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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING**

IDAHO GROUND WATER)	
APPROPRIATORS, INC.,)	
)	
Petitioner,	)	Case No. CV-2010-382
)	
vs.	)	(consolidated Gooding County
	)	Cases CV-2010-382, 2010-383, 2010-
CITY OF POCATELLO,	)	384, 2010-387, 2010-388, and Twin
	)	Falls County Cases CV-2010-3403,
Petitioner,	)	2010-5520, 2010-5946, 2012-2096,
	)	2013-2305, 2013-4417, and Lincoln
vs.	)	County Case CV-2013-155)
)	
TWIN FALLS CANAL COMPANY, NORTH)	
SIDE CANAL COMPANY, A&B IRRIGATION	)	CITY OF POCATELLO'S
DISTRICT, AMERICAN FALLS RESERVOIR	)	OPENING BRIEF ON JUDICIAL
DISTRICT #2, BURLEY IRRIGATION	)	REVIEW (AS APPLIED ORDER)
DISTRICT, MILNER IRRIGATION DISTRICT,)	
and MINIDOKA IRRIGATION DISTRICT,)	
)	
Petitioners,)	

vs.)
)
GARY SPACKMAN, in his capacity as)
Director of the Idaho Department of Water Resources,)
and the IDAHO DEPARTMENT OF WATER)
RESOURCES,)
Respondents.)
_____)
)
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)
_____)

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I. Statement of the Case/Procedural History

On June 23, 2010, the Director issued an order (“2010 Methodology Order”) that outlined the Idaho Department of Water Resources’ (“Department” or “IDWR”) methodology for predicting material injury in the Surface Water Coalition (“SWC”) delivery call. That order is on appeal in these consolidated cases, and the City of Pocatello (“Pocatello”) has concurrently filed an appellate brief regarding that order. *See City of Pocatello’s Opening Brief on Judicial Review (Methodology Order)*, June 13, 2014.¹ Pursuant to the 2010 Methodology Order, the Department administered the SWC’s senior water rights in the spring of 2010 by applying Steps 3 and 4 of the 2010 Methodology Order to the 2010 irrigation season via a *Final Order Regarding April Forecast Supply (Methodology Steps 3 & 4); Order on Reconsideration* (“As Applied Order”), June 24, 2010. A hearing on the As Applied Order was held on May 24 and 25, 2010.

II. Standard of Review

Pursuant to Idaho Code section 67-5279 a district court shall review an agency action to determine if it was: “(a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; or (d) arbitrary, capricious, or an abuse of discretion.” I.C. § 67-5279.

A reviewing court will not disturb an agency’s factual findings if they are supported by substantial evidence in the record, even if the evidence is conflicting. *A & B Irrigation Dist. v. Idaho Dep’t of Water Res.*, 153 Idaho 500, 505–06, 284 P.3d 225, 230–31 (2012). Certain issues are within the Director of the Idaho Department of Water Resources’ (“Director”) discretion in administering delivery calls. However, in reviewing delivery calls on appeal, this Court is to “determine whether that exercise of discretion is being properly carried out.” *Am. Falls*

¹ For the sake of brevity and to avoid repetition, Pocatello herein incorporates that brief, which contains a detailed description of the procedural history in this case and the 2010 Methodology Order itself.

Reservoir Dist. No. 2 v. Idaho Dep't of Water Res. ("AFRD#2"), 143 Idaho 862, 880, 154 P.3d 433, 451 (2007). And while the Director may use his expertise "to reach factual findings based on evidence in the record, that expertise cannot serve as a substitute for necessary evidence." *Peckham v. Idaho State Bd. of Dentistry*, 154 Idaho 846, 852, 303 P.3d 205, 211 (2013).

Finally, any order entered by the Director must contain "[a] reasoned statement in support of the decision." I.C. § 67-5248(1)(a). This requires the Director to "to identify facts, as well as inferences drawn from the facts upon the application of its expertise and judgment, which underlie its decision." *Woodfield v. Bd. of Prof'l Discipline of Idaho State Bd. of Med.*, 127 Idaho App. 738, 747, 905 P.2d 1047, 1056 (1995).

III. Issues Presented on Appeal

- A. Whether the 2010 Methodology Order was applied as written to administer SWC's water rights in the As Applied Order.
- B. Whether the As Applied Order demonstrates that administration of the 2010 Methodology Order is arbitrary and capricious.
- C. Whether the As Applied Order was entered in violation of due process.

