

**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
2024 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 2024 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 years], 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 [Rule 50.01 of the Department’s Rules for Conjunctive Management of Surface and Ground Water Resources].¹

Methodology Order, at 45 (footnote added).

3. The following table summarizes the 2024 irrigation season diversions and crop water need for each SWC entity. All values are reported in acre-feet (“AF”). These values are used to determine entity-specific season-ending reasonable in-season demand (“RISD”) values for the in-season demand shortfall table.

Entity	Demand ²	Crop Water Need
A&B	63,325	33,252
AFRD2	484,090	155,059
BID	250,565	107,798
Milner	68,036	31,858
Minidoka	327,696	193,553
NSCC	961,781	357,703
TFCC	1,092,365	466,232

4. The following table summarizes the final calculated 2024 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 April 18, 2024 *Final Order Regarding April 2024 Forecast Supply (Methodology Steps 1–3)* (“*April Forecast Supply Order*”) and the July 17, 2024 *Order Revising April 2024 Forecast Supply and Amending Curtailment Order (Methodology Steps 5 & 6)* (“*July Order*”). 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.³ The third column summarizes the natural flow adjustments, which include natural flow delivered for recharge⁴ and natural flow delivered to Southwest

¹ In 2024, the Idaho Legislature established a new area of common ground water supply boundary for the Eastern Snake Plain Aquifer in Idaho Code § 42-233c. The new boundary is currently the ESPAM2.2 model boundary, but the boundary may be expanded by the Director in the future. I.C. § 42-233c(1)–(2). This new boundary supersedes the boundary in Rule 50.01 of the Department’s Rules for Conjunctive Management of Surface and Ground Water Resources. See *Idaho Cnty. Nursing Home v. Idaho Dep’t of Health & Welfare*, 120 Idaho 933, 937, 821 P.2d 988, 992 (1991) (“When a conflict exists between a statute and a regulation, the regulation must be set aside to the extent of the conflict.”); compare I.C. § 42-233c, with IDAPA 37.03.11.050.01. The Department used the ESPAM2.2 model boundary in the model simulation for this order.

² The “Demand” for each SWC entity is equal to each entity’s 2024 April–October diversions.

³ The natural flow diverted was calculated from the preliminary daily water right accounting records located here: <https://research.idwr.idaho.gov/apps/Hydrologic/Accounting/>.

⁴ Natural flow recharge values represent accomplished recharge through the Idaho Water Resource Board’s recharge water rights as of October 31, 2024.

Irrigation District (“SWID”).⁵ The fourth column contains the preliminary storage allocations reported from the July 27, 2024 Water District 01 storage report.⁶ The fifth column summarizes storage adjustments due to the application of the Minidoka Credit.⁷ 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. RISD is calculated for each SWC entity using demand, crop water need, and project efficiency. 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. The completed application of the methodology order results in a final net in-season demand shortfall volume of 77,200 AF to TFCC for the 2024 irrigation season.

Entity	Natural Flow Diverted through 10/31	Natural Flow Adjustment	Preliminary Storage Allocation	In-Season Storage Adjustment	Total Supply	RISD	Demand Shortfall
A&B	21,653	-	135,192	-	156,845	56,590	0
AFRD2	246,797	(66,830)	386,794	1,000	567,760	463,479	0
BID	111,173	(3,822)	222,568	5,130	335,049	254,853	0
Milner	26,548	(1,565)	88,970	-	113,953	58,135	0
Minidoka	143,460	-	360,165	8,370	511,995	383,569	0
NSCC	467,336	(60,467)	844,928	(7,750)	1,244,047	987,916	0
TFCC	854,737	(5,872)	242,791	(6,750)	1,084,907	1,162,094	77,200

5. The following table summarizes the end of season reasonable carryover shortfall calculation for 2024. All values are reported in AF. The second column of the table contains the preliminary storage allocations reported from the July 27, 2024 Water District 01 storage report. The third column summarizes adjustments for storage water due to the application of the Minidoka Credit. The fourth column contains the total storage water use reported from the October 31, 2024 Water District 01 water right accounting report.⁸ The fifth column summarizes adjustments for water delivered through the SWC member’s canals for use by non-SWC members.⁹ The sixth column contains the actual carryover volumes as defined by the *Methodology Order*, see *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

⁵ Further information regarding these adjustments is provided in Attachment A. See “Natural Flow Adjustment” column *infra* Attachment A.

