation did not fill this year, because no water users secured water in 2021 to fulfill the carryover shortfall, there is no volume of water to be made available to the SWC under Step 5.

3. Step 6 of the Methodology Order 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 RISD [Reasonable In-Season Demand]; (2) issue a revised FS [Forecast Supply] and (3) estimate the Time of Need date.

Id. (footnote omitted).

4. On April 20, 2022, the Director issued his *Final Order Regarding April 2022 Forecast Supply (Methodology Steps 1 – 3)* (“April Forecast Supply Order”). The April Forecast Supply Order predicted a demand shortfall to the SWC of 162,600 acre-feet for the 2022 irrigation season. *April Forecast Supply Order* at 3. At that time, the only members of the SWC predicted to experience material injury during the 2022 irrigation season were American Falls Reservoir District #2 (“AFRD2”) and Twin Falls Canal Company (“TFCC”). The Director ordered that, by May 1, 2022, ground water users with consumptive water rights “junior to December 25, 1979, 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 DS [demand shortfall] of 162,600 acre-feet in accordance with an approved mitigation plan.” *Id.* at 6. The Director also ordered that, “[i]f a junior ground water user cannot establish . . . that they can mitigate for their proportionate share of the predicted DS of 162,600 acre-feet in accordance with an approved mitigation plan, the Director will issue an order curtailing the junior-priority ground water user.” *Id.*

5. On May 5, 2022, the Director issued a *Final Order Curtailing Ground Water Rights Junior to December 25, 1979* (“Curtailment Order”). The Director ordered that:

[A]t 12:01 a.m. on or before May 20, 2022, ground water users holding water rights bearing priority dates junior to December 25, 1979, within the ESPA ACGWS [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 3.

B. April through June Climate

6. The April 2022 Joint Forecast prepared by the United States Army Corps of Engineers and the United States Bureau of Reclamation (“BOR”) predicted 2,150,000 acre-feet of natural flow at the Heise gage for the period April–July 2022. *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 (citation omitted).

7. The time period from April through June was relatively cool and wet. According to data measured at the Natural Resources Conservation Service’s SNOTEL sites in the Upper Snake River Basin, the basin received 137%, 117%, and 89% of average precipitation in April, May, and June, respectively. The National Weather Service’s Twin Falls weather station reported 106%, 116%, and 23% of normal precipitation in April, May, and June, respectively. Twin Falls temperatures were 3.1 degrees below normal for April, 3.8 degrees below normal for May, and 0.1 degrees above normal for June.¹