IV. Argument

A. Introduction

In this brief, Pocatello presents its arguments on judicial review regarding the arbitrary and *ultra vires* nature of the As Applied Order.² Pocatello's concerns with the As Applied Order arise from IDWR's failure to apply the 2010 Methodology in a manner consistent with Idaho law. As detailed in Pocatello's appeal of the 2010 Methodology Order, Pocatello disputes that the 2010 Methodology Order itself is consistent with Idaho law. However, regardless of the outcome in the 2010 Methodology Order appeal (i.e., whether or not the 2010 Methodology is

² Between the 2010 Methodology Order and the ripening of this appeal in 2014 the Department relied on the 2010 Methodology Order to administer SWC's water rights. While Pocatello appealed only the 2010 As Applied Order, the issues raised by IDWR's application of Steps 3 and 4 arise in other years of administration as well.

affirmed or modified), IDWR is limited under administrative law principles to applying a reasoned and transparent procedure in water administration, and is foreclosed from arbitrary and *ultra vires* determinations.

The Director has the right to exercise his discretion in the administration of delivery calls; however, “[t]his is certainly not unfettered discretion, nor is it discretion to be exercised without any oversight. *AFRD#2*, 143 Idaho at 880, 154 P.3d at 451. In exercising his discretion, the Director must administer water rights to avoid arbitrary and capricious results, and in such a manner that provides parties with due process and a reasoned basis for the Director’s analysis. IDWR’s implementation of the 2010 Methodology Order is arbitrary and *ultra vires* because IDWR failed to:

- Predict a reasonable initial injury for AFRD#2;
- Consider and subtract from the SWC diversions all water “wheeled” through, but not used by the SWC, thus over-estimating the amount of water required by SWC under the Reasonable In-Season Demand (“RISD”) analysis;
- Implement Steps 3 and 4 based on the methods and procedures identified in the 2010 Methodology Order, without relying on internal Department memoranda; and
- Provide due process during the hearing on the As Applied Order.

Accordingly, to the extent the 2010 Methodology Order is not itself *ultra vires*, Pocatello requests that the Court order the Department to implement the 2010 Methodology Order in administration in a manner that does not result in arbitrary and capricious administration, and so as to result in administration that complies with Idaho law.

B. Summary of Steps 3 and 4

The 2010 Methodology Order, which is explained in more detail in *City of Pocatello’s Opening Brief on Judicial Review (Methodology Order)*, outlines a ten-step process to “determin[e] material injury to reasonable in-season demand and reasonable carryover.” CM-

DC-2010-001 R. 597.³ While IDWR did not have the benefit of the Idaho Supreme Court's decision in *SWC I* at the time the As Applied Order was issued, the As Applied Order, which implements Steps 3 and 4 for 2010, may be characterized as an example of IDWR's "pre-season management plan for allocation of water resources that employs a baseline methodology." *In Re Distribution of Water to Various Water Rights Held By or For the Benefit of A&B Irrigation Dist.* ("SWC I"), 155 Idaho 640, 315 P.3d 828, 841 (2013). Because the As Applied Order involved only the administration of Steps 3 and 4, those steps are the focus of the discussion below.

In plain terms, Step 3 consists of the Director's assessment of the predicted water supply for the irrigation season, the comparison of that predicted supply to SWC's "baseline demand" for water, and an evaluation of whether there is a predicted shortfall to that demand:

Typically within the first two weeks of April, the USBR and USACE issue their Joint Forecast that predicts an unregulated inflow volume at the Heise Gage for the period of April 1 through July 31. Within fourteen (14) days after issuance of the Joint Forecast, the Director will predict and issue an April Forecast Supply for the water year and will compare the April Forecast Supply to the baseline demand ("BD")⁴ to determine if a demand shortfall ("DS") is anticipated for the upcoming irrigation season. A separate April Forecast Supply and DS will be determined for each member of the SWC.

CM-DC-2010-001 R. 598.

Step 4 explains how administration will proceed if a demand shortfall is predicted—in other words, what happens if the Director predicts injury to SWC.

If the April DS is greater than the reasonable carryover shortfall from the previous year, junior ground water users will be required to establish, to the satisfaction of the Director, their ability to secure and provide a volume of storage water or to conduct other approved mitigation activities that will provide water to the injured

³ The record submitted by IDWR on April 4, 2014 contains two CD-ROM discs. In referencing the record, Pocatello shall refer to Bates stamped record documents on Disc 1 of 2 as "CM-DC-2010-001 R." and to the Bates stamped record documents on Disc 2 of 2 as "2008-551 R."