⁶ The preliminary storage allocations can be found on Water District 01’s website: <https://www.waterdistrict1.com/current-data/>.

⁷ 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. Further information regarding these adjustments is provided in Attachment A. See “In-Season Storage Adjustment” column *infra* Attachment A.

⁸ Data retrieved from the preliminary daily water right accounting database between November 16–18, 2024.

⁹ Further information regarding these adjustments is provided in Attachment A. See “Storage Use Adjustment” column *infra* Attachment A (Storage Use Adjustment values include storage assignments reported on the Water District 01 Rental Pool and Adjustment Worksheet as of October 10, 2024).

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. Completed application of the Methodology determines a final net shortfall to TFCC’s reasonable carryover of 44,900 AF. No other members of the SWC have a reasonable carryover shortfall.

Entity	In-Season				Actual Carryover	Reasonable Carryover	Reasonable Carryover Shortfall
	Preliminary Storage Allocation	Storage Allocation Adjustment	Storage Use	Storage Use Adjustment			
A&B	135,192	-	41,672	-	93,520	22,700	0
AFRD2	386,794	1,000	314,624	(10,500)	83,670	16,700	0
BID	222,568	5,130	142,981	-	84,717	0	0
Milner	88,970	-	44,287	(1,234)	45,917	16,100	0
Minidoka	360,165	8,370	184,506	(38)	184,066	0	0
NSCC	844,928	(7,750)	567,912	(13,000)	282,266	113,300	0
TFCC	242,791	(6,750)	245,112	(1,612)	(7,459)	37,400	44,900

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 2024, 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 2024. *Id.* 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).

4. Consistent with Finding of Fact 5, the Director concludes by clear and convincing evidence there is a 44,900 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 to the reaches of the Snake River from which the SWC members divert, in an amount equal to the established reasonable carryover shortfall. The water must accrue to the near Blackfoot to Minidoka reach by September 30 of the following year. Using the Eastern Snake Plain Aquifer Model (“ESPAM”) Version 2.2, the Director determines curtailment of ground water rights junior to January 25, 1970, is predicted to produce a volume of at least 44,900 AF in the near Blackfoot to Minidoka reach by September 30, 2025.

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 45. 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 January 25, 1970, must mitigate for the reasonable carryover shortfall of 44,900 AF in accordance with an approved mitigation plan.¹⁰ If, within fourteen days following issuance of this order, a junior ground water user fails

¹⁰ Participants in the mitigation plans approved for SWID, the Coalition of Cities, and the 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 Irrigation District’s approved 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 248 AF. Regarding the Idaho Ground Water Appropriators, Inc.’s (“IGWA”) approved 2016 Mitigation Plan, on June 20, 2024, the SWC and IGWA submitted a *Joint Motion for Order Approving 2024 Stipulation*, requesting that the Director issue an order accepting a stipulation entered into by the parties (“*2024 Stipulation*”) as compliance with the 2016 Mitigation Plan for the 2024 irrigation season. On June 20, 2024, the Director issued *Order Approving 2024 Stipulation as Compliance with Approved Mitigation Plan* (“*Order Approving 2024 Stipulation*”). The *2024 Stipulation* and *Order Approving 2024 Stipulation* can be viewed on IDWR’s website: <https://idwr.idaho.gov/legal-actions/mitigation-plan-actions/SWC/IGWA/>. At the issuance of this order, the Director does not know whether IGWA complied with the *2024 Stipulation* and whether IGWA is in compliance with IGWA’s 2016 Mitigation Plan. However, following the Director’s issuance of his *Order Approving 2024 Stipulation*, the SWC and IGWA worked in good faith and at length to establish a new ongoing stipulated mitigation plan. On November 19, 2024, the SWC and certain ground water districts submitted a new stipulated mitigation plan (“*2024 Stipulated Mitigation Plan*”) and requested that the Director issue an order approving the plan. The *2024*

to establish, to the satisfaction of the Director, their ability to mitigate for the reasonable carryover shortfall of 44,900 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 2024 irrigation season.

DATED this 29th day of November 2024.



MATHEW WEAVER
Director

Stipulated Mitigation Plan will be advertised in December. Because of the new *2024 Stipulated Mitigation Plan*, the Director will not at this time subject junior ground water users in good standing with the signatory ground water districts to curtailment under this order.

