

**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

**FINAL ORDER  
ESTABLISHING 2022  
REASONABLE CARRYOVER**

**(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 established 9 steps for determining material injury to members of the Surface Water Coalition (“SWC”). This order applies step 9, the final step of the Methodology Order for the 2022 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 [base line year], 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. There are currently seven approved mitigation plans in place responding to the SWC delivery call to mitigate for material injury to in-season demand and reasonable carryover:

- 1) Docket No. CM-MP-2009-007 for the benefit of the Idaho Ground Water Appropriators, Inc. (“IGWA”) (delivery of stored water);
- 2) Docket No. CM-MP-2009-006 for the benefit of IGWA (conversions, dry ups, and recharge);
- 3) Docket No. CM-MP-2016-001 for the benefit of IGWA (the IGWA and SWC stipulated mitigation plan);
- 4) Docket No. CM-MP-2010-001 for the benefit of the Southwest Irrigation and Goose Creek Irrigation District (collectively, “SWID”);
- 5) Docket No. CM-MP-2019-001 for the benefit of certain cities commonly referred to as the “Coalition of Cities”;
- 6) Docket No. CM-MP-2015-003 for the benefit of the A&B Irrigation District (“A&B”); and
- 7) Docket No. CM-MP-2007-001 for the benefit of J.R. Simplot Company, Basic American Foods, and ConAgra Foods Packaged Foods Company, Inc., d/b/a Lamb-Weston (collectively, the “Water Mitigation Coalition”) (delivery of stored water).

4. The following table summarizes the 2022 irrigation season diversions and 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”). These values are used to determine entity-specific season ending reasonable in-season demand (“RISD”) values.

<b>Entity</b>	<b>Demand<sup>1</sup></b>	<b>Crop Water Need</b>
<b>A&amp;B</b>	63,848	35,762
<b>AFRD2</b>	408,710	160,162
<b>BID</b>	241,033	103,327
<b>Milner</b>	56,452	31,908
<b>Minidoka</b>	311,795	188,016
<b>NSCC</b>	953,998	375,458
<b>TFCC</b>	957,044	472,011

5. The following table summarizes the final calculated 2022 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 2022 Forecast Supply (Methodology Steps 1–3)* (April 20, 2022) (“April Forecast Supply Order”) and *Order Revising April 2022 Forecast Supply and Amending Curtailment Order (Methodology Steps 5 & 6)* (July 20, 2022) (“July Order”). The Director predicted a 162,600 AF material injury to the SWC in the April Forecast Supply Order. *April Forecast Supply Order* at 4. The Director predicted a 52,600 AF material injury to the SWC in the July Order. *July Order* at 8. The differences are due to changes in total supply and

<sup>1</sup> The “Demand” for each SWC entity is equal to each entity’s 2022 April – October diversions.

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 WD01.<sup>5</sup> The fifth column summarizes storage adjustments due to 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. Completed application of the methodology order results in a final net in-season demand shortfall volume of 84,200 AF to AFRD2 and 192,400 AF to TFCC for the 2022 irrigation season.<sup>7</sup>

Entity	Natural Flow Diverted through 10/31	Natural Flow Adjustment	Preliminary Storage Allocation	In-Season Storage Adjustment	Total Supply	RISD	Demand Shortfall
<b>A&amp;B</b>	0	-	106,072	-	106,072	60,832	-
<b>AFRD2</b>	40,893	(2,464)	338,245	1,000	377,673	461,831	84,200
<b>BID</b>	86,261	(3,714)	202,293	5,130	289,970	243,232	-
<b>Milner</b>	9,717	(3,011)	63,046	-	69,752	62,186	-
<b>Minidoka</b>	111,676	-	251,632	8,370	371,678	354,496	-
<b>NSCC</b>	354,800	(10,368)	762,791	(7,750)	1,099,473	1,059,783	-
<b>TFCC</b>	755,866	(5,346)	220,395	(6,750)	964,165	1,156,558	192,400

<sup>2</sup> The natural flow diverted was calculated from the preliminary daily water right accounting records located here: <https://www.waterdistrict1.com/media/yszp4lj1/snkwra.pdf>.

