BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF WATER RIGHT NO. 1-6	)	**FINAL ORDER REGARDING INSTRUCTIONS TO WATER DISTRICT 01 WATERMASTER**

The Watermaster for Water District 01 ("Watermaster") has asked the Director of the Idaho Department of Water Resources ("Director") to provide him accounting instructions for water right no. 1-6. This is necessary because American Falls Reservoir District No. 2 ("AFRD2") has argued that the Watermaster is incorrectly accounting for water right no. 1-6. The Director finds, concludes and orders as follows:

ANALYSIS

Water right no. 1-6 was decreed in the Snake River Basin Adjudication ("SRBA") as an irrigation right for 1,700 c.f.s. with a priority date of March 30, 1921, in the name of the United States Bureau of Reclamation ("Bureau"). *Partial Decree Pursuant to I.R.C.P. 54(b) For Water Right 01-00006* (May 1, 2012) ("*Partial Decree*").[1] The authorized place of use is the area within the boundaries of AFRD2 and the authorized point of diversion is the Milner-Gooding Canal, which conveys water from the Snake River just above Milner Dam to AFRD2. *Id.*

The partial decree includes a condition in the "Quantity" element, and the Watermaster has requested accounting instructions for making distributions consistent with the "Quantity" condition. *See generally* chapter 6, title 42, Idaho Code ("Distribution of Water Among Appropriators"). The condition provides as follows:

> The right to divert as natural flow during each irrigation season under this water right, having a March 30, 1921, priority, as follows: From May 1 of each irrigation season continuing during that season so long as there is natural flow available for that priority, the first 1,700 cubic feet per second of flow to be available one-half (1/2) to American Falls Reservoir District No. 2 and one-half (1/2) to American Falls Reservoir, except that in any year in which American Falls Reservoir is full to capacity on April 30 or fills after that date, taking into account any water that may be temporarily stored to its credit in upstream reservoirs, all water diverted by American Falls Reservoir District No. 2 within

[1] The partial decree includes a *Pioneer* ownership condition. *See United States v. Pioneer Irr. Dist.*, 144 Idaho 106, 115, 157 P.3d 600, 609 (2007).

the maximum of 1,700 cubic feet per second during the year prior to the initial storage draft on American Falls Reservoir after the reservoir finally fills in that year shall be considered as natural flow under water right No. 1-6. Nothing herein shall prevent American Falls Reservoir District No. 2 from diverting water under said license prior to May 1 of a given irrigation season but all such diversions shall be charged as storage in the event the reservoir is not full on April 30 of that season or does not fill after April 30 of that season.

This condition was included in the Amended Director's Report for SRBA Subcase No. 01-0006 and decreed pursuant to stipulation.[2] *Standard Form 5 – Stipulated Elements Of A Water Right, Subcase No. 01-6* (Mar. 13, 2012).

1. The Only Authorized Purpose Of Use For Water Right No. 1-6 Is Irrigation.

AFRD2 has argued to the Department that water right no. 1-6 authorizes the use of water for both irrigation and storage. *Petition for Reconsideration of Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9)* ("*Petition*"), dated Dec. 10, 2012.[3] First, AFRD2 is incorrect in its assertion that water right no. 1-6 authorizes the use of water for both irrigation and storage. Water right no. 1-6 only authorizes use of the water for irrigation. This is evidenced by a review of the water right elements. First, the only authorized purpose of use decreed for this water right is irrigation. Storage does not appear under the decreed purpose of use for this right. Next, the point of diversion for water right no. 1-6 is the Milner-Gooding Canal. AFRD2 does not have a reservoir to store water at this point of diversion. Furthermore, the quantity element for this water right is described in cubic feet per second ("c.f.s."), the units associated with irrigation water rights. The water right does not use the standard units of storage, which are acre-feet per year. In sum, the decreed elements of 1-6 are consistent with the elements of a water right authorizing diversion of natural flow water for irrigation purposes, not of a water right for storage purposes. *See Idaho Power Co. v. State, By and Through Dept. of Water Resources*, 104 Idaho 575, 581, 661 P.2d 741, 747 (1983) ("Following construction of Idaho Power's three Hells Canyon dams, state water licenses were issued. Seven of those licenses appear in the record here. One is a storage right measured in acre-feet, and the six others are flow rights measured in cubic feet per second (cfs).").

