

**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 2024
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 July 19, 2023, the Department issued its *Sixth 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 Steps 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 43. On November 30, 2023, the Director issued the *Final Order Establishing 2023 Reasonable Carryover (Methodology Step 9)* (“*2023 Step 9 Order*”) concluding that no member of the SWC is owed reasonable carryover storage in 2023 for use in 2024. *2023 Step 9 Order*, at 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.

Methodology Order, at 43. (footnote omitted).

4. On April 18, 2024, the Director issued his *Final Order Regarding April 2024 Forecast Supply (Methodology Steps 1 – 3)* (“*April Forecast Supply Order*”). The *April Forecast Supply Order* predicted a demand shortfall to the SWC of 74,100 acre-feet for the 2024 irrigation season. *April Forecast Supply Order*, at 3. At that time, the only member of the SWC predicted to experience material injury during the 2024 irrigation season was Twin Falls Canal Company (“TFCC”). *Id.* The Director ordered that, on or before May 2, 2024, ground water users with consumptive water rights “junior to March 31, 1954, 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 April IDS [in-season demand shortfall] of 74,100 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 April IDS in accordance with an approved mitigation plan, the Director will issue an order curtailing the junior-priority ground water user.” *Id.*

5. On May 30, 2024, the Director issued a *Final Order Curtailing Ground Water Rights Junior to March 31, 1954* (“*Curtailment Order*”). The Director ordered that:

[E]ffective May 30, 2024, ground water users holding water rights bearing priority dates junior to March 31, 1954, within the ESPA ACGWS [Eastern Snake Plain Aquifer area of common ground water supply], and listed in Attachment A to this order shall immediately 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 9.

6. In response to additional ground water district filings and a change to the area of common ground water supply, the Director amended the curtailment list on June 6, 2024¹, June 20, 2024², and June 28, 2024³.

¹ *Order Amending Curtailment List*, June 6, 2024.

² *Second Order Amending Curtailment List*, June 20, 2024.

³ *Order Regarding Mid-Season Change to Area of Common Ground Water Supply for the Eastern Snake Plain Aquifer; Third Order Amending Curtailment List*, June 28, 2024.

B. April through June Climate

7. The April 2024 Joint Forecast prepared by the United States Army Corps of Engineers and the United States Bureau of Reclamation (“BOR”) predicted a near-normal 3,370,000 acre-feet of unregulated inflow at the Snake River near Heise gage for the period April–July 2024. *April Forecast Supply Order*, at 2. The Joint Forecast “is generally as accurate a forecast as is possible using current data gathering and forecasting techniques.” *Methodology Order*, at 19.

8. The April through June precipitation was below average while the April through June temperature was above average. According to data measured at the Natural Resources Conservation Service’s SNOTEL sites in the Upper Snake River Basin, the basin received 64%, 92%, and 54% of average precipitation in April, May, and June, respectively. The National Weather Service’s Twin Falls weather station reported 27%, 55%, and 14% of normal precipitation in April, May, and June, respectively. Twin Falls temperatures were 2.3 degrees above normal for April, -1.9 degrees below normal for May, and 4.4 degrees above normal for June.⁴

C. Reasonable In-Season Demand

9. RISD “is the projected annual diversion volume for each SWC entity during the year of evaluation that is attributable to the projected beneficial use of growing crops within the service area of the entity.” *Methodology Order*, at 13. In April, the demand from the 2018 baseline year (“BLY”) defines the RISD. *Id.* at 17. During the irrigation season, the RISD for the completed portion of the irrigation season is recalculated by dividing the actual crop water need (“CWN”) for each entity by the project efficiency for that entity. *Id.* at 17, 43. For the remainder of the irrigation season, the RISD is the demand defined by the July–October 2018 BLY. RISD is calculated on a monthly time step.