<sup>3</sup> Natural flow recharge values represent accomplished recharge through the Idaho Water Resource Board’s recharge water rights as of October 31, 2022.

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

<sup>5</sup> The preliminary storage allocations can be found on Water District 01’s website located here: <https://www.waterdistrict1.com/media/5vaf2jtc/2022.pdf>

<sup>6</sup> See column titled “In-Season Storage Adjustment” in Attachment A to this order. The Minidoka Credit is a long-standing 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> *The Order Revising 2022 Forecast Supply (Methodology Steps 7–8)* (August 18, 2022) (“Step 7–8 Order”) revised the total shortfall prediction to 132,100 AF and established the times of need. *Step 7–8 Order* at 10–11. The Step 7–8 Order demand shortfall was mitigated by junior ground water users through implementation of approved mitigation plans cited in Finding of Fact 3, or by curtailment of water use authorized by junior-priority water rights during the 2022 irrigation season not protected by an approved mitigation plan. No additional mitigation is required to address in-season demand shortfall for the 2022 irrigation season.

6. The following table summarizes the end of season reasonable carryover shortfall calculation for 2022. All values are reported in AF. The second column of the summary table contains the carryover volumes reported from the October 31, 2022 Water District 01 water rights accounting report.<sup>8</sup> The third column summarizes the water supplied to each SWC member for mitigation. Adjusting the October 31, 2022 carryover volumes by deducting storage water delivered to SWC members for mitigation ensures that junior ground water users not participating in approved mitigation plans do not benefit from implementation of those mitigation plans. The fourth column summarizes adjustments for storage water leased by a SWC member to the rental pool via a private lease. The adjustments for storage water leased by a SWC member ensure that the leases, which are voluntary reductions in storage supplies, do not increase the reasonable carryover shortfall obligation of junior ground water users. The fifth column contains the actual carryover volumes as defined by the Methodology Order (*Methodology Order* at 28) and is calculated by summing columns two, three, and four. The sixth column contains the reasonable carryover volumes established in the Methodology Order. *Methodology Order* at 28. The reasonable carryover shortfall in the last column is the difference between reasonable carryover and the actual carryover volume for each member of the SWC at the end of the irrigation season. Completed application of the Methodology determines a final net shortfall to AFRD2's reasonable carryover of 38,255 AF and a final net shortfall to TFCC's reasonable carryover of 11,054 AF. No other members of the SWC have a reasonable carryover shortfall.

Entity <sup>9</sup>	Oct. 31, 2022, Carryover	Adjustments for Mitigation	Adjustments for Storage Water Leased	Actual Carryover	Reasonable Carryover	Reasonable Carryover Shortfall
A&B	54,982	(9,703)	-	45,279	18,500	0
AFRD2	10	(26,765)	-	(26,755)	11,500	38,255
BID	51,583	(4,388)	-	47,196	0	0
Milner	28,424	(2,598)	-	25,826	4,800	0
Minidoka	66,727	(14,157)	30,000	82,569	0	0
NSCC	171,637	(14,216)	-	157,142	65,500	0
TFCC	31,125	(16,979)	-	14,146	25,200	11,054

7. 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 2022, 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

<sup>8</sup> The preliminary water right accounting report for the 2022 irrigation season was published to the Water District 01 webpage on November 18, 2022: <https://www.waterdistrict1.com/media/yszp4lj1/snkwra.pdf>

The carryover volumes used in this order can be found in the report's summary Diversion table under the "AF RMNG" columns for October 31, 2022. The "AF RMNG" for Minidoka and BID were summed and then prorated 56.4% to Minidoka and 43.6% to BID. Because final accounting for 2022 is not yet complete for Water District 01, the proportions were estimated using an average of the previous five years. The October 31, 2022 "AF RMNG" for AFRD2 was corrected to address an accounting error that indicated additional storage use after irrigation shut off.

<sup>9</sup> Details of adjustments to quantities in the above tables are set forth in Attachment A to this order.

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 accounts for 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 2022. *Methodology Order* at 38–39 (Step 9). 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 Dep’t of Water Res.*, 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 Dep’t of Health & Welfare v. Doe*, 150 Idaho 36, 41, 244 P.3d 180, 185 (2010).