CERTIFICATE OF SERVICE

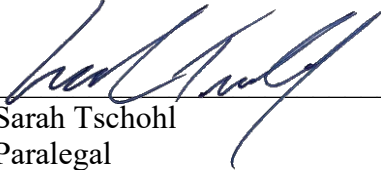
I HEREBY CERTIFY that on this 29th day of November 2024, the above and foregoing, was served by the method indicated below, and addressed to the following:

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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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¹¹ Through informal means and the receipt of undelivered mail, the Department has been made aware that the mailing address for counsel of McHugh Bromley, PLLC has changed from the service address the Department has on record in this matter: 380 South 4th Street, Suite 103, Boise, ID 83702. To avoid additional unnecessary expense, the Department has updated the mailing address for McHugh Bromley, PLLC in this matter. However, this update does not remove any duty that counsel of McHugh Bromley, PLLC may have to formally notify the Department and the parties of their change of mailing address for service in this matter.

<p>COURTESY COPY TO: Craig Chandler IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 craig.chandler@idwr.idaho.gov</p>	<input checked="" type="checkbox"/> Email
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Sarah Tschohl
Paralegal

Attachment A 2024 SWC Adjustments

Entity	Adjustment Volume (AF)	Description	Natural Flow Adjustment	In-Season Storage Adjustment	Storage Use Adjustment
A&B	(194)	Twin Falls Canal Company (A&B Irrigation District)			
	(62)	Twin Falls Canal Company (A&B Irrigation District)			
		Total A&B	0	0	0
AFRD2	3,500	Minidoka Irrigation District (Northsnake GWD)			Yes
	7,000	Minidoka Irrigation District (Magic Valley GWD)			Yes
	1,000	Minidoka Credit		Yes	
	(66,830)	IWRB Recharge	Yes		
		Total AFRD2	(66,830)	1,000	(10,500)
BID	5,130	Minidoka Credit		Yes	
	(1,938)	SWID Natural Flow	Yes		
	(1,884)	IWRB Recharge	Yes		
		Total BID	(3,822)	5,130	0
Milner	100	Scott Breeding			Yes
	1,134	Artesian			Yes
	(1,565)	SWID Natural Flow	Yes		
		Total Milner	(1,565)	0	(1,234)
MID	(11,500)	Northside Canal (North Snake GWD)			
	(3,500)	AFRD2 (North Snake GWD)			
	(1,500)	Northside Canal (Water Mitigation Coalition)			
	(8,500)	Water Mitigation Coalition			
	8,370	Minidoka Credit		Yes	
	18	Sundt Construction			Yes
	17	Whitaker Construction			Yes
	(1,300)	Bureau of Reclamation			
	3	Lucky Lake			Yes
	(5,000)	Southwest Irrigation District			
	(7,000)	AFRD2 (Magic Valley GWD)			
		Total MID	0	8,370	(38)
NSCC	11,500	Minidoka Irrigation District (Northsnake GWD)			Yes
	1,500	Minidoka Irrigation District (Magic Valley GWD)			Yes
	(7,750)	Minidoka Credit		Yes	
	(60,467)	IWRB Recharge	Yes		
	(1,300)	Bureau of Reclamation			
	Total NSCC	(60,467)	(7,750)	(13,000)	
TFCC	194	A&B Irrigation District			
	62	A&B Irrigation District			
	(6,750)	Minidoka Credit		Yes	
	1,612	Artesian			Yes
	(5,872)	IWRB Recharge	Yes		
	Total TFCC	(5,872)	(6,750)	(1,612)	

**EXPLANATORY INFORMATION TO ACCOMPANY A
FINAL ORDER**

(To be used in connection with actions when a hearing was **not** held)

The accompanying document is a "Final Order" issued by the Idaho Department of Water Resources ("Department") pursuant to Idaho Code § 67-5246.

PETITION FOR RECONSIDERATION

(See Idaho Code § 67-5246(4))

Any party may file a petition for reconsideration of this 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 presiding officer 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.

REQUEST FOR HEARING

(See Idaho Code § 42-1701A(3))

Unless the right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director, and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to Idaho Code § 42-1701A(3). A written petition to the Director contesting this final order and requesting a hearing must be filed with the Department by any aggrieved person **within fifteen (15) days after service of this final order.**

CERTIFICATE OF SERVICE

(See IDAPA 37.01.01.053, 37.01.01.202)

All documents filed with the Department in connection with a petition for reconsideration or a request for hearing of this final order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 53 and 202.