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	**CM-DC-2010-001** **ORDER REVISING APRIL 2021 FORECAST SUPPLY** ***(METHODOLOGY STEP 6)***

The Director ("Director") of the Idaho Department of Water Resources ("Department") finds, concludes, and orders as follows:

FINDINGS OF FACT

A. Background

1. On April 19, 2016, the Director issued his *Fourth Amended 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 Step 6 of the Methodology Order.

2. Step 6 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 37 (internal footnote omitted).

3. On April 19, 2021, the Director issued his *Final Order Regarding April 2021 Forecast Supply (Methodology Steps 1 – 3)* ("April Forecast Supply Order"). The April Forecast Supply Order predicted a demand shortfall to the SWC of 40,500 acre-feet for the 2021 irrigation season. *April Forecast Supply Order* at 3. At that time, the only member of the SWC predicted to experience material injury during the 2021 irrigation season was the Twin Falls Canal Company ("TFCC"). The Director ordered that, by May 1, 2021, ground water users with consumptive water rights "junior to May 30, 1989, 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 [demand shortfall] of 40,500 acre-feet in

accordance with an approved mitigation plan." *Id.* at 6. The Director also ordered that, if a junior ground water user cannot establish they can mitigate for their proportionate share of the predicted demand shortfall in accordance with an approved mitigation plan, "the Director will issue an order curtailing the junior-priority ground water user." *Id.*

4. On May 20, 2021, the Director issued a *Final Order Curtailing Ground Water Rights Junior to May 30, 1989* ("Curtailment Order"). The Director ordered that:

> [A]t 12:01 a.m. on or before June 3, 20[21], ground water users holding water rights bearing priority dates junior to May 30, 1989, within the [Eastern Snake Plain Aquifer area of common ground water supply] listed in Attachment A to this order shall 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 3-4.

B. April – June Climate

5. The April 2021 Joint Forecast prepared by the United States Army Corps of Engineers and the United States Bureau of Reclamation ("BOR") predicted 2,600,000 acre-feet of natural flow at the Heise gage for the period April – July, 2021. *April Forecast Supply Order* at 2. The Joint Forecast "is generally as accurate a forecast as is possible given current data gathering and forecasting techniques." *Methodology Order* at 17.

6. The months of April, May, and June were dry. According to data measured at the Natural Resources Conservation Service's SNOTEL sites in the Upper Snake River Basin, the basin received 49%, 121%, and 13% of average precipitation in April, May, and June, respectively. The National Weather Service's Twin Falls weather station reported 29%, 51%, and 2% of normal precipitation in April, May and June, respectively. Twin Falls temperatures were 0.3 degrees below normal for April, were 0.1 degrees above normal for May, and were 8.4 degrees above normal for June.[1]

C. Reasonable In-Season Demand

7. RISD is the volume of water that would be required to be diverted at the point of diversion during the year of evaluation to grow the specific crops within the service area of the entity. In April, the demand from the 2006/2008/2012 baseline year ("BLY") represents the RISD. During the irrigation season, the RISD for the already expired 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. For the future remainder of the irrigation season, the RISD is the demand predicted from the July-October 06/08/12 BLY. RISD is calculated on a monthly timestep.