AFRD2 looks past these issues and instead points to the quantity element quoted above and has argued that the condition adds a storage purpose of use to this water right. In a recent proceeding before the Department, AFRD2 has argued that the plain language of the condition in the "Quantity" element of the partial decree authorizes the "diversion" or "accumulation" of water into storage in American Falls Reservoir in some circumstances. *Petition* at 2-3.[4] While it

---

[2] In the SRBA, the parties to Subcase No. 1-6 disagreed as to the interpretation of the condition's language, but stipulated to including the language without resolving their substantive dispute.

[3] AFRD2 made this argument in its *Petition* in *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, as well as similar arguments in proceedings related to SRBA Subcase No. 1-2064.

[4] The Department issued its *Order Denying Petition for Reconsideration* in response to the Petition on December 21, 2012.

may be hard to describe the language of the condition as "plain", AFRD2's interpretation actually conflicts with the language of the condition. The condition does not include the terms "accumulation" or "accumulate." The only "diversions" referenced in the condition are diversions by AFRD2. AFRD2 does not divert any Snake River water into storage at the authorized point of diversion. Rather, all diversions from the Snake River by AFRD2 are conveyed directly to its irrigation system via the Milner-Gooding Canal and are used for irrigation purposes. Thus, the "plain" language of the condition does not support a conclusion that water right no. 1-6 authorizes the "diversion" or "accumulation" of Snake River water into storage at American Falls Reservoir.

At its core, the condition restricts AFRD2's diversions under water right no. 1-6 by expressly limiting the timing and quantity of the diversions. The condition limits AFRD2's post-May 1 diversions of natural flow to one-half of "the first 1,700 cubic feet per second of flow" available under the March 30, 1921 priority. *Partial Decree*. The condition does not prohibit AFRD2 from diverting prior to May 1 or from diverting additional water, but provides that "all such diversions shall be charged as storage" rather than as natural flow under water right no. 1-6. *Partial Decree*.[5]

The condition provides an exception to the limits it otherwise imposes on AFRD2's natural flow diversions under water right no. 1-6: if American Falls Reservoir fills, "taking into account any water that may be temporarily stored to its credit in upstream reservoirs," AFRD2 is authorized to divert up to 1,700 c.f.s. as natural flow under water right no. 1-6. *Partial Decree*.

Because this exception also applies to AFRD2's diversions prior to May 1, in years American Falls Reservoir does not fill until after May 1 (taking into account water that may be temporarily stored to its credit in upstream reservoirs), the condition may require that some or all of the storage use charges AFRD2 incurred earlier in the season under the preliminary accounting "shall be considered as natural flow." *Partial Decree*. While AFRD2 has suggested that this provision constitutes "a unique administration process," *Petition* at 2, it is only an accounting provision for determining whether AFRD2's diversions are to be considered natural flow diversions under water right no. 1-6, or to be charged as storage use. It does not "authorize diversions of water under the right to . . . storage" at American Falls Reservoir. *Petition* at 2.

The authorization to divert water into storage at American Falls Reservoir is provided by water right no. 1-2064, which has the same priority date as water right no. 1-6: March 30, 1921.[6] Both water rights are held by the Bureau, and the fact that both have the same priority date but different uses and beneficiaries[7] explains the need for the condition in the "Quantity" element of water right no. 1-6. The two Bureau rights compete for the same water, and the condition provides the basis for allocating between them the natural flow available under their shared

---

[5] This aspect of the condition is consistent with standard administration in Water District No. 1 where diversions in excess of natural flow rights are routinely charged as storage use. AFRD2 has contracted with the United States Bureau of Reclamation for storage in American Falls Reservoir. However, as is described in greater detail later in this order, the water is stored in American Falls Reservoir pursuant to water right no. 1-2064, not water right no. 1-6.

[6] Water right no. 1-2064 has not yet been decreed in the SRBA, but it appears there is no dispute over its recommended priority date of March 30, 1921.