C. Reasonable In-Season Demand

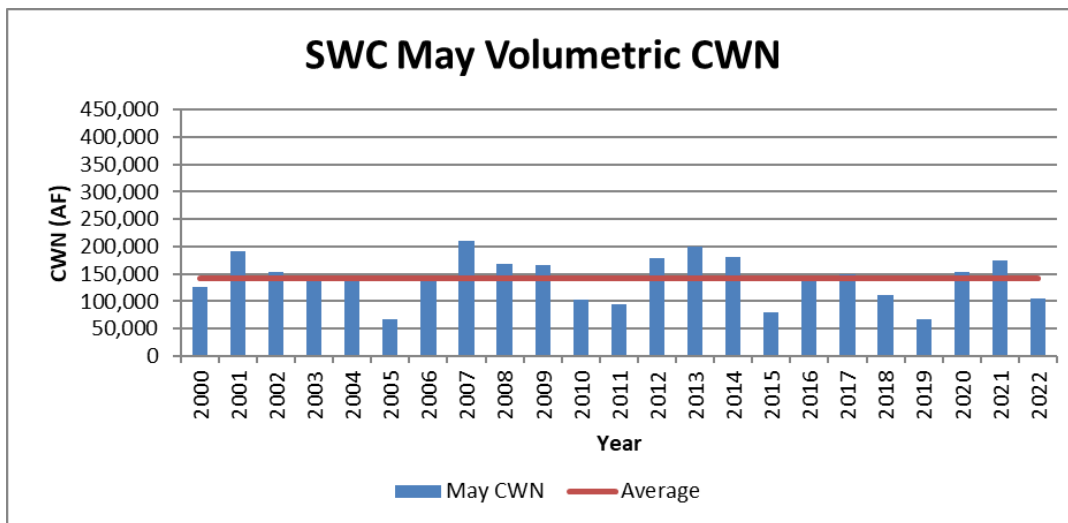
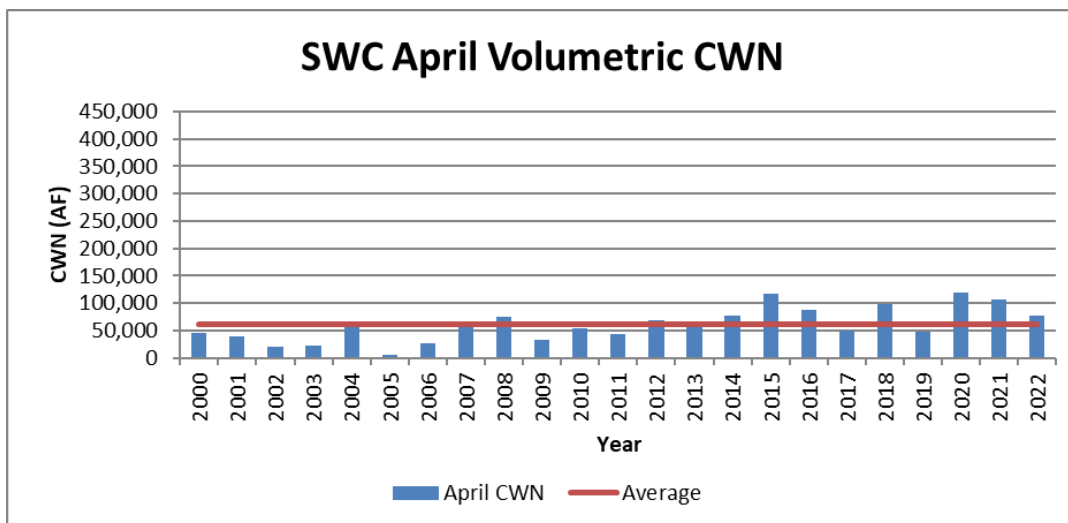
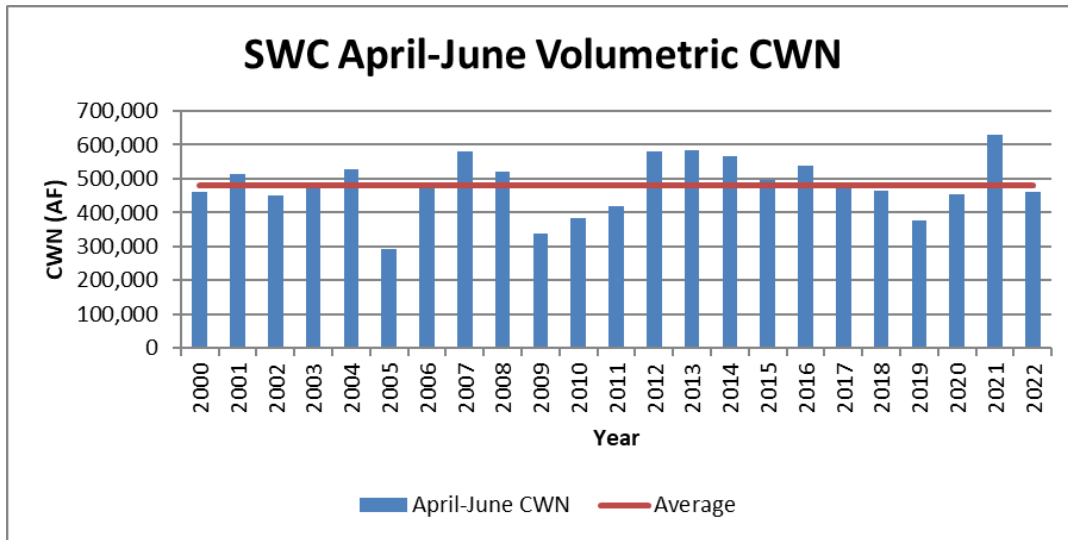
8. RISD is the volume of water that would be required to be diverted at the point of diversion during the year of evaluation to grow the specific crops within the entity’s service area. In April, the demand from the 2006/2008/2012 baseline year (“BLY”) represents the RISD. During the irrigation season, the RISD for the already expired portion of the irrigation season is recalculated by dividing each entity’s actual crop water need (“CWN”) 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 2006/2008/2012 BLY. RISD is calculated on a monthly timestep.