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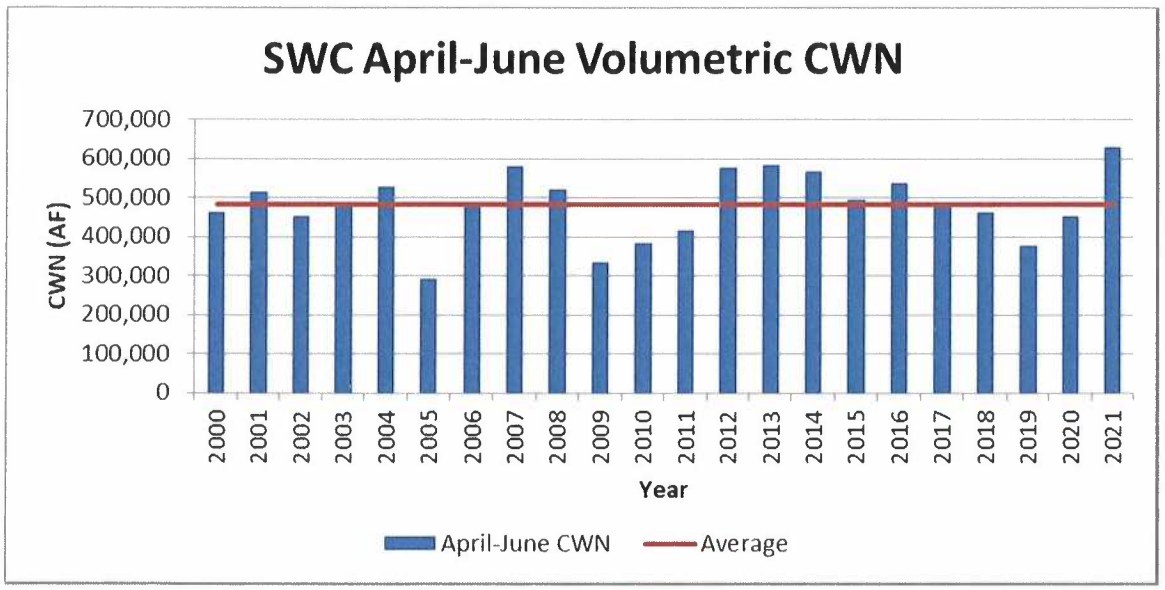
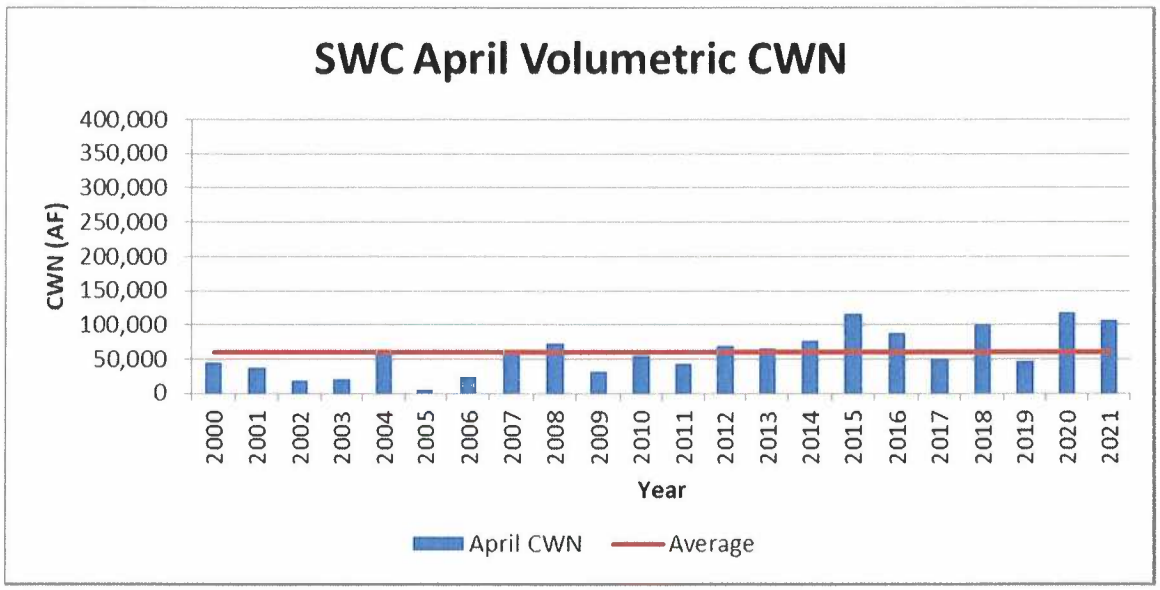
[1] Precipitation and temperature data obtained from the NOAA National Weather Service Preliminary Monthly Climate Data for the Twin Falls 3SE weather station (Twin Falls Airport).

i. Crop Water Need

8. CWN is the project wide volume of irrigation water required for crop growth so crop development is not limited by water availability. CWN is the difference between the fully realized consumptive use associated with crop development, or evapotranspiration, and effective precipitation. CWN is an input variable for calculating RISD for those months of the irrigation season that are complete. 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. Demand shortfall is then calculated as the difference between the adjusted forecast supply and the RISD. For specifics regarding determination of CWN, see *Methodology Order* at 14.