[7] Water right no. 1-6 is an irrigation right that benefits AFRD2 only, while water right no. 1-2064 is a storage right that benefits all spaceholders in American Falls Reservoir, including AFRD2.

priority of March 30, 1921. Other than the natural flow AFRD2 may divert under water right no. 1-6, all natural flow under priority of March 30, 1921 is available for diversion into American Falls Reservoir under water right no. 1-2064, which is not limited by a diversion rate but rather by an annual volume.[8]

2. The Historical Record Establishes That The Intent Behind The Quantity Condition Was To Provide The Watermaster Guidance On How To Deliver Water Between Two Water Rights With The Same Priority Date.

The condition under the quantity element has an extensive history.[9] The condition comes from, with minor changes, a portion of the "Eagle Decree." "Supplemental Decree," *Burley Irr. Dist, v. Eagle* (5th Jud. Dist.) (Jul. 10, 1968).[10] However, the condition did not originate with the Eagle Decree, which simply recited a pre-existing provision of the "Palisades Contracts" of the 1950s. The Palisades Contracts' provision also was intended to simply confirm pre-existing language: instructions in a 1936 letter from the United States Commissioner of Reclamation to the Superintendent of the Minidoka Project. *Letter from John C. Page, Acting Commissioner, to E.B. Darlington, Superintendent, Minidoka Project* (Apr. 6, 1936) (the "1936 Letter"), a copy of which is attached hereto as Attachment A.

The 1936 Letter was intended to resolve, consistent with the "Woodville Decree,"[11] a dispute over allocation of water between two Bureau water right permits that had the same priority date (March 30, 1921) but different purposes. Permit No. 15134 authorized diversion of 1,700 c.f.s. for irrigation use by AFRD2, while Permit No. R-269 authorized storage of 1.7 million acre-feet at American Falls Reservoir. *Id.*[12] The fact that the two Bureau rights had the same priority resulted in a dispute between AFRD2 and the other spaceholders in American Falls Reservoir[13] over which "should have the superior or preference right to use natural flow available for filling the said priority rights of March 30, 1921." *Id.* The dispute arose during the drought of the early 1930s and immediately escalated into federal court litigation, which ended inconclusively because the United States, as legal owner of the two rights, was deemed a necessary party but had not consented to suit. *Am. Falls Res. Dist. No. 2 v. Crandall*, 82 F.2d 973 (9th Cir. 1936), *rehearing denied & opinion modified*, 85 F.2d 964 (9th Cir. 1936).

The Commissioner of Reclamation issued the 1936 Letter after the litigation was dismissed to resolve the question of the allocation of natural flow between the two Bureau rights. The 1936 Letter included three discrete instructions for allocating flows available under the shared priority date of March 30, 1921:

---

[8] The license for the American Falls Reservoir water right, License No. R-269, authorized an annual volume of 1.8 million acre-feet.

[9] As previously noted, the parties to Subcase No. 1-6 disagreed as to the interpretation of the condition's language, but stipulated to including the language without resolving their substantive dispute. *See supra* note 2.

[10] *See also* "Supplemental Decree," *Aberdeen-Springfield Canal Co. v. Eagle* (7th Jud. Dist.) (Mar. 12, 1969).

[11] "Decree 661," *Woodville Canal Co. v. Clark & Edwards Canal Co.*, (D. Idaho, Jun. 25, 1929).

[12] While the 1936 Letter refers to storage of 1.8 million acre-feet, 100,000 acre-feet of this volume was "bank storage." *See* Water Right License No. R-269.

[13] AFRD2, as a spaceholder in American Falls, held (and still holds) a storage allocation to approximately 400,000 acre-feet of storage water in American Falls Reservoir under its contract with the Bureau.

1. From October 1 to May 1, all such flows to the reservoir;
2. After May 1, half of the first 1,700 c.f.s. to AFRD2 with remaining flows to the reservoir;
3. In years the reservoir fills and spills over, AFRD2's diversions prior to the filling of the reservoir to be considered natural flow and not charged as storage use.[14]

These instructions contemplated different allocations between the two rights depending upon whether American Falls Reservoir filled and spilled, and limited the quantity of water available to AFRD2 under the irrigation right in years the reservoir did not fill. In years the reservoir did not fill and spill, the reservoir was to receive all natural flow available under priority of March 30, 1921 prior to May 1, and thereafter the reservoir right and the irrigation right would each receive half of the first 1,700 c.f.s., with the remaining flow going to the reservoir. In contrast, in years the reservoir filled and spilled, AFRD2 was to receive the full amount of the irrigation right (1,700 c.f.s.) during the entire period of use.