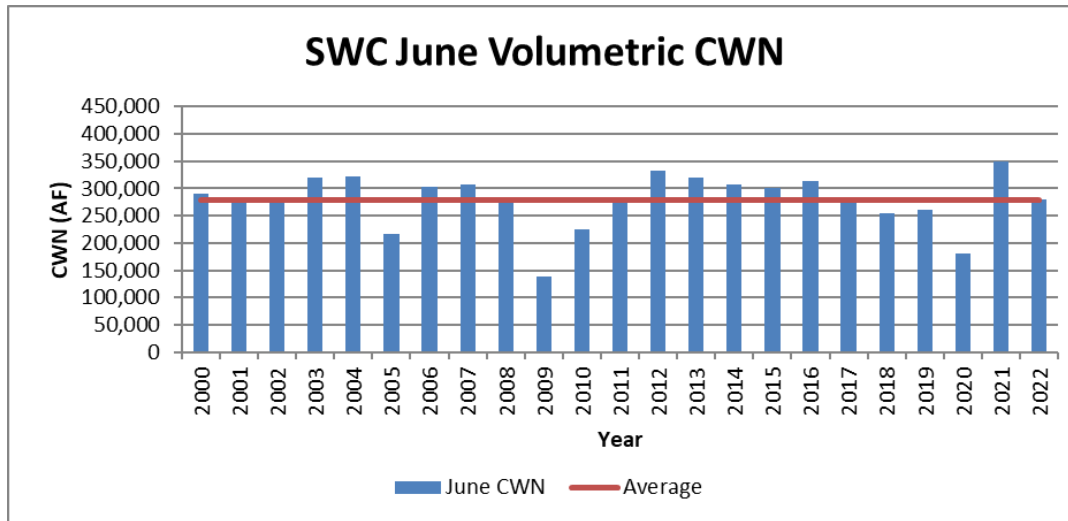
i. Crop Water Need

9. CWN is the project wide volume of irrigation water required for crop growth so 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 RISD for those months of the irrigation season that are complete. To calculate the season-total RISD volume, 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. Demand shortfall is then calculated as the difference between the adjusted forecast supply and the season-total RISD. For specifics regarding determination of CWN, see the Methodology Order at page 14.

10. 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 462,481 acre-feet. This volume is 89% of the April 1–June 30 ten-year average CWN (2012-2021) and 88% of the CWN for the 2006/2008/2012 BLY. As calculated from April 1 to June 30, from the year 2000 until this year (23 years), 2022 has the fifteenth largest CWN volume of any irrigation season. The following graphs summarize monthly volumetric CWN values.

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).





ii. *Extension of BLY*

11. The RISD for the future portion of the irrigation season (July–October) is the July–October demand for the 2006/2008/2012 BLY. The numeric July–October demand values are shown in the table in Finding of Fact 12 below.

iii. *Calculation of RISD*

12. As calculated from the beginning of the irrigation season (April 1), the SWC’s volumetric RISD for 2022 is 1,232,297 acre-feet. This volume is 88% of the April 1–June 30 ten-year average RISD (2012–2021) and 94% 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 (23 years), 2022 has the seventeenth largest RISD volume of any irrigation season. The recalculated RISD for the 2022 irrigation season by entity is summarized in column six of the following table:

	April–June CWN (AF)	E_p (April–June)	April–June RISD (AF)	July–October Demand for 2006/2008/2012 BLY (AF)	Recalculated RISD (AF)
A&B	13,935	0.46-0.91	22,894	36,114	59,008
AFRD2	50,458	0.20-0.38	161,691	261,740	423,430
BID	39,344	0.30-0.46	97,183	136,738	233,921
Milner	10,853	0.33-0.83	22,233	28,352	50,585
Minidoka	74,031	0.38-0.57	148,682	200,690	349,372
NSCC	114,006	0.21-0.39	376,790	584,862	961,652
TFCC	159,854	0.29-0.51	402,824	633,715	1,036,539

D. Forecast Supply

13. When determined during the irrigation season, the forecast supply (“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. Natural flow diversions for the remainder of the irrigation season are estimated by a regression analysis. *Id.* at 18, 37. Storage allocations are established by the BOR and Water District 01 (“WD1”) on the day of allocation. *Id.* at 37.

i. Sum of Actual Natural Flow Diverted

14. Actual natural flow diverted for the period April through June for each SWC member are summarized in the table contained within the Summary of Forecast Supply section in Finding of Fact 22.

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

15. 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 BOR, snow water equivalent (“SWE”) data from the Two Ocean Plateau SNOTEL site, Spring Creek discharge, and select ground water 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.

