

**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 2023
REASONABLE CARRYOVER**

(METHODOLOGY STEP 9)

FINDINGS OF FACT

1. On July 19, 2023, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued the *Sixth 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 2023 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. A transient ESPAM simulation will be run to determine

the priority date of water rights that must be curtailed to produce the reasonable carryover shortfall volume by September 30 of the following year. Curtailment will be simulated within the area of common ground water supply, as described by CM Rule 50.01.

Methodology Order at 45.

3. The following table summarizes the 2023 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 17. All values are reported in acre-feet (“AF”). These values are used to determine entity-specific season ending RISD values.

Entity	Demand ¹	Crop Water Need
A&B	62,080	28,401
AFRD2	433,151	135,217
BID	231,011	86,494
Milner	52,976	27,074
Minidoka	322,423	156,201
NSCC	985,149	313,401
TFCC	1,079,398	403,209

4. The following table summarizes the final calculated 2023 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 2023 Forecast Supply (Methodology Steps 1-3)* (April 21, 2023) (“*April Forecast Supply Order*”), *Order Revising April 2023 Forecast Supply and Amending Curtailment Order (Methodology Steps 5 & 6)* (July 19, 2023) (“*July Order*”) and the *Order Revising July 2023 Forecast Supply (Methodology Steps 7-8)* (August 31, 2023). The differences are due to changes in total supply and RISD that reflect diversion and ET data not available when 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.² The third column summarizes the natural flow adjustments, which include natural flow delivered for recharge³ and natural flow delivered to SWID.⁴ The fourth column contains the preliminary storage allocations reported from the August 1, 2023 Water

¹ The “Demand” for each SWC entity is equal to each entity’s 2023 April–October diversions.

² The natural flow diverted was calculated from the preliminary daily water right accounting records located here: <https://research.idwr.idaho.gov/apps/Hydrologic/Accounting/>.

³ Natural flow recharge values represent accomplished recharge through the Idaho Water Resource Board’s recharge water rights as of October 31, 2023.

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

District 01 storage report.⁵ The fifth column summarizes storage adjustments due to the application of the Minidoka Credit.⁶ 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 exceeds the RISD. No members of the SWC have a demand shortfall for 2023.

Entity	Natural Flow Diverted through 10/31	Natural Flow Adjustment	Preliminary Storage Allocation	In-Season Storage Adjustment	Total Supply	RISD	Demand Shortfall
A&B	15,628	-	132,888	-	148,516	46,854	0
AFRD2	155,354	(7,395)	382,422	1,000	531,380	378,375	0
BID	127,690	(3,714)	220,083	5,130	349,189	204,761	0
Milner	19,476	(3,011)	88,090	-	104,555	48,319	0
Minidoka	166,934	-	336,711	8,370	512,015	315,721	0
NSCC	508,227	(3,986)	834,525	(7,750)	1,331,016	831,620	0
TFCC	898,401	(181)	238,561	(6,750)	1,130,031	1,007,766	0

5. The following table summarizes the end of season reasonable carryover shortfall calculation for 2023. All values are reported in AF. The second column of the table contains the preliminary storage allocations reported from the August 1, 2023 Water District 01 storage report. The third column summarizes adjustments for storage water due to the 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.⁷ The fifth column contains the total storage water use reported from the October 31, 2023 Water District 01 water right accounting report.⁸ The sixth column contains the actual carryover volumes as defined by the *Methodology Order* (*Methodology Order* at 45) 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 31. 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 2023.

⁵ The preliminary storage allocations can be found on Water District 01’s website: <https://www.waterdistrict1.com/current-data/>.

⁶ 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.

⁷ See column titled “Storage Use Adjustment” in “Attachment A” for further information regarding these adjustments.

⁸ This water right accounting report was published to the Water District 01 webpage on November 17, 2023: <https://www.waterdistrict1.com/current-data/>.

	Preliminary Storage Allocation	In-Season Storage Allocation Adjustment	Storage Use Adjustment ⁹	Storage Use	Actual Carryover	Reasonable Carryover	Reasonable Carryover Shortfall
A&B	132,888	-	-	46,452	86,436	22,700	0
AFRD2	382,422	1,000	(45,453)	331,435	97,230	16,700	0
BID	220,083	5,130	(11,500)	118,653	118,060	0	0
Milner	88,090	-	(2,100)	38,611	51,579	16,100	0
Minidoka	336,711	8,370	-	155,372	189,709	0	0
NSCC	834,525	(7,750)	(28,091)	508,999	345,867	113,300	0
TFCC	238,561	(6,750)	(5,366)	186,544	50,633	37,400	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 its final accounting for 2023, 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 considers the best available water diversion and storage data, comparative water years, and RISD. *Methodology Order* at 45.

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 2023. *Methodology Order* at 45. 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 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.” *Id.*

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).