The Palisades Contracts and the Eagle Decree included a provision that was intended to confirm AFRD2's allocation of natural flow under the 1936 Letter.[15] This provision was

---

[14] The pertinent portion of the 1936 Letter provided as follows:

> That during the non-irrigation season of each year from October 1 of one year until May 1 of the next, all water available under the said priority rights of March 30, 1921, decreed to the Secretary of the Interior be stored in American Falls Reservoir; that during the month[s] of May and June, and so long thereafter during the irrigation season as there may be natural flow available for filling the said priority of March 30, 1921, that the first 1700 second feet thereof be divided on a fifty-fifty basis and one-half thereof furnished to the [AFRD2] and one-half to the American Falls Reservoir and that all water available for filling the said priority rights decreed to the Secretary of the Interior during the said months of the irrigation season over and above one-half of the first 1700 second-feet herein provided for the [AFRD2] be furnished to the American Falls Reservoir.
>
> That in years when the American Falls Reservoir fills and spills over the water diverted into the [AFRD2] Canal during the period that American Falls Reservoir is filling will be considered natural flow water and will not be charged against District No. 2 as a part of its stored water supply.

1936 Letter at 3.

[15] Ltr. from F. M. Clinton, Acting Regional Director of the Bureau of Reclamation, to the Board of Directors, AFRD2 (May 21, 1952)("[O]ur proposal is to require other companies and districts to consent to the United States contracting with your District to administer [water right no. 1-6] in keeping with the order approved by the First Assistant Secretary of the Interior on April 6, 1936."); Ltr. from Branch Bird, Attorney for AFRD2, to Lynn Crandall, Watermaster (June 11, 1952)(Asking whether all or just one-half of the available natural flow had been delivered to AFRD2 under the authority of the April 6, 1936 letter.); Ltr. from Lynn Crandall, Watermaster, to Branch Bird, Attorney for AFRD2 (June 12, 1952)(Letter from the watermaster acknowledging that he "followed the instructions" of the April 6, 1936 letter.); Ltr. from F.M. Clinton, Acting Regional Director of Bureau of Reclamation Region, to Branch Bird, Attorney for AFRD2 (Aug. 4, 1952) ("The intention is by this language to formalize by contract the Secretary's order of 1936 as that order has in fact been administered."); Ltr. from John Rosholt, Attorney, to Leon Grieve, Manager Big Wood Canal Company (Mar. 9, 1966)(Letter discussing how the goal of the supplemental adjudication that resulted in Eagle Decree was to confirm and decree provisions of the Palisades Contracts "which cleared up controversies which had existed on the river for many years."); Ltr. from John Rosholt to Cecil Hobdey, Attorney for AFRD2 (Apr. 6, 1966)("These general provisions, as in the case of American Falls Reservoir District No. 2, verify the rights of several parties on the river which have heretofore (prior

incorporated into water right no. 1-6 as a condition in the "Quantity" element of the SRBA partial decree. Consistent with the 1936 Letter, the condition provides that "[f]rom May 1 . . . the first 1,700 cubic feet per second of flow" is to be divided, with "one-half (1/2)" going to AFRD2 and "one-half (1/2)" going to American Falls Reservoir. *Partial Decree.* The exception to this allocation is that in any year American Falls Reservoir fills on or after April 30 (taking into account water stored to its credit in other reservoirs), "all water diverted by District No. 2 within the maximum of 1,700 cubic feet per second during the year prior to the initial storage draft after the reservoir finally fills in that year shall be considered as natural flow under water right no. 1-6." *Id.* The condition also expressly confirms that AFRD2 may divert water "prior to May 1 . . . but all such diversions shall be charged as storage in the event the reservoir is not full" on or after April 30, *id.*, which was implicit in the 1936 Letter.