9. As calculated from the beginning of the irrigation season (April 1), the SWC's volumetric CWN for the current water year through the month of June is 631,436 acre-feet. This volume is 127% of the April 1 – June 30 ten-year average CWN (2011-2020) and 120% of the CWN for the (2006/2008/2012) BLY. As calculated from April 1 to June 30, from the year 2000 until this year, 2021 has the largest CWN volume of any irrigation season. The following graphs summarize monthly volumetric CWN values.




SWC April Volumetric CWN
CWN (AF)
400,000
350,000
300,000
250,000
200,000
150,000
100,000
50,000
0
2000
2001
2002
2003
2004
2005
2006
2007
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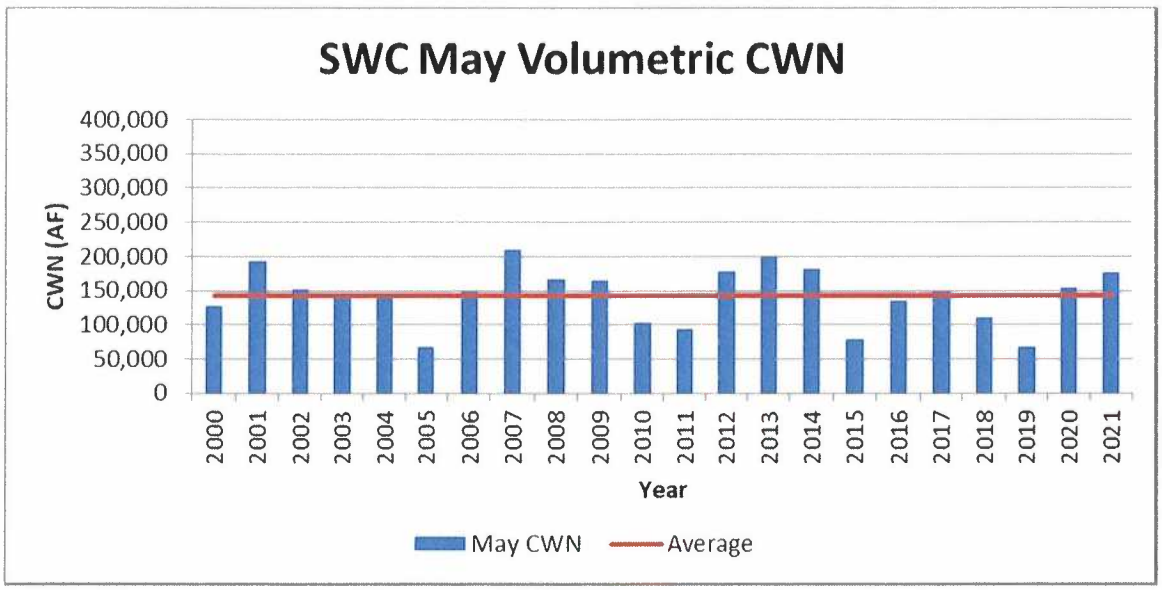
2020
2021
Year
April CWN
Average