i. Crop Water Need

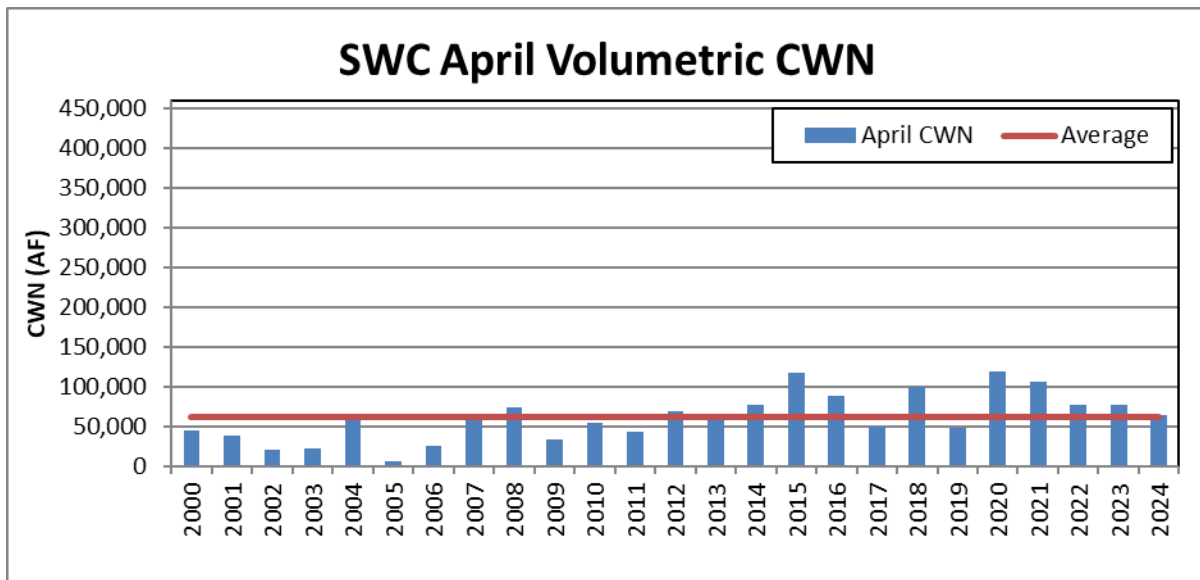
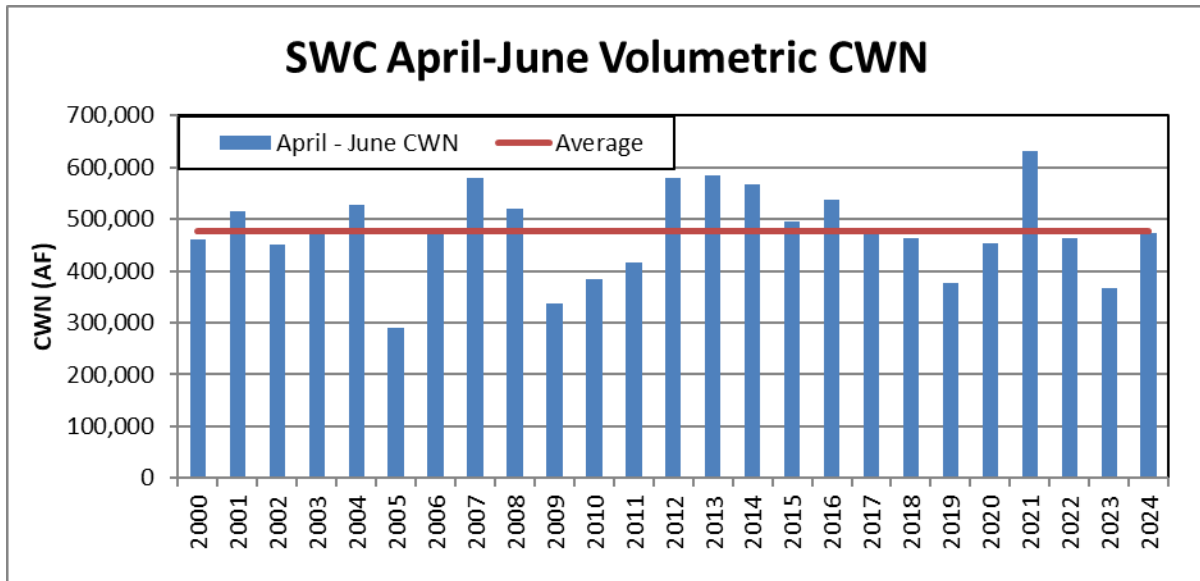
10. “CWN is the volume of irrigation water required for crop growth within a SWC entity boundary, such that crop growth is not limited by water availability.” *Methodology Order*, at 15. “CWN is the difference between the fully realizable consumptive use associated with crop growth, or ET [evapotranspiration], and effective precipitation” *Id.*