The condition in water right no. 1-6 effectively allocates the natural flow available under priority of March 30, 1921 between water right no. 1-6 and water right no. 1-2064. This allocation is consistent with the intent and instructions of the 1936 Letter, and confirms that the *Petition*'s interpretation of the condition in water right no. 1-6 is incorrect. The only connection between water right no. 1-6 and storage in American Falls Reservoir under water right no. 1-2064 is that both rights compete for the same water, and the condition in water right no. 1-6 effectively allocates the natural flow available under the March 30, 1921 priority between the two Bureau rights by limiting AFRD2's natural flow diversions under water right no. 1-6. AFRD2's natural flow diversions under water right no. 1-6 may have the effect of allowing AFRD2 to reduce its storage use and consequently increase its storage carryover, but this is an indirect and incidental effect rather than the purpose of the right, as recognized by the Ninth Circuit in 1936:

> The real and basic reason for this suit is shown by the following testimony of Watermaster Crandall:
>
> . . . . The benefit received by [AFRD2] in 1932, by the use of the direct flow, permitted an additional holdover for irrigation in 1933 of approximately 110,000 a.f. at American Falls.
>
> Thus it can be seen that if appellant district can maintain their claim in the years where a natural flow is available it will be able to restrict its use of water to natural flow water at such times, and if the amount of such natural flow water is not charged against its storage rights, the amount of unused storage water would be an additional amount upon which to draw during the following year, owing to the 'holdover' rights under its contract with the government.

---

to Palisades) been unclear. ... Actually, phase 2 of this lawsuit does nothing more than obtain the confirmation of the Idaho court so that the water rights be decreed as per the provisions of the Palisades contracts which were individually negotiated between each company and the government."); Ltr. from H.C. Eagle, Watermaster, to John Rosholt, Attorney, (Nov. 16, 1966) ("The normal flow right for [AFRD2] is a complicated one. It is explained in detail in each of the Palisades Contracts... [t]his right is limited with reference to the status of American Falls storage... ."); Ltr. from John Rosholt, Attorney, to Cecil Hobdey, Attorney for AFRD2 (Nov. 23, 1966)(Explaining some of the history of water right no. 1-6, from the Woodville Decree through Palisades Contract.).

Am. Falls Res. Dist. No. 2, 82 F.2d at 977. In sum, AFRD2's assertion that the condition in the "Quantity" element of water right no. 1-6 authorizes diversions into storage at American Falls Reservoir lacks support in the plain language and intent of the condition.

3. Distribution Of Natural Flow To Water Right 1-6

Distribution of natural flow to water right no. 1-6 should be consistent with the elements of the partial decree, including the "Quantity" condition. Therefore, in years the American Falls Reservoir water right (1-2064) fills, all remaining natural flow available under priority of March 30, 1921 up to a maximum of 1,700 c.f.s. should be distributed to AFRD2 during the period from March 15 to November 15. In years the American Falls Reservoir water right does not fill, one-half (1/2) of the natural flow available under priority of March 30, 1921 up to a maximum of 850 c.f.s. should be distributed to AFRD2 during the period from May 1 to November 15.

Implementing this distribution in the water right accounting program code is complicated. Because the quantity and timing of natural flow distributions to water right no. 1-6 depend upon whether water right no. 1-2064 fills, and AFRD2 generally begins diverting while American Falls Reservoir is still filling, the initial accounting will have to be subsequently adjusted in some years. The fact that water right no. 1-2064 fills in most years means the need to make subsequent accounting adjustments can be minimized if the initial accounting is based on the assumption water right no. 1-2064 will fill. The Watermaster is therefore instructed to implement the distribution of natural flow to AFRD2 under water right no. 1-6 in the water right accounting program code as follows:

1) The natural flow available under priority of March 30, 1921 shall initially be distributed to water right no. 1-6 from March 15 to November 15 on a daily basis, not to exceed the daily diversion of water by AFRD2 and not to exceed 1700 c.f.s. If water right no. 1-2064 fills, no subsequent adjustment to this initial accounting is necessary. If water right no. 1-2064 does not fill the initial accounting must be adjusted as described in (2) and (3).