16. Either June 15 or July 1 SWE values for the Two Ocean Plateau SNOTEL site are used as input variables in each of the regression models developed in the Methodology Order. Two Ocean Plateau SWE data was selected as a predictor variable in the Methodology Order based upon stepwise statistical analysis carried out in the development of each regression model. The Two Ocean Plateau SWE data is an optimum predictor variable for several reasons, including: its elevation (the site is located above 9,000 feet 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.

17. On July 1, 2022, the Two Ocean Plateau SNOTEL station reported 0.0 inches of SWE, and this value was used to predict July–October natural flow volumes for A&B, AFRD2, and Milner.

18. The variables used to predict July–October natural flow volumes for BID, Minidoka, and NSCC in 2022 include: (1) 21.2 inches of SWE reported by the Two Ocean Plateau SNOTEL site on June 15, 2022; (2) 1,991,394 acre-feet of natural flow runoff at the Snake River near Heise (April–June) as reported by the BOR; and (3) 27.69 feet depth to water at well 5S31E27ABA1 as measured by the Department on March 23, 2022.

19. The variables used to predict the July–October natural flow volume for TFCC in 2022 include: (1) 21.2 inches of the SWE reported by the Two Ocean Plateau SNOTEL Site on June 15; (2) 1,991,394 acre-feet of natural flow runoff at the Snake River near Heise (April–June) as reported by the BOR; and (3) 79,088 acre-feet of discharge (January–May) as measured and reported by the United States Geologic Survey for its *Spring Creek at Sheepskin Rd Nr Fort Hall ID* Gage (Gage No. 13075983).

iii. Storage Allocations

20. Preliminary storage allocation values for each member of the SWC were established by the BOR and WD1 and published in WD1’s Initial Storage Report on July 5, 2022,² found in the table in Finding of Fact 22 below. No members of the SWC received a full storage allocation in the Initial Storage Report.

iv. Adjustments to Total Supply

21. Natural flow and storage water supplies were both adjusted as shown in the table in Finding of Fact 22 below. Adjustments to natural flow include wheeled water to Southwest Irrigation District through BID and Milner, 3,800 acre-feet and 2,900 acre-feet, respectively. Adjustments to natural flow also include wheeled water as a part of the Idaho Water Resource Board’s water right to AFRD2 and NSCC, 2,425 acre-feet and 139 acre-feet, respectively. The only adjustments made to stored water supply in the table below were for the Minidoka Credit. Adjustments for wheeled storage water published in WD1’s 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

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

	Natural Flow Diverted 4/1 to 6/30 (AF)	Predicted Natural Flow Diversions 7/1 to 10/31 (AF)	Natural Flow Adjustment (AF)	Preliminary Storage Allocation (AF)	Minidoka Credit Adjustment (AF)	Forecast Supply (AF)
A&B	12	0	0	106,072	0	106,084
AFRD2	40,438	0	0	338,244	1,000	377,257
BID	85,459	11,633	(3,700)	202,292	5,130	300,715
Milner	9,464	123	(3,000)	63,046	0	69,733
Minidoka	93,175	15,515	0	251,631	8,370	368,691
NSCC	287,666	94,427	0	762,788	(7,750)	1,137,131
TFCC	367,078	449,532	0	220,394	(6,750)	1,030,115

² The Initial Storage Report may be viewed at: <https://www.waterdistrict1.com/media/omzjxnsz/2022.pdf>.

E. Revised Shortfall Prediction

23. Demand Shortfall (“DS”) is calculated as the difference between RISD and the FS.

24. Based on the above, and as summarized in the table below, the Director predicts, at this time, that TFCC and AFRD2 are expected to experience material injury.

	Forecast Supply (AF)	RISD (AF)	Shortfall (AF)
A&B	106,084	59,008	0
AFRD2	377,257	423,430	46,200
BID	300,715	233,921	0
Milner	69,733	50,585	0
Minidoka	368,691	349,372	0
NSCC	1,137,131	961,652	0
TFCC	1,030,115	1,036,539	6,400
		Total	52,600

25. The current, predicted shortfall to the SWC’s RISD is 52,600 acre-feet.

26. The estimated Time of Need was established by predicting when the remaining storage balance for TFCC was equal to their reasonable carryover volume of 25,200 acre-feet and the remaining storage balance for AFRD2 was equal to their reasonable carryover volume of 11,500 acre-feet. An analogous year was chosen to predict the storage use for TFCC and AFRD2 for the remainder of the 2022 irrigation season. The analogous year, 2016, was selected based on similar Blackfoot to Milner reach gains. Anticipating that TFCC’s and AFRD2’s storage use for the remainder of the 2022 season will be similar to their storage use in 2016, the Time of Need is predicted to occur on September 2, 2022, for TFCC and September 13, 2022, for AFRD2.