⁴ Because of the nature of this appeal, Pocatello's brief is laden with acronyms and terms of art. Appendix A to this brief contains a key referencing some of the frequently used acronyms relevant to this appeal.

members of the SWC equal to the difference of the April projected demand shortfall and reasonable carryover shortfall, for all injured members of the SWC. If junior ground water users fail or refuse to provide this information by May 1, or within fourteen (14) days from issuance of the values set forth in Step 3, whichever is later in time, the Director will issue an order curtailing junior ground water users.

Id. at 598–99.

C. Application of the 2010 Methodology Order in the As Applied Order

The Director proceeded with administration of the 2010 irrigation season based on the 2010 Methodology Order and pursuant to Steps 3 and 4, described above, the Director predicted shortfalls to RISD to two SWC entities: American Falls Reservoir District No. 2 (“AFRD#2”) in the amount of 27,400 acre feet; and Twin Falls Canal Company, in the amount of 56,900 acre feet. CM-DC-2010-001 R. 186 (*Order Regarding April 2010 Forecast Supply (Methodology Steps 3 & 4)*) (“April Forecast Supply Order”), Apr. 29, 2010. All parties requested a hearing, which the Director granted, but limited the scope of the hearing to the “issue of whether the [As Applied Order] followed Steps 3 and 4 of the Methodology Order.” CM-DC-2010-001 R. 326.⁵ On June 24, 2014 after hearing, the Director issued the final As Applied Order that is the subject of the appeal in this matter, reducing the amount of injury predicted at that time. CM-DC-2010-001 R. 612.

D. The As Applied Order demonstrates an arbitrary and capricious application of the Methodology Order.

The As Applied Order demonstrates the factual and technical problems with applying the 2010 Methodology Order to administer the SWC’s water rights. Rather than rely on the 2010 Methodology Order, the Department administered the SWC water rights during the 2010

⁵ Pocatello’s appeal of the As Applied Order is addressed in a separate brief filed concurrently in this matter pursuant to the Court’s *Order Amending in Part Procedural Order Governing Judicial Review of Final Orders of Director of Idaho Department of Water Resources*, Feb. 24, 2014.

irrigation season in reliance on internal memoranda and ad hoc decision-making by Department employees.

1. Application of the Methodology Order resulted in over-estimating injury to AFRD#2 by a factor of 16. Such imprecision is evidence of the arbitrary nature of administration under the 2010 Methodology Order.

By operation of Steps 3 and 4, the Department predicts the RISD that will be required by SWC and compares RISD to predicted water supplies. As detailed in the *City of Pocatello's Opening Brief on Judicial Review (Methodology Order)*, the actual RISD analysis is based solely on historical diversions made by SWC in 2006 and 2008. As Applied Hearing Tr., May 24, 2010, CM-DC-2010-001 68:3–23, 66:8–12. IDWR projects available water supplies in Steps 3 and 4, as described above. The difference between SWC's baseline demand ("BD") and the April Forecast Supply is the shortage predicted for SWC, known as demand shortfall ("DS") and the mitigation amounts that junior ground water users are required to provide at the beginning of the irrigation season, or risk curtailment.

In 2010, the Director initially predicted DS to two SWC entities: AFRD#2 in the amount of 27,400 acre feet; and Twin Falls Canal Company, in the amount of 56,900 acre feet. CM-DC-2010-001 R. 186. However, within several weeks, the Director issued an *Order Regarding IGWA Mitigation Obligation* on May 17, 2010 which revised the DS forecast because "[s]ince the issuance of the April Forecast Supply Order, water has been diverted by members of the SWC for beneficial use." CM-DC-2010-001 Exhibit 1002 at 2. "In the April Forecast Supply Order, the Director predicted that AFRD2 would receive 1,256 acre-feet" *Id.* "AFRD2 has diverted 16,874 acre-feet of natural flow." *Id.* at 3.

This revision decreased AFRD#2's predicted DS for the season from 27,400 acre feet to 11,800 acre feet. *Id.* On June 24, 2014 after hearing, the Director issued the final As Applied Order that is the subject of the appeal in this matter and found AFRD#2 was no longer injured

because AFRD#2 had diverted 32,381 acre feet of natural flow, many times the amount of water IDWR predicted would be available to AFRD#2 in the April Forecast Supply Order. CM-DC-2010-001 R. 612, 613.