⁹ Storage Use Adjustment values include storage assignments reported on the Water District 01 Adjustment Worksheet as of November 22, 2023 (Attachment A). Personal communication with Water District 01 and water users indicates Water District 01 will finalize additional storage assignments this water year that will decrease the Storage Use Adjustment values and increase the Actual Carryover values of SWC entities.

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 2023.

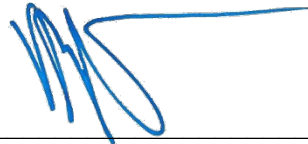
5. Because no members of the SWC have a reasonable carryover shortfall for 2023, junior ground water users do not need to establish “their ability to supply a volume of storage water or to conduct other approved mitigation activities that will provide water to the injured members of the SWC equal to the reasonable carryover shortfall for all injured members of the SWC.” *Methodology Order* at 45. 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 2023 for use in 2024.

IT IS FURTHER ORDERED that this final order concludes the application of the *Methodology Order* to the climatic, hydrologic, and agronomic facts of the 2023 irrigation season.

DATED this 30th day of November 2023.



MATHEW WEAVER
Director

Attachment A 2023 SWC Adjustments

Entity	Adjustment Volume (AF)	Description	Natural Flow Adjustment	In-Season Storage Adjustment	Storage Use Adjustment
A&B	-	-			
		Total A&B	0	0	0
AFRD2	3,500.0	Minidoka Irrigation District (Northsnake GWD)			Yes
	41,742.8	IGWA/SWC/IWRB			Yes
	1,000.0	Minidoka Credit		Yes	
	(7,395.0)	IWRB Recharge	Yes		
		Total AFRD	(7,395)	1,000	45,243
BID	5,000.0	Falls Irrigation District (Southwest Irrigation District)			Yes
	1,500.0	City of Pocatello (Southwest Irrigation District)			Yes
	5,000.0	City of Pocatello (LCSC Enterprises)			Yes
	5,130.0	Minidoka Credit		Yes	
	(3,714.0)	SWID Natural Flow	Yes		
		Total BID	(3,714)	5,130	11,500
Milner	100.0	Scott Breeding			Yes
	2,000.0	Minidoka (Southwest Irrigation District)			Yes
	(3,011.0)	SWID Natural Flow	Yes		
		Total Milner	(3,011)	0	2,100
MID	(11,500.0)	Northside Canal (North Snake GWD)			
	(3,500.0)	AFRD2 (North Snake GWD)			
	(5,000.0)	SWID Pumps (SWID Pumps)			
	(1,500.0)	Northside Canal (Water Mitigation Coalition)			
	8,370.0	Minidoka Credit		Yes	
		Total MID	0	8,370	0
NSCC	100.0	Arthur Henry Farms			Yes
	11,500.0	Minidoka Irrigation District (Northsnake GWD)			Yes
	1,500.0	Minidoka Irrigation District (Magic Valley GWD)			Yes
	14,991.1	IGWA/SWC/IWRB			Yes
	(7,750.0)	Minidoka Credit		Yes	
	(3,986.0)	IWRB Recharge	Yes		
		Total NSCC	(3,986)	(7,750)	28,091
TFCC	5,000.0	City of Pocatello (Southwest Irrigation District)			Yes
	365.6	IGWA/SWC/IWRB			Yes
	(6,750.0)	Minidoka Credit		Yes	
	(181.0)	IWRB Recharge	Yes		
		Total TFCC	(181)	(6,750)	5,366

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of November 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

<p>John K. Simpson MARTEN LAW LLP P.O. Box 2139 Boise, ID 83701-2139 jsimpson@martenlaw.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
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<p>W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318 wkf@pmt.org</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
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<p>David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th St., South Terrace, Suite 370 Denver, CO 80202 david.gehlert@usdoj.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
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<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83205 rdiehl@pocatello.us</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
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<p>Robert E. Williams WILLIAMS, MESERVY, & LOTHSPREICH, LLP P.O. Box 168 Jerome, ID 83338 rewilliams@wmlattys.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405 rharris@holdenlegal.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Randall D. Fife City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 rfife@idahofallsidaho.gov</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC P.O. Box 3005 Idaho Falls, ID 83403 sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Dylan Anderson Dylan Anderson Law PLLC P.O. Box 35 Rexburg, Idaho 83440 dylan@dylanandersonlaw.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>COURTESY COPY TO: Tony Olenichak IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 Tony.Olenichak@idwr.idaho.gov</p>	<input checked="" type="checkbox"/> Email

<p>COURTESY COPY TO: Corey Skinner IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033 corey.skinner@idwr.idaho.gov</p>	<input checked="" type="checkbox"/> Email
<p>COURTESY COPY TO: William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318 wparsons@pmt.org</p>	<input checked="" type="checkbox"/> Email



Megan Jenkins
Manager Assistant II

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.