SWC May Volumetric CWN
CWN (AF)
400,000
350,000
300,000
250,000
200,000
150,000
100,000
50,000
0
2000
2001
2002
2003
2004
2005
2006
2007
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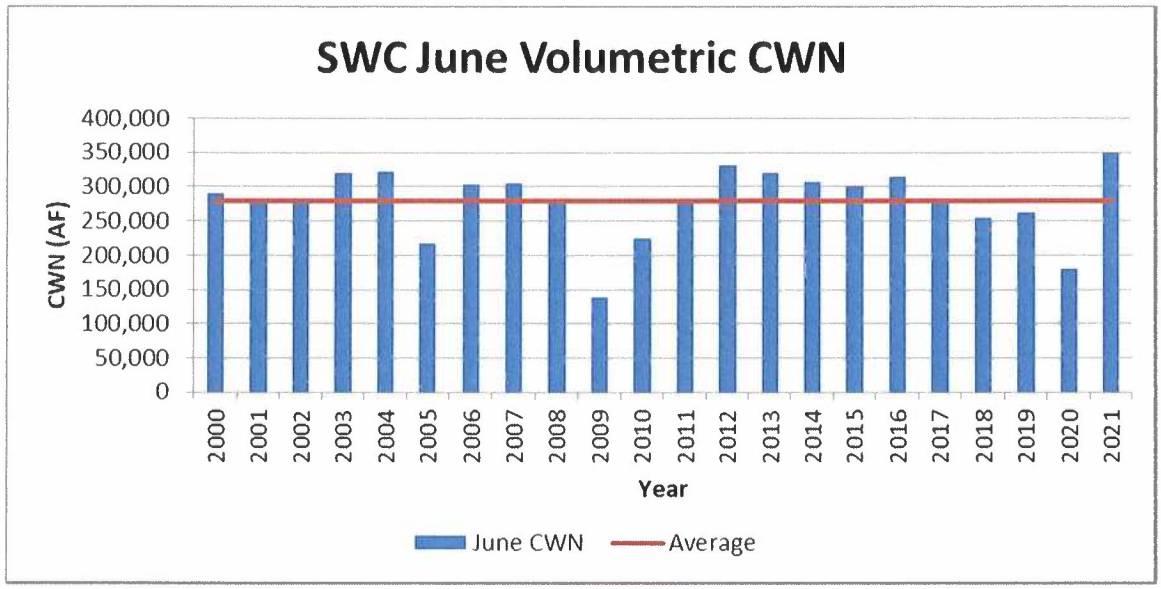
2021
Year
May CWN
Average



ii. Extension of BLY

10. The RISD for the future portion of the irrigation season (July –October) is the July-October demand for (2006/2008/2012) BLY. The numeric July-October demand values are shown in the table in Finding of Fact 11 below.

iii. Calculation of RISD

11. As calculated from the beginning of the irrigation season (April 1), the SWC's volumetric RISD for 2021 through June 30 is 1,731,575 acre-feet. This volume is 129% of the April 1 – June 30 ten-year average RISD (2011-2020) and 132% of the April-June demand for the (2006/2008/2012) BLY. As calculated from April 1 to June 30, from the year 2000 until this year, 2021 has the largest RISD volume of any irrigation season. The recalculated RISD on June 30 of the 2021 irrigation season by entity is summarized in column six of the following table:

	April-June CWN (AF)	E_p (April - June)	April-June RISD (AF)	July-October Demand for 06/08/12 BLY (AF)	Recalculated RISD (AF)
A&B	19,056	0.45-0.96	31,790	36,114	67,904
AFRD2	70,170	0.21-0.37	234,532	261,740	496,272
BID	53,223	0.31-0.47	130,653	136,738	267,390
Milner	14,636	0.35-0.90	29,302	28,352	57,654
Minidoka	100,661	0.36-0.56	213,368	200,690	414,058
NSCC	156,076	0.22-0.39	525,648	584,862	1,110,510
TFCC	217,614	0.29-0.50	566,343	633,715	1,200,058

D. Forecast Supply

12. When determined during the irrigation season, the forecast supply ("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. *Methodology Order* at 37. Actual natural flow diversions for the already expired 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 a regression analysis. *Id.* at 18, 37. Storage allocations are established by the BOR and Water District 01 ("WD1") on the day of allocation. *Id.* at 37.

i. Sum of Actual Natural Flow Diverted

13. 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 21.

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

14. Natural flow diversions were predicted for the remainder of the irrigation season by regression analysis. The Methodology Order established the following variables as predictor variables in 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 select ground water levels near American Falls Reservoir. *Methodology Order* at 19. Unique regression models with unique predictor variable groups are established in the Methodology Order for each SWC member.

15. 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. Two Ocean Plateau SWE data was selected as a predictor variable in the Methodology Order based upon step-wise statistical analysis carried out in the development of each regression model. 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.

16. On July 1, 2021, the Two Ocean Plateau SNOTEL station reported 0.2 inches of SWE and this value was used to predict July – October natural flow volumes for A&B, AFRD2, and Milner.