4. Consistent with Finding of Fact 6, the Director concludes by clear and convincing evidence there is a 38,255 AF volume of material injury to AFRD2’s reasonable carryover and a 11,054 AF volume of material injury to TFCC’s reasonable carryover. No other members of the SWC have a reasonable carryover shortfall.

5. Because not all junior ground water users are participants in an approved mitigation plan, the Director must determine a priority date for curtailment that will result in an accumulation of water at steady state, to the reaches of the Snake River from which the SWC members divert, in amount equal to the established reasonable carryover shortfall. Using the Eastern Snake Plain Aquifer Model (“ESPAM”) Version 2.2, the Director determines the curtailment date to produce a steady state volume of at least 49,309 AF in the near Blackfoot to Minidoka reach is junior to May 31, 1989.

6. According to the Methodology Order, fourteen days following issuance of this order, which establishes the reasonable carryover shortfall obligation, junior ground water users must “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.”

*Methodology Order* at 39. Otherwise, “the Director will issue an order curtailing junior ground water rights.” *Id.*

## ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that, junior ground water users holding consumptive ground water rights within the Eastern Snake Plain Aquifer area of common ground water supply bearing priority dates junior to May 31, 1989, must mitigate for their proportionate share of the reasonable carryover shortfall of 49,309 AF in accordance with an approved mitigation plan.<sup>10</sup> If, within fourteen days following issuance of this order, junior ground water users fail to establish, to the satisfaction of the Director, their ability to mitigate for their proportionate share of the reasonable carryover shortfall of 49,309 AF in accordance with an approved mitigation plan, the Director will issue an order curtailing the junior-priority ground water use.

IT IS FURTHER ORDERED that this final order concludes the application of the Methodology Order to the climatic, hydrologic, and agronomic facts of the 2022 irrigation season.

Dated this 30th day of November 2022.

  
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GARY SPACKMAN  
Director

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<sup>10</sup> As stated, in Finding of Fact 3 above, seven mitigation plans are currently approved for the SWC delivery call to mitigate for material injury to reasonable carryover. Participants in the mitigation plans approved for IGWA, SWID, the Cities, and Water Mitigation Coalition do not need to establish their ability to mitigate for their proportionate share of the reasonable carryover shortfall. However, due to the nature of A&B’s mitigation plan, A&B must establish to the satisfaction of the Director its ability to mitigate for its proportionate share of the reasonable carryover shortfall, which is 2,542 AF.

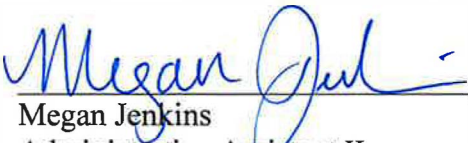
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of November 2022, I served a true and correct copy of the foregoing, *Final Order Establishing 2022 Reasonable Carryover (Methodology Step 9)*, by the method indicated below, upon the following:

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<p><b>COURTESY COPY TO:</b>  William A. Parsons  PARSONS SMITH &amp; STONE  P.O. Box 910  Burley, ID 83318  <a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a></p>	<input checked="" type="checkbox"/> Email