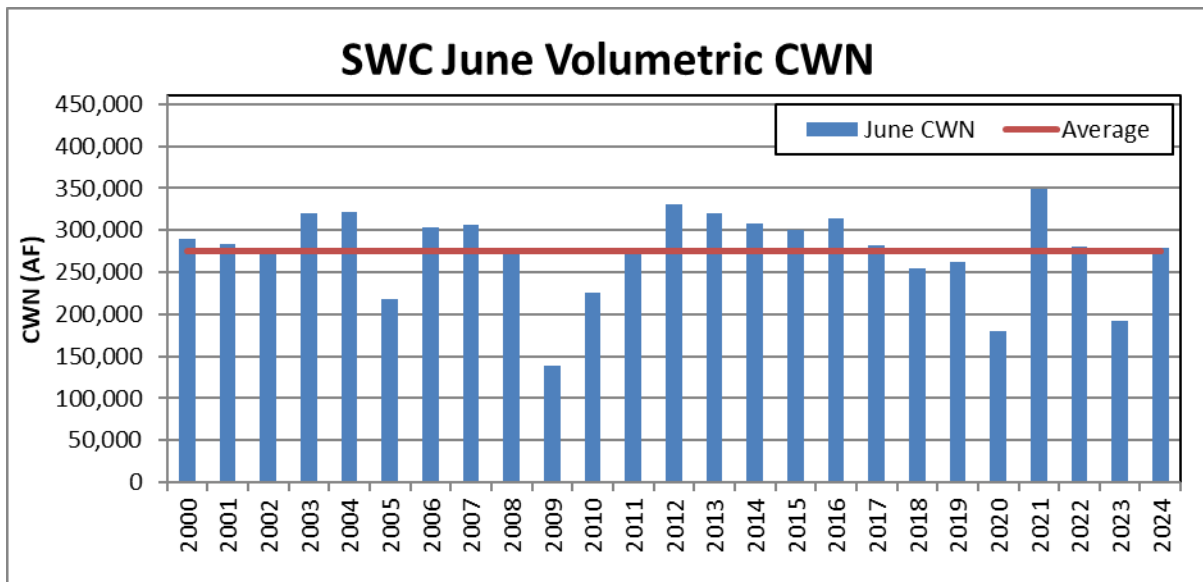
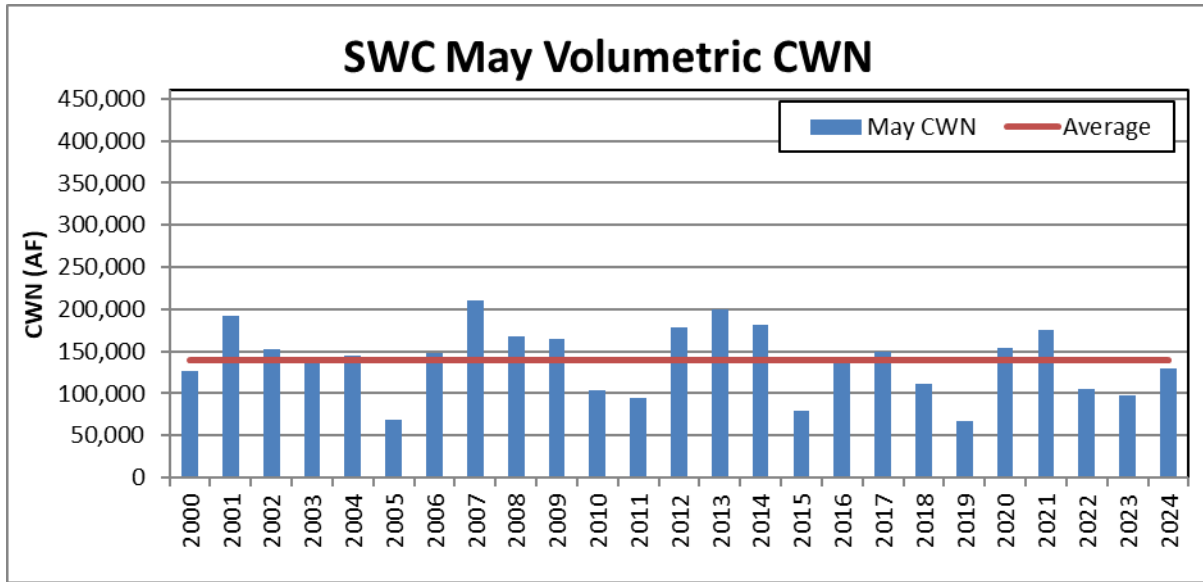
11. CWN is an input variable for calculating RISD for the completed portion of the irrigation season. *Id.* at 17. Actual RISD for the completed portion of the irrigation season is combined with monthly predicted baseline demands for the remaining months of the irrigation season to calculate a season-total RISD volume. *Id.* at 17–18. In-season demand shortfall is then calculated as the difference between the adjusted FS and the RISD. *Id.* at 23.