17. The variables used to predict July – October natural flow volumes for BID, Minidoka, and NSCC in 2021 include: (1) 0.0 inches of SWE reported by the Two Ocean Plateau SNOTEL site on June 15, 2021; (2) 1,841,633 acre-feet of natural flow runoff at the Snake River near Heise (April – June) as reported by the BOR; and (3) 26.25 feet depth to water at well 5S31E27ABA1 as measured by IDWR on March 23, 2021.

18. The variables used to predict the July – October natural flow volume for TFCC in 2021 include: (1) 0.0 inches of the SWE reported by the Two Ocean Plateau SNOTEL Site on June 15; (2) 1,841,633 acre-feet of natural flow runoff at the Snake River near Heise (April – June) as reported by the BOR; and (3) 80,118 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

19. Preliminary storage allocation values for each member of the SWC were established by the BOR and WD1 and published in WD1's Initial Storage Report on June 29, 2021,[2] found in the table in Finding of Fact 21 below.

iv. Adjustments to Total Supply

20. The natural flow and storage water supplies were both adjusted as shown in the table in Finding of Fact 21 below. Adjustments to natural flow include wheeled water to Southwest Irrigation District through BID and Milner, 3,700 acre-feet and 3,000 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. An adjustment for water supplied to or from the rental pool would artificially increase or decrease the shortfall obligation.

v. Summary of Forecast Supply

21. The table below contains the individual components of the FS for each of the SWC members.

	Natural Flow Diverted 4/1 to 6/30 (AF)	Predicted Natural Diversions Flow 7/1 to 10/31 (AF)	Natural Flow Adjustment (AF)	Preliminary Storage Allocation (AF)	Minidoka Credit Adjustment (AF)	Forecast Supply (AF)
A&B	2,868	0	0	132,913		135,781
AFRD2	57,259	2,864	0	382,492	1,000	443,616
BID	113,750	4,178	(3,700)	220,123	5,130	339,482
Milner	11,124	835	(3,000)	83,050		92,009
Minidoka	108,748	5,620	0	314,318	8,370	437,056
NSCC	279,202	44,560	0	834,679	(7,750)	1,150,691
TFCC	457,025	394,532	0	237,962	(6,750)	1,082,769

[2] The *Initial Storage Report* may be viewed at: http://www.waterdistrict1.com/WD01%20Storage%20Report.pdf.

E. Revised Shortfall Prediction

22. Demand Shortfall ("DS") is calculated as the difference between RISD and the FS.

23. Based on the above, and as summarized in the table below, the Director predicts, at this time, that TFCC and AFRD2 are expected to experience material injury.

	Forecast Supply (AF)	RISD (AF)	Shortfall (AF)
A&B	135,781	67,904	0
AFRD2	443,616	496,272	52,700
BID	339,482	267,390	0
Milner	92,009	57,654	0
Minidoka	437,056	414,058	0
NSCC	1,150,691	1,110,510	0
TFCC	1,082,769	1,200,058	117,300
		Total	170,000

24. The current, predicted shortfall to the SWC's RISD is 170,000 acre-feet.

25. The estimated Time of Need was established by predicting when the remaining storage balance for TFCC was equal to their reasonable carryover volume of 25,200 acre-feet and the remaining storage balance for AFRD2 was equal to their reasonable carryover volume of 11,500 AF. An analogous year was chosen to predict the storage use for TFCC and AFRD2 for the remainder of this season. The analogous year, 2013, was selected based on similar Blackfoot to Milner reach gains. Anticipating that TFCC's and AFRD2's storage use for the remainder of the 2021 season will be similar to their storage use in 2013, the Time of Need is predicted to occur on August 20, 2021, for TFCC and September 25, 2021 for AFRD2.

F. Step 6

26. 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 pursuant to an approved mitigation plan or to conduct other approved mitigation activities 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. The ESPA Model will be run to determine the priority date to produce the

> necessary mitigation obligation volume within the area of common ground water supply, as described by CM Rule 50.01.

Methodology Order at 38 (footnote omitted).