Such a dramatic difference between the predicted natural flow supply and the actual natural flow supply demonstrates the arbitrary and capricious nature of the RISD/predicted water supply evaluation, and suggests a lack of legal basis for the underlying procedures used to predict injury in the 2010 Methodology Order. Basing RISD on historical diversions alone, combined with the Methodology's intentional underestimation of supply (by relying on a regression line two standard deviations below), results in wildly inaccurate predictions for the irrigation season. *See generally City of Pocatello's Opening Brief on Judicial Review (Methodology Order).*⁶

2. Requiring juniors to secure mitigation water that is ultimately not required for beneficial use due to inadequacies of the procedures to determine shortage is contrary to Idaho law.

In the context of water administration, this drastic overestimation of injury (DS) to AFRD#2 is problematic because juniors are required to secure the initial amount of shortfall water predicted 14 days after the initial forecast: "junior ground water users will be required to establish, to the satisfaction of the Director, their ability to secure and provide a volume of storage water to the injured members of the SWC equal to the difference of the April projected demand shortfall and reasonable carryover shortfall, for all injured members of the SWC." CM-DC-2010-001 R. 598. To be considered "secured," the juniors must demonstrate that the water is "dedicated solely for mitigation" and held until further determined by the Director. CM-DC-2010-001 R. 614. Therefore, while the 2010 Methodology Order allows the amount of

⁶ When asked at hearing if this disparity caused the Department any concern about its use of the RISD-forecast supply regression analysis, Department employees stated that they had not considered the import of this disparity. As Applied Hearing Tr., May 24, 2010, CM-DC-2010-001 157:20–158:11.

mitigation owed to be reduced to reflect actual water needs as the season progresses, any reductions are meaningless because in practice juniors must satisfy the initial amount of projected injury (DS) required.

This is contrary to Idaho law— as stated in the initial SWC Order: “senior surface water right holders cannot demand that junior ground water right holders diverting water from a hydraulically-connected aquifer be required to make water available for diversion unless that water is necessary to accomplish an authorized beneficial use.” 2008-551 R. 1400–01, ¶ 45. The 2010 Methodology Order, as applied in the As Applied Order, requires juniors to secure vastly more water than may ultimately be needed by the SWC, contrary to the doctrine of beneficial use. *See Conant v. Jones*, 3 Idaho 606, 32 P. 250, 251 (1893) (a water user is “only entitled to such water, from year to year, as he puts to beneficial use”).

3. Department failed to implement the Methodology Order to account for water diverted by SWC that was not beneficially used in their systems.

The 2010 Methodology Order requires the Department to adjust any prediction of injury to SWC water rights to “remove any water diversions that can be identified to not directly support the beneficial use of crop development.” CM-DC-2010-001 R. 578, ¶ 45. This would include a reduction for any “wheeled water”—water diverted by a SWC entity on behalf of a non-SWC entity and “wheeled” through an SWC canal or system to the non-SWC beneficial user. However, testimony at hearing established that the Department only adjusted SWC demand for wheeled water if those diversions were more than one percent of the specific SWC entity’s total demand. As Applied Hearing Tr., May 24, 2010, CM-DC-2010-001 46:7–49:21; CM-DC-2010-001 Exhibit 3000.

On cross-examination, the Department witness Mathew Weaver admitted that there was no support for this one percent threshold in the 2010 Methodology Order itself and that the

agency's failure to take all wheeled water into account could increase mitigation requirements of juniors.⁷ As Applied Hearing Tr., May 24, 2010, CM-DC-2010-001 49:16–21, 52:14–53:1. Under Idaho law, the Director may only order curtailment or accept mitigation water to supply the amounts to seniors required for beneficial use. 2008-551 R. 10100 (“juniors will only be regulated or required to provide mitigation subject to the material injury factors set forth in CMR 042”); 2008-551 R. 1401 (SWC entities’ water rights are injured when “diversion under the junior rights intercept a sufficient quantity of water to interfere with the exercise of the senior primary and supplemental water rights for the authorized beneficial use.”). The Director’s failure to deduct *all* wheeled water from the SWC’s total demand is *ultra vires*.

4. The As Applied Order is arbitrary because the Director applied methods to forecast supply and storage allocation that are not discussed in the 2010 Methodology Order.