12. As calculated from the beginning of the irrigation season (April 1), the SWC’s volumetric CWN for the current water year through June 30, 2024, is 473,375 acre-feet. This

⁴ 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).

volume is 99% of the 2000-2023 average CWN for April 1–June 30 and 102% of the CWN for the 2018 BLY. The following graphs summarize monthly volumetric CWN values:





ii. Extension of BLY

13. The RISD for the remaining portion of the irrigation season (July–October) is the July–October demand for the 2018 BLY. The numeric July–October demand values are shown in the table in Finding of Fact 14 below.

iii. Calculation of RISD

14. As calculated from the beginning of the irrigation season (April 1), the SWC’s volumetric RISD for 2024 through June is 1,312,217 acre-feet. This volume is 100% of the

2000-2023 average demand from April 1–June 30 and 93% of the demand for the 2018 BLY. The recalculated RISD at this point of the 2024 irrigation season by entity is:

	April–June CWN (AF)	E_p (April–June)	April–June RISD (AF)	July–October Demand for 2018 BLY (AF)	Recalculated RISD (AF)
A&B	11,079	0.42-0.99	19,503 ⁵	38,528	58,032 ⁵
AFRD2	53,373	0.21-0.38	177,086	274,485	451,571
BID	40,576	0.30-0.47	101,186	145,546	246,732
Milner	11,319	0.37-0.73	21,972	36,432	58,404
Minidoka	72,113	0.35-0.53	159,603	196,968	356,571
NSCC	113,058	0.22-0.40	378,994	594,099	973,093
TFCC	171,857	0.26-0.51	453,873	653,473	1,107,346

D. Forecast Supply

15. When calculated during the irrigation season, the FS is the sum of the year-to-date actual natural flow diversions, the forecasted natural flow supply for the remainder of the season, and the storage allocation for each member of the SWC. *Methodology Order*, at 43. For this order, the 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. Actual natural flow diversions for the completed portion of the irrigation season are extracted from the Department’s water rights accounting program. The natural flow diversions for the remainder of the irrigation season are estimated by regression analysis. *Id.* at 20–21, 43. Storage allocations are determined by Water District 01 after the Day of Allocation. *Id.* at 43.

i. Sum of Actual Natural Flow Diverted

16. 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 24.

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

17. Natural flow diversions were predicted for the remainder of the irrigation season by regression analysis. The *Methodology Order* established the following predictor variables for 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 ground water levels near American Falls Reservoir. *Methodology Order*, at 20. Unique regression models with unique predictor variable groups are established in the *Methodology Order* for each SWC member. *Id.* at 20–21.

⁵ The Department has modified the total A&B irrigated acreage count to 14,749 acres. Based on the decision in CV01-23-13238, the new acreage count removes A&B Irrigation District’s enlargement acres.