27. The predicted July DS for TFCC is 117,300 acre-feet. The predicted shortfall to AFRD2 is 52,700 acre-feet.

28. The Department ran the Eastern Snake Plain Aquifer Model ("ESPAM") version 2.1 to predict the junior priority water rights that must be curtailed to produce the volume of water equal to the predicted July DS. Ground water rights bearing priority dates junior to June 14, 1977, must be curtailed to produce the volume of water equal to the predicted July DS.

CONCLUSIONS OF LAW

29. 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 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.

30. Idaho Code § 42-607 states the watermaster, under the direction of the Director, shall regulate diversions "when in times of scarcity of water it is necessary so to do in order to supply the prior rights of others in such stream or water supply . . . ."

31. Based on Findings of Fact 5 through 25 above, it is reasonably certain TFCC and AFRD2 will be materially injured. The predicted shortfall to TFCC is 117,300 acre-feet. The predicted shortfall to AFRD2 is 52,700 acre-feet.

32. In the April Forecast Supply Order, the Director predicted a demand shortfall to the SWC of 40,500 acre-feet. Because the Step 6 revised mid-season prediction is greater than the shortfall predicted in the April Forecast Supply Order, the curtailment date established in the Curtailment Order must be adjusted.

33. Using the ESPAM 2.1, the new curtailment date is junior to June 14, 1977.

34. The predicted July DS is 170,000 acre-feet. Junior ground water users holding consumption water rights bearing priority dates junior to June 14, 1977, within the Eastern Snake

Plain Aquifer area of common ground water supply must mitigate for their proportionate share of the predicted DS in accordance with an approved mitigation plan.[3] Junior ground water users mitigating for their proportionate share of the predicted DS with a secured volume of water pursuant to an approved mitigation plan must, to the satisfaction of the Director, secure their proportionate share for delivery to the injured members of the SWC on or before August 3, 2021.

35. If, on or before August 3, 2021, ground water users holding consumptive water rights bearing priority dates junior to June 14, 1977, within the Eastern Snake Plain Aquifer area of common ground water supply fail to establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted DS of 170,000 acre-feet in accordance with an approved mitigation plan, the Director will issue an order curtailing the junior-priority ground water user. Junior ground water users who are mitigating with a secure volume of water are not required to assign the secured volume of water until after the Director issues a subsequent order requiring assignment of the water.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED as follows:

The Director's revised prediction is an in-season DS of 170,000 acre-feet. On or before August 3, 2021, ground water users holding consumptive water rights bearing priority dates junior to June 14, 1977, 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 DS of 170,000 acre-feet in accordance with an approved mitigation plan. If a junior ground water user cannot establish, to the satisfaction of the Director that they can mitigate for their proportionate share of the predicted DS of 170,000 acre-feet in accordance with an approved mitigation plan, the Director will issue an order curtailing the junior-priority ground water user.

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[3] There are six approved mitigation plans in place responding to the SWC delivery call filed by: 1) A&B Irrigation District, 2) Southwest Irrigation District and Goose Creek Irrigation District (collectively, "SWID"), 3) the Idaho Ground Water Appropriators, Inc. ("IGWA"), and 4) certain cities commonly referred to as the "Coalition of Cities." A&B's enlargement rights have already been curtailed by the May 20, 2021, Curtailment Order, which remains in effect. A&B's other water rights are not affected by the adjusted curtailment date, thus A&B does not need to establish that it can mitigate for its proportionate share of the predicted DS in this order. SWID, IGWA and the Coalition of Cities, do not need to establish that they can mitigate for their proportionate share of the predicted DS either due to the nature of their respective mitigation plans.

IT IS FURTHER ORDERED the May 20, 2021, Curtailment Order remains in full force and effect. All ground water users holding water rights listed in Attachment A to the May 20, 2021, Curtailment Order bearing priority dates junior to May 30, 1989, shall continue to be curtailed from diversion and use of ground water pursuant to those water rights unless they are mitigating in accordance with an approved mitigation plan or are notified by the Department that the order of curtailment has been modified or rescinded as to their water rights.

Dated this 20th day of July, 2021.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July 2021, a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

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Megan Jenkins

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.