RISD (the amount of water SWC is predicted to require during the irrigation season) is comprised in part of IDWR’s prediction of the amount of storage SWC will receive pursuant to Steps 3 and 4. However, the 2010 Methodology Order does not describe the Department’s actual methods for forecasting supply and storage allocation under Steps 3 and 4 and, based on hearing testimony, it is undisputed that agency policy and procedures that are not part of the 2010 Methodology Order were used to develop the As Applied Order. Department staff testified that much of the procedure followed by IDWR in applying Steps 3 and 4 was based on internal memoranda prepared by staff that contained more detail than the procedures explained in the 2010 Methodology Order. As Applied Hearing Tr., May 24, 2010, CM-DC-2010-001 78:1–5.

⁷ As an example, in the baseline years used by the Director—an average of 2006/2008 historical diversions—Twin Falls Canal Company diverted 415,730 acre feet over the course of the season; 1% of that is 4,157.2 acre feet. CM-DC-2010-001 R. 606. Accordingly, water wheeled thru Twin Fall Canal Company’s system on behalf of other entities in amounts less than 4,157.2 acre feet is not deducted from RISD.

At hearing, Liz Cresto, the Department employee in 2010 who was charged with predicting storage fill under Steps 3 and 4, testified that there was “no algorithm” used to project storage fill. As Applied Hearing Tr., May 24, 2010, CM-DC-2010-001 152:2–4. Ms. Cresto testified that instead, the forecast is based on her own discretion, “professional judgment” and consideration of several variables. *Id.* at 152:2–23. In response to questions about the lack of detail associated with procedures employed in IDWR’s RISD determination, Mathew Weaver, Department employee, agreed that the 2010 Methodology Order leaves open room for “another professional hydrologist or professional engineer [to] go out and develop their own methodology with the guidance to arrive at their own analog years, and arrive at their own allocation volumes,” and admitted that the 2010 Methodology Order is incomplete, and doesn’t specify the means by which the Department will develop the predicted storage allocation. *Id.* at 78:14–79:7. *See also id.* at 147:14–23.

While the As Applied Order asserts that the 2010 Methodology Order as modified after hearing “describes the process for predicting storage fill and storage allocation in greater detail” (CM-DC-2010-001 R. 610), even as revised after hearing, the 2010 Methodology Order says only that the Department “will evaluate the current reservoir conditions and the current water supply outlook to determine historical analogous year or years to predict reservoir fill.” CM-DC-2010-001 R. 583.

The lack of detail in the 2010 Methodology Order regarding predictions of storage, and the Department’s reliance on other methods in internal memoranda, demonstrates the broad license that the Director has taken in issuing an open-ended methodology order that allows the Department to make ad hoc decisions in administration. While the Director is afforded discretion in administering delivery calls, that discretion does not permit the Department to make

decisions on a year-by-year basis regarding how to calculate its own methodology for predicting material injury.

Pursuant to statute, the Director must give a “reasoned statement” for the Department’s orders and predictions of forecast supply and shortages in order to permit meaningful judicial review. I.C. § 67-5248(1)(a). ““What is needed for adequate judicial review is a clear statement of what, specifically, the decision making body believes, after hearing and considering all the evidence, to be the relevant and important facts upon which its decision is based. Conclusions are not sufficient.”” *Jasso v. Camas County*, 151 Idaho 790, 796, 264 P.3d 897, 903 (Idaho 2011) (quoting *Workman Family P’ship. v. City of Twin Falls*, 104 Idaho 32, 37, 655 P.2d 926, 931 (1982)). Here, Methodology provided the Department with an insufficiently transparent basis for the Director to predict material injury. Implementing the legally inadequate Methodology resulted in an arbitrary and capricious decision by the Department in entering the As Applied Order.

E. The Director improperly limited the scope of the hearing.

The Director limited evidence at the As Applied hearing to “information relevant to whether the Department followed steps 3 and 4 of the Methodology Order.” CM-DC-2010-001 R. 466. Parties were not permitted to submit evidence or question Department witnesses about the technical basis for Steps 3 and 4, or about whether Steps 3 and 4 were supported by the record in this matter. *Id.* Prior to hearing, Idaho Ground Water Appropriators, Inc. (“IGWA”) and Pocatello requested the presence of five Department employees at the hearing to provide testimony “regarding the facts, basis, outcome, consequences, implications, timing and other matters on the Director’s [Methodology Order] and [As Applied Order] and subsequent orders.” CM-DC-2010-001 R. 443. The Director denied the request as to two of the requested

witnesses—Tony Olenichak and Lyle Swank because “they are not the best source of information.” CM-DC-2010-001 R. 465.