18. 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*. *Id.* 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. *Id.* The Two Ocean Plateau SWE data is an optimum predictor variable for several reasons, including: its elevation (the site is located above 9,000 ft 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.

19. On July 1, 2024, the Two Ocean Plateau SNOTEL station reported 0.0 inches of SWE. When the snow water equivalent is zero on July 1, the predicted natural flow supplies for the period July 1–October 31 for A&B, AFRD2, and Milner are zero acre-feet. *Methodology Order*, at 20.

20. The input variables used to predict July–October natural flow volumes for BID, Minidoka, and NSCC in 2024 include: (1) 6.3 inches of SWE reported by the Two Ocean Plateau SNOTEL site on June 15, 2024; (2) 2,728,698 acre-feet of natural flow runoff at the Snake River near Heise (April–June) as reported by the BOR; and (3) 24.59 feet depth to water at well 05S 31E 27ABA1 as measured by the Department on March 23, 2024.

21. The variables used to predict the July–October natural flow volume for TFCC in 2024 include: (1) 6.3 inches of the SWE reported by the Two Ocean Plateau SNOTEL Site on June 15; (2) 2,728,698 acre-feet of natural flow runoff at the Snake River near Heise (April–June) as reported by the BOR; and (3) 80,044 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

22. Storage allocation values for each member of the SWC were established by Water District 01 on June 29, 2024, and are summarized in the table in Finding of Fact 24 below.

iv. Adjustments to Total Supply

23. Natural flow and storage water supplies were both adjusted, as shown in the table in Finding of Fact 24 below. Adjustments to natural flow include wheeled water to the Southwest Irrigation District through BID and Milner, 341 acre-feet and 277 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, NSCC, and TFCC, 53,113 acre-feet, 62,081 acre-feet, and 4,999 acre-feet, respectively. The only adjustments made to the 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.

v. *Summary of Forecast Supply*

24. The following table summarizes the calculated FS and its individual components for each of the SWC members.

	Natural Flow Diverted through 6/30 (AF)	Predicted Natural Flow 7/1 to 10/31 (AF)	Natural Flow Adjustment (AF)	Preliminary Storage Allocation (AF)	Minidoka Credit Adjustment (AF)	Forecast Supply (AF)
A&B	23,491	0	0	135,192	0	158,683
AFRD2	234,645	0	(53,113)	386,794	1,000	569,326
BID	103,731	39,252	(341)	222,568	5,130	370,339
Milner	25,242	0	(277)	89,059	0	114,024
Minidoka	133,857	56,736	0	360,165	8,370	559,127
NSCC	416,055	145,826	(62,081)	844,928	(7,750)	1,336,977
TFCC	433,773	436,235	(4,999)	242,320	(6,750)	1,100,579

E. Revised Shortfall Prediction

25. In-season demand shortfall (“IDS”) is calculated as the difference between RISD and the FS.

26. Based on the above, and as summarized in the following table, the Director predicts that TFCC will be materially injured by junior ground water pumping.

	Forecast Supply (AF)	RISD (AF)	Shortfall (AF)
A&B	158,683	58,032	0
AFRD2	569,326	451,571	0
BID	370,339	246,732	0
Milner	114,024	58,404	0
Minidoka	559,127	356,571	0
NSCC	1,336,977	973,093	0
TFCC	1,100,579	1,107,346	6,800
		Total	6,800

27. The current predicted shortfall to the SWC’s RISD is 6,800 acre-feet.

28. At approximately the halfway point of the irrigation season, the estimated Time of Need is established by predicting when the remaining storage balance equals the volume of reasonable carryover. This year, because TFCC is the only entity with a calculated injury, the Time of Need equals the predicted day when its remaining storage equals its reasonable carryover volume of 37,400 acre-feet. To calculate the Time of Need for TFCC, the Department

chose 2023 as the analogous year to predict TFCC's storage use for the remainder of the 2024 irrigation season. The analogous year, 2023, was selected based on similar Blackfoot to Milner reach gains. Assuming TFCC's storage use for the remainder of the 2024 season will match its storage use in 2023, the Time of Need is predicted to occur on September 6, 2024, for TFCC.

