

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTING )	
WATER TO WATER RIGHTS NOS. )	<b>FINAL ORDER REGARDING</b>
02-100, 02-201, 02-223, 02-224, 02-2001A, )	<b>MEASURING AND REPORTING</b>
02-2001B, 02-2032A, 02-2032B, 02-2036, )	<b>THE “AVERAGE DAILY FLOW”</b>
02-2056, 02-2057, 02-2059, 02-2060, )	<b>AS MEASURED AT THE MURPHY</b>
02-2064, 02-2065, 02-4000A, 02-4000B, )	<b>GAGING STATION.</b>
02-4001A, 02-4001B, 02-10135, 36-2013, )	
36-2018, 36-2026, 37-2128, 37-2471, )	
37-2472, 37-20709, and 37-20710. )	
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**FINDINGS OF FACT**

**I. The Partial Decrees For “Average Daily Flow” As Measured At The Murphy Gaging Station.**

1. The water rights dispute known as “the Swan Falls controversy” questioned the validity and scope of certain hydropower water rights claimed by Idaho Power Company at its Swan Falls project on the Snake River, and at other projects on the Snake River and its tributaries downstream from Milner Dam. *Idaho Power Co. v. State*, 104 Idaho 575, 578, 661 P.2d 741, 744 (1983). On October 25, 1984, the parties to the Swan Falls controversy executed a settlement agreement, commonly known as “the Swan Falls Agreement.” The Swan Falls Agreement was executed by the Chief Executive Officer of Idaho Power Company, the Governor of Idaho, and the Attorney General of Idaho. *Memorandum Decision and Order on Cross-Motions for Summary Judgment, In re SRBA Case No. 39576, Consolidated Subcase No. 00-92023 (92-23)* (Apr. 18, 2008) (“*Memorandum Decision*”), at 9.

2. The Swan Falls Agreement “was not a self-executing instrument” and its signing did not resolve the controversy. *Id.* at 26. Rather, the Swan Falls Agreement “proposed a suite of legislative and administrative actions that if implemented would resolve the controversy and the legal issues to the mutual satisfaction of the parties.” *Id.*; *see Miles v. Idaho Power Co.*, 116 Idaho 635, 637, 778 P.2d 757, 759 (1989) (citing the legislation enacted to implement the settlement). Among the actions proposed by the Swan Falls Agreement was the adoption of a negotiated definition of the hydropower water rights, and raising the State Water Plan’s minimum average daily flow for the

Murphy Gaging Station on the Snake River from 3,300 cfs to 3,900 cfs from April 1 to October 31, and to 5,600 cfs from November 1 to March 31.<sup>1</sup>

3. While Idaho Power Company's SRBA claims for the hydropower water rights did not reference or incorporate the definition of the hydropower water rights proposed in the Swan Falls Agreement, the Director's reports for the hydropower water rights included provisions pertaining to the Swan Falls Agreement. *Memorandum Decision* at 2-3.<sup>2</sup> Further, the Director's reports recommended that some of the hydropower water rights be decreed in the name of the State of Idaho.<sup>3</sup> Idaho Power Company disagreed with the Director's reports and filed a "Complaint" and a "Counterclaim" challenging the recommendations, and also alleging various causes of action and claims for relief. *Memorandum Decision* at 3. The SRBA District Court in July 2007 consolidated into a single proceeding issues pertaining to the ownership of the hydropower water rights, and the interpretation and/or application of the Swan Falls Agreement in decreeing the elements of the hydropower water rights. *Order Granting In Part, Denying In Part Motion To Dismiss; Consolidating Common Issues Into Consolidated Subcase*, [etc.], *In re SRBA Case No. 39576, Consolidated Subcase No. 92-23* (Jul. 24, 2007), at 16.

4. The SRBA District Court on April 18, 2008, issued a summary judgment decision in the consolidated proceeding holding, among other things, that the legislation proposed by Exhibit 7B to the Swan Falls Agreement "clearly and unambiguously provides that any portion of Idaho Power's water rights in excess of the [Murphy Gaging Station] minimum flows are held in trust by the State, by and through the Governor, for the use and benefit of Idaho Power for power purposes and for the people of the State of Idaho," and that the proposed legislation was "entirely consistent with the body of the Agreement."<sup>4</sup> *Memorandum Decision* at 31