  
Megan Jenkins  
Administrative Assistant II



**Attachment A (2022 SWC Adjustments)**

Entity	Volume (AF)	Description	Natural Flow Adjustment	In-Season Storage Adjustment	Adjustments of Mitigation	Adjustments for Storage Water Lease
<b>A &amp; B</b>	6,400.0	IGWA Assignments - SWC			Yes	
	2,215.0	IGWA Assignments - SWC			Yes	
	3,038.0	Magic Valley GWD				
	1,088.0	Minidoka (Water Mitigation Coalition)			Yes	
		<b>Total A &amp; B</b>	<b>0</b>	<b>0</b>	<b>9,703</b>	<b>0</b>
<b>AFRD2</b>	4,855.1	City of Pocatello (multiple cities)			Yes	
	1,435.1	City of Pocatello			Yes	
	1,755.0	Enterprise (Galena GWD)				
	1,100.0	Idaho Canal (Big Wood GWD)				
	4,900.0	IGWA Assignments - SWC			Yes	
	1,696.0	IGWA Assignments - SWC			Yes	
	13,046.0	IGWA Assignments - SWC			Yes	
	(1,076.0)	Magic Valley GWD				
	3,500.0	Minidoka (North Snake GWD)				
	833.0	Minidoka (Water Mitigation Coalition)			Yes	
	1,000.0	Minidoka Credit		Yes		
	(2,464.0)	IWRB Recharge	Yes			
	<b>Total AFRD</b>	<b>(2,464)</b>	<b>1,000</b>	<b>26,765</b>	<b>0</b>	
<b>BID</b>	3,750.0	IGWA Assignments - SWC			Yes	
	2,200.0	Minidoka (Southwest Irrigation District)				
	637.5	Minidoka (Water Mitigation Coalition)			Yes	
	5,130.0	Minidoka Credit		Yes		
	(3,714.0)	SWID Natural Flow	Yes			
	<b>Total BID</b>	<b>(3,714)</b>	<b>5,130</b>	<b>4,388</b>	<b>0</b>	
<b>Milner</b>	200.0	Scott Breeding				
	978.5	Artesian				
	1,500.0	Falls Irrigation District (Southwest Irrigation District)				
	1,000.0	IGWA Assignments - SWC			Yes	
	346.0	IGWA Assignments - SWC			Yes	
	1,082.0	IGWA Assignments - SWID			Yes	
	3,038.0	Magic Valley GWD				
	170.0	Minidoka (Water Mitigation Coalition)			Yes	
	2,800.0	Minidoka (Southwest Irrigation District)				
	1,046.4	PWUI				
	140.0	Southwest Irrigation District Pumps				
(3,011.0)	SWID Natural Flow	Yes				
	<b>Total Milner</b>	<b>(3,011)</b>	<b>0</b>	<b>2,598</b>	<b>0</b>	
<b>MID</b>	(1,088.0)	A & B (Water Mitigation Coalition)				Yes
	(3,500.0)	AFRD #2 (North Snake GWD)				Yes
	(833.0)	AFRD #2 (Water Mitigation Coalition)				Yes
	(637.5)	Burley Irrigation District (Water Mitigation Coalition)				Yes
	(2,200.0)	Burley Irrigation District (Southwest Irrigation District)				Yes
	13,128.5	IGWA Assignments - SWC			Yes	
	(170.0)	Milner (Water Mitigation Coalition)				Yes
	(2,800.0)	Milner (Southwest Irrigation District)				Yes
	(2,065.5)	Northside Canal Co (Water Mitigation Coalition)				Yes
	(11,500.0)	Northside Canal Co (North Snake GWD)				Yes
	(1,500.0)	Northside Canal Co (Water Mitigation Coalition)				Yes
	1,028.5	IGWA Assignments - SWID			Yes	
	(1,028.5)	IGWA Assignments - SWID				Yes
	(2,677.0)	TFCC (Water Mitigation Coalition)				Yes
8,370.0	Minidoka Credit		Yes			
	<b>Total MID</b>	<b>0</b>	<b>8,370</b>	<b>14,157</b>	<b>(30,000)</b>	
<b>NSCC</b>	12,150.0	IGWA Assignments - SWC			Yes	
	100.0	Arthur Henry Farms				
	11,500.0	Minidoka (North Snake GWD)				
	1,500.0	Minidoka (Water Mitigation Coalition)				
	2,065.5	Minidoka (Water Mitigation Coalition)			Yes	
	(7,750.0)	Minidoka Credit		Yes		
	(10,367.8)	IWRB Recharge	Yes			
	<b>Total NSCC</b>	<b>(10,368)</b>	<b>(7,750)</b>	<b>14,216</b>	<b>0</b>	
<b>TFCC</b>	1,391.7	Artesian				
	8,671.5	IGWA Assignments - SWC			Yes	
	4,500.0	IGWA Assignments - SWID			Yes	
	1,130.0	IGWA Assignments - SWID			Yes	
	2,677.5	Minidoka (Water Mitigation Coalition)			Yes	
	281.9	PWUI				
	(6,750.0)	Minidoka Credit		Yes		
(5,346.0)	IWRB Recharge	Yes				
	<b>Total TFCC</b>	<b>(5,346)</b>	<b>(6,750)</b>	<b>16,979</b>	<b>0</b>	

## **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.