F. Step 6

29. Step 6 requires the following:

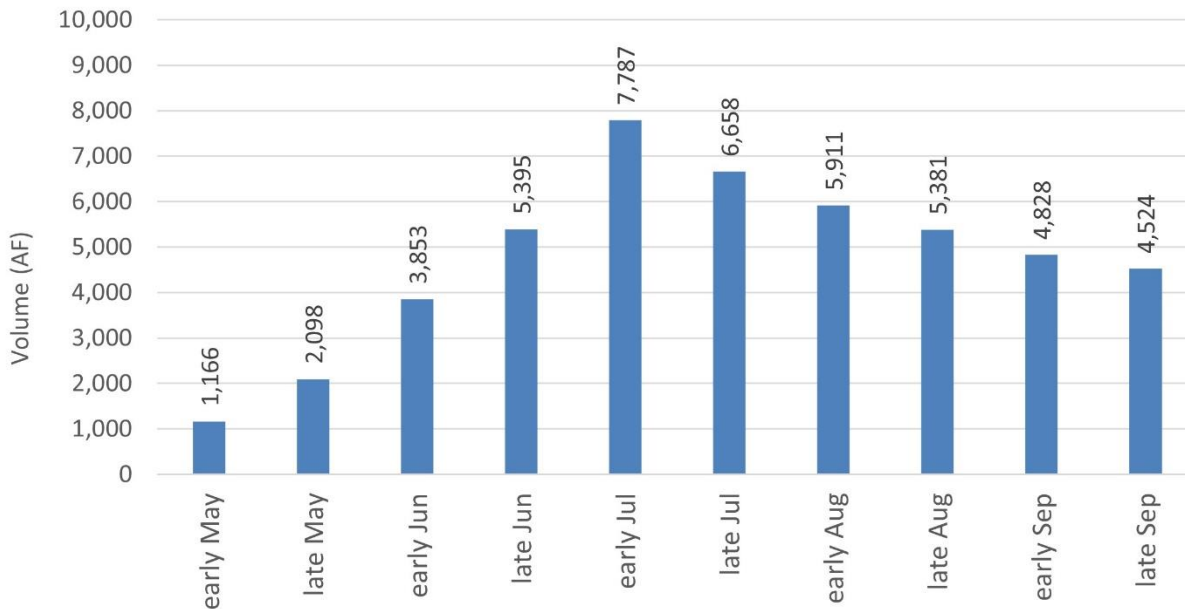
Upon a determination of an additional mitigation obligation, junior ground water users will be required to establish, to the satisfaction of the Director, their ability to secure a volume of storage water or to conduct other approved activities pursuant to an approved mitigation plan that will deliver 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. A transient ESPAM simulation will be run to determine the priority date to produce the necessary additional mitigation obligation volume by September 30 of the same year. Curtailment will be simulated within the area of common ground water supply, as described by CM Rule 50.01.

Methodology Order, at 44 (footnote omitted). Effective July 1, 2024, Senate Bill 1341 added a new section to Idaho Code, Idaho Code § 42-233c, which modified the description of the ESPA area of common ground water supply.

30. The predicted July IDS for TFCC is 6,800 acre-feet.

31. In April 2024, pursuant to the *Methodology Order*, the Department ran the Eastern Snake Plain Aquifer Model version 2.2 ("ESPAM2.2") to calculate the priority curtailment date, such that the curtailment of all water rights junior to the date within the area of common ground water supply, would produce a volume of water equal to the April IDS in the Snake River between May 1 and September 30. The ESPAM2.2 simulation predicted curtailment of ground water rights bearing priority dates junior to March 31, 1954, would produce the volume of water equal to the predicted April IDS of 74,100 AF in the near Blackfoot to Minidoka reach. *April Forecast Supply Order*, at 4.