F. Step 6

27. Step 6 requires the following:

Upon a determination of an additional mitigation obligation, junior ground water users will be required to establish, to the satisfaction of the Director, their ability to secure a volume of storage water pursuant to an approved mitigation plan or to conduct other approved mitigation activities that will deliver the additional mitigation obligation water to the injured members of the SWC at the Time of Need. If junior ground water users fail or refuse to submit this information within fourteen (14) days from issuance of a Step 6 order, the Director will issue an order curtailing junior ground water users. The ESPA Model will be run to determine the priority date to produce the necessary mitigation obligation volume within the area of common ground water supply, as described by CM [IDAPA 37.03.11] Rule 50.01.

Methodology Order at 38 (footnote omitted).

28. The predicted July DS for TFCC is 6,400 acre-feet. The predicted shortfall to AFRD2 is 46,200 acre-feet.

29. The Department ran the Eastern Snake Plain Aquifer Model (“ESPAM”) version 2.2 to predict the junior priority water rights that must be curtailed to produce the volume of water equal to the predicted July DS. Ground water rights bearing priority dates junior to March 12, 1989, must be curtailed to produce the volume of water equal to the predicted July DS.

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 states 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. This year, no water is required to be allocated to the SWC pursuant to Step 5 related to a reasonable carryover shortfall because no junior water users secured water in 2021 to fulfill the carryover shortfall.

4. Based on Findings of Fact 6 through 25 above, it is reasonably certain TFCC and AFRD2 will be materially injured. The predicted shortfall to TFCC is 6,400 acre-feet. The predicted shortfall to AFRD2 is 46,200 acre-feet.

5. In the April Forecast Supply Order, the Director predicted a demand shortfall to the SWC of 162,600 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 May 5, 2022 Curtailment Order must be adjusted.

6. Using the ESPAM 2.2, the new curtailment date is junior to March 12, 1989.

7. It is necessary to amend the May 5, 2022 Curtailment Order so that ground water users holding water rights listed in Attachment A to the Curtailment Order bearing priority dates senior or equal to March 12, 1989 are no longer curtailed. Ground water users holding water rights listed in Attachment A to the Curtailment Order bearing priority dates junior to March 12,

1989, should remain curtailed unless they are mitigating in accordance with an approved mitigation plan.³

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED as follows:

Effective immediately, all ground water users holding water rights listed in Attachment A to the May 5, 2022 Curtailment Order bearing priority dates senior or equal to March 12, 1989, are no longer curtailed. However, all ground water users holding water rights listed in Attachment A to the May 5, 2022 Curtailment Order bearing priority dates junior to March 12, 1989, 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 5, 2022 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(11), 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 5, 2022 Curtailment Order and inform water users holding water rights bearing priority dates senior or equal to March 12, 1989, that they are no longer curtailed.

Dated this 20th day of July 2022.


GARY SPACKMAN
Director

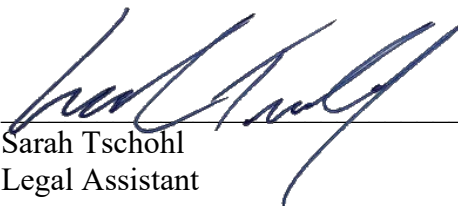
³ There are currently seven approved mitigation plans responding to the SWC delivery call, filed by the following entities: (1) A&B Irrigation District, (2) Southwest Irrigation District and Goose Creek Irrigation District (collectively, "SWID"), (3) the Idaho Ground Water Appropriators, Inc. ("IGWA"), (4) certain cities commonly referred to as the "Coalition of Cities," and (5) certain entities commonly referred to as the "Water Mitigation Coalition." A&B's enlargement rights have already been curtailed by the May 5, 2022 Curtailment Order, which remains in effect. A&B's other water rights are not affected by the adjusted curtailment date, and thus A&B does not need to establish that it can mitigate for its proportionate share of the predicted DS in this order. SWID, IGWA, the Coalition of Cities, and the Water Mitigation Coalition do not need to establish that they can mitigate for their proportionate share of the predicted DS either due to the nature of their respective mitigation plans. *See April Forecast Supply Order* at 5 n.4

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July 2022, a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

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Sarah Tschohl
Legal Assistant

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.