2) If water right no. 1-2064 does not fill, the initial accounting for water rights nos. 1-6 and 1-2064 must be adjusted as follows. Distributions to water right no. 1-6 must be limited to the period from May 1 to November 15 and to one-half (1/2) of the first 1,700 c.f.s. of natural flow available under priority of March 30, 1921; and all remaining natural flow available under that priority is to be distributed to water right no. 1-2064. If water right no. 1-2064 does not fill under this adjusted accounting, no further accounting adjustments are necessary. If water right no. 1-2064 fills under this adjusted accounting, further adjustments to the accounting for water right no. 1-6 must be made, as described in (3).

3) If water right no. 1-2064 fills under the adjusted accounting described in (2), any natural flow available under priority of March 30, 1921 in excess of the quantity required to fill water right no. 1-2064 shall be distributed to water right no. 1-6 from March 15 to November 15 on a daily basis, not to exceed the daily diversion of water by AFRD2 and not to exceed 1700 c.f.s.

CONCLUSION

Water right no. 1-6 is a water right for irrigation purposes, not a water right for the storage in American Falls Reservoir. Storage in American Falls Reservoir is addressed under water right no. 1-2064. An argument to the contrary ignores the elements of water right no. 1-6. AFRD2's suggestion that the Watermaster should be "accumulating diversions to storage in American Falls Reservoir under water right 1-6" is based on an incorrect reading of water right no. 1-6. As detailed in the long history of water right no. 1-6, the purpose of the quantity condition is to provide guidance to the Watermaster as to how to divide the natural flow between water right no. 1-6 and water right no. 1-2064. The language in water right no. 1-6 does not authorize diversions of natural flow to storage in American Falls Reservoir.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the Watermaster for Water District 01 is instructed to account for water right no. 1-6 as provided in this order. Any diversions by AFRD2 that are not natural flow under these instructions are to be charged as storage water use. The Watermaster is also instructed to update any programming commentary and/or other applicable documentation to reference this Order.

IT IS FURTHER ORDERED that 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. Idaho Code § 42-1701A(3).

IT IS FURTHER ORDERED that pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by the final order or orders previously issued by the Director in this matter 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 a hearing was held, the final agency action was taken, the party seeking review of the order resides, or 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: (a) of the service date of the final order; (b) 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. Idaho Code § 67-5273. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Dated this 11th day of February, 2013.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of February, 2013, the above and foregoing, was served by the method indicated below, and addressed to the following:

C. Thomas Arkoosh ARKOOSH EIGUREN LLC P.O. Box 2900 Boise, ID 83701 tom.arkoosh@aelawlobby.com	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☐ Email
David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th St. South Terrace, Ste 370 Denver, CO 80202 david.gehlert@usdoj.gov	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☐ Email
Matt Howard US Bureau of Reclamation 1150 N. Curtis Road Ste 100 Boise, ID 83706-1234 mhoward@usbr.gov	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☐ Email
United States of America Bureau of Reclamation Regional Director PN Code -3100 1150 N. Curtis Rd. Ste 100 Boise, ID 83706-1234	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☐ Email
Lyle Swank IDWR—Eastern Region 900 N. Skyline Dr., Ste A Idaho Falls, ID 83402-1718 lyle.swank@idwr.idaho.gov	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☐ Email

Deborah J. Gibson

Deborah Gibson
Administrative Assistant to the Director

ADDRESS ALL COMMUNICATIONS TO
THE COMMISSIONER

UNITED STATES

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

WASHINGTON

APR -6 1936

OFFICE OF THE COMMISSIONER

Mr. E. B. Darlington,
Superintendent, Minidoka Project,
Bureau of Reclamation,
Burley, Idaho.

My dear Mr. Darlington:

Under date of June 25, 1929, the United States District Court for the District of Idaho made a decree adjudicating the rights to the use of water from Snake River in that certain decree commonly known as the Woodville Decree, under which water rights were decreed to the various parties to the said action in various amounts and under various dates of priority and among others the following rights were decreed to the Secretary of the Interior and his successors in office:

> "To the Secretary of the Interior of the United States of America, and his successors in office, for use upon the various projects which have heretofore or may hereafter become entitled to the same by reason of contracts with the United States therefor, the water filed upon by the United States in connection with the construction of the American Falls Reservoir under permit number 15134, and reservoir permit number R-269, under date of priority of March 30th, 1921, the amount of water to be decreed to the Secretary of the Interior of the United States and his successors in office for such use under said date of priority of March 30th, 1921, to be One Million seven hundred thousand (1,700,000) acre feet per annum for storage in the American Falls Reservoir and Eight Thousand (8,000) second feet for direct diversion. It is understood and agreed that paragraph two of the stipulation herein does not apply to the said rights of priority of March 30, 1921, provided for in this paragraph or the rights decreed in the Foster and Rexburg decrees."