Due process requires meaningful opportunity to be heard on issues in dispute. Procedural due process requires that parties have an opportunity to be heard, and this opportunity “must occur at a meaningful time and in a meaningful manner.” *Cowan v. Bd of Comm’rs of Fremont County*, 143 Idaho 501, 512, 148 P.3d 1247, 1258 (2006) (citation omitted). Due process also requires an agency to grant “an aggrieved party the opportunity to present a case and have its merits fairly judged.” *Jackson Water Works, Inc. v. Pub. Utilities Comm’n of State of Cal.*, 793 F.2d 1090, 1097, (9th Cir. 1986). “The opportunity to present reasons why a proposed action should not be taken is a fundamental due process requirement.” *Martin v. Sch. Dist. No. 394*, 393 F.Supp.2d 1028, 1037 (D. Idaho 2005).

At the start of the As Applied hearing on May 24, 2010 the Director reiterated that “we will be specifically receiving evidence regarding how the Department applied the Methodology Order, and that application is limited to Steps 3 and 4 in the Order. . . . I don’t want to receive evidence regarding all of the steps all the way through the irrigation season.” As Applied Hearing Tr., May 24, 2010, CM-DC-2010-001 8:5–25. The Director refused to allow the hearing to delve into the application of the methodology order as a whole in 2010, limiting testimony to whether Steps 3 and 4 were applied, stating that “I’ll cut off the examination on this subject. The question -- the question, in my opinion, here today is -- is the direct use of 3 -- Steps 3 and 4, as described in the Methodology Order, were those steps followed. And it really has to do with using 2006 and 2008 and the average of the two as a baseline year.” As Applied Hearing Tr., May 25, 2010, CM-DC-2010-001 201:16–23. When IGWA asked the Director if they could “put on evidence of the problems with the timing requiring mitigation water by May 1

prior to the date of allocation,” the Director ruled he would not allow such evidence. As Applied Hearing Tr., May 24, 2010, CM-DC-2010-001 16:1-7.

Therefore, in both the Methodology hearing and the As Applied hearing parties were not permitted to admit evidence regarding the substance of the methodology as a whole, whether it was supported by the record, whether it complied with the Hearing Officer’s Recommendations, or whether it was properly applied in the As Applied Order.

V. Conclusion

IDWR’s discretion extends to developing a “pre-season management plan” under the context of Steps 3 and 4; however, that discretion is not without limits, and IDWR cannot arbitrarily deviate from the procedures announced for developing the “pre-season management plan.” For these reasons, the As Applied Order should be remanded to the Department with directions to correct these problems in future applications of the Methodology, and regardless of the resolution of the Methodology appeal.


Respectfully submitted, this 13th day of June, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June, 2014, I caused to be served a true and correct copy of the foregoing **City of Pocatello's Opening Brief on Judicial Review (As Applied Order)** in **SRBA Case No. CV-2010-382, Gooding County** upon the following by the method indicated below:



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USEFUL DEFINITIONS AND ACRONYMS

BD – “baseline demand” – the amount of water SWC diverted in the BLY.

BLY – “baseline year” – refers to the use of one or more years of diversions as a basis for determining the predicted in-season irrigation needs of the SWC in a delivery call; the BLY method was used by the IDWR to develop both the MFS and RISD values.

DS – “demand shortfall” – the difference between BD and the Forecast Supply; in other words:
 $\text{Forecast Supply} - \text{BD} = \text{DS}$

“Forecast Supply” – the sum of the predicted natural flow at the Heise gage and the Joint Forecast for storage in the Upper Snake River issued by the USBR and USACE

“HO Factors” – refers to the factors qualifying IDWR’s reliance on a BLY methodology to predict in-season irrigation needs for SWC. The HO Factors were adopted by the Hearing Officer in the 2008 Recommendations and affirmed by the district court and Idaho Supreme Court in *SWC I*.

MFS – “minimum full supply” – used in the IDWR May 2, 2005 Order which was the initial response to the SWC delivery call and predicted the in-season irrigation needs of the SWC based on diversions in 1995.

RISD – “reasonable in-season demand” – used in the 2010 Methodology Order. Also a BLY method of predicting the in-season irrigation needs of the SWC.