32. In July 2024, the Department ran the ESPAM2.2 to simulate the effect of adjusting the curtailment priority date in mid-July. The ESPAM2.2 simulation calculated that the curtailment of ground water rights junior to March 31, 1954, through mid-July, will produce a volume of water greater than the predicted July IDS of 6,800 AF in the near Blackfoot to Minidoka reach between July 1 and September 30 of this irrigation season. The following figure summarizes the results of the ESPAM2.2 simulation increase:



Modeled increase in ESPA discharge to near Blackfoot to Minidoka reach resulting from curtailment of ground water junior to March 31, 1954 through mid-July

33. The July through September benefits to the near Blackfoot to Minidoka reach from the predicted curtailment of ground water rights bearing priority dates junior to March 31, 1954, are greater than 6,800 acre-feet. Accordingly, the continued curtailment of junior ground water rights is not necessary in response to the predicted July IDS.⁶ Curtailment may be reinstated this irrigation season if the Step 7 revised IDS is greater than the simulated benefits to the near Blackfoot to Minidoka reach remaining to accrue by September 30.

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

⁶ The method deployed in this as-applied order for calculating mid-season adjustments to the curtailment priority date using ESPAM2.2 was presented to the SWC Methodology Technical Working Group on November 28, 2022. The method assumes all groundwater users were curtailed or provided an equivalent aquifer enhancement mitigation volume at the same time and location as the curtailment. Some ground water users junior to March 31, 1954, were protected from curtailment this year by compliance with approved mitigation plans that authorize the direct delivery of storage water to the SWC as an alternative to full mitigation of pumping depletions to the aquifer. Therefore, the actual volume of water accruing to the near Blackfoot to Minidoka reach due to curtailment is less than the volume simulated by ESPAM2.2. If the Director were to calculate mid-season adjustments to the curtailment date without acknowledging the effects of pumping depletions mitigated by direct delivery of storage water, the curtailment date would unfairly shift to include more senior water users not protected by approved mitigation plans based on stipulated agreements.

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 Idaho Department of Water Resources, shall regulate diversions “during times of water scarcity, in order to supply the prior rights of others from such stream or water supply”

3. Because the Department did not determine a shortfall to the SWC’s reasonable carryover at the end of the 2023 irrigation season, junior water users are not obligated to secure or deliver storage water this year under Step 5 of the *Methodology Order*.

4. Based on the Findings of Fact 6 through 27 above, it is reasonably certain TFCC will be materially injured. The calculated shortfall to TFCC is 6,800 acre-feet.

5. In the *April Forecast Supply Order*, the Director predicted a demand shortfall for the SWC of 74,100 acre-feet. Because the shortfall volume calculated consistent with Step 6 of the *Methodology Order* is different than the shortfall predicted in the *April Forecast Supply Order*, the curtailment date established in the May 30, 2024, *Curtailment Order* must be adjusted.

6. Using the ESPAM2.2, the Department has determined that the curtailment of ground water rights bearing priority dates junior to March 31, 1954, from May 1–July 15 would result in a volume of water greater than the predicted July IDS of 6,800 AF in the near Blackfoot to Minidoka reach between July 1 and September 30 of this irrigation season. Accordingly, the continued curtailment of ground water rights beyond mid-July is unwarranted at this time.

7. Because further curtailment is unwarranted, it is necessary for the Department to amend the June 28, 2024 *Order Regarding Mid-Season Change to Area of Common Ground Water Supply for the Eastern Snake Plain Aquifer; Third Order Amending Curtailment List (“Third Amended Curtailment Order”)* so that ground water users holding water rights listed in Attachment C to the *Third Amended Curtailment Order* are no longer curtailed.

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 C to the June 28, 2024 *Third Amended Curtailment Order* are no longer curtailed.

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 C to the June 28, 2024 *Third Amended Curtailment Order* and inform water users that they are no longer curtailed.

Dated this 17th day of July 2024.



MATHEW WEAVER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of July 2024, the above and foregoing, was served by the method indicated below, and addressed to the following:

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<p>COURTESY COPY TO: Andrew J. Waldera SAWTOOTH LAW OFFICES, PLLC 1101 W. River Street, Suite 110 Boise, Idaho 83702 andy@sawtoothlaw.com</p>	<input checked="" type="checkbox"/> Email



Kayleen Richter
Deputy Attorney General

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.**