Thereafter proof of completion of works was made under permit number 15134 and reservoir permit number R-269 and the state commissioner of reclamation found that the United States had complied with the requirements of the above named permits to the extent of 1700 second feet under permit number 15134 and 1,800,000 acre feet under permit number R-269 and issued to the United States a certificate for 1700 second feet under priority of March 30, 1921, for use on the Gooding division of the Minidoka project and a certificate for 1,800,000 acre feet under priority of March 30, 1921, for storage in the American Falls Reservoir.

ATTACHMENT A

For several years past there has been a controversy pending between the American Falls Reservoir District No. 2, representing the Gooding division, on the one side and the American Falls Reservoir District and other parties interested in the American Falls Reservoir on the other side, as to whether during that part of the irrigation season when the American Falls Reservoir is in process of filling, the reservoir or the Gooding canal should have the superior or preference right to use natural flow water available for filling the said priority rights of March 30, 1921, decreed to the Secretary of the Interior.

As a compromise measure and in order to allow to each project an equitable portion of the benefits of these simultaneous water appropriations, directions were given that the preference or superior right be allowed in alternate years first to the one project and then to the other, under which order the Gooding canal had the preference in 1932 and the American Falls Reservoir in 1933.

This controversy resulted in the filing of a suit entitled "American Falls Reservoir District No. 2 v. Lynn Crandall et al" in which the district court made certain findings of fact and conclusions of law, including one as follows:

> "Under the original decree and the contracts between the United States and the contract holders for storage water the right to direct the use of the water made available under said permit rests with the United States. However, under the laws of Idaho, the Secretary of the Interior has no discretion to allow plaintiff or other contract holders to use water in alternate years as such contract holders have the right to use it each year if they are complying with the terms of their contract."

During this litigation the representatives of both parties have expressed the view that it would be preferable and more in accord with state law to divide the water each year than to allow the preference right in alternate years first to one party and then to the other, as has been the practice in recent years. Although the order of the court offers no guide as to how the water should be delivered, the administrative officers of the government wish to conform as nearly as possible to the wishes of the interested parties and the views expressed in the above quoted conclusion of law filed by the trial court.

You are therefore instructed to direct the water master to deliver the water available under the water rights decreed to the Secretary of the Interior in the said Woodville Decree as follows:

That during the non-irrigation season of each year from October 1 of one year until May 1 of the next, all water available under the said priority rights of March 30, 1921, decreed to the Secretary of the Interior be stored in the American Falls Reservoir; that during the month of May and June, and so long thereafter during the irrigation season as there may be natural flow water available for filling the said priority of March 30, 1921, that the first 1700 second feet thereof be divided on a fifty-fifty basis and one-half thereof furnished to the Gooding Canal and one-half to the American Falls Reservoir and that all water available for filling the said priority rights decreed to the Secretary of the Interior during the said months of the irrigation season over and above the one-half of the first 1700 second-feet herein provided for the Gooding Canal be furnished to the American Falls Reservoir.

That in years when the American Falls Reservoir fills and spills over the water diverted into the Milner-Gooding canal during the period that American Falls Reservoir is filling will be considered natural flow water and will not be charged against District No. 2 as a part of its stored water supply.

That the foregoing instructions remain in effect until further instructions from this office, or until otherwise ordered by the Court.

John C. Page
Acting Commissioner.

Approved: APR -6 1936

First Assistant Secretary.

EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION

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

(Required by Rule of Procedure 740.02)

The accompanying order is an **Order Denying Petition for Reconsideration** of the "final order" or "amended final order" issued previously in this proceeding by the Idaho Department of Water Resources ("department") pursuant to section 67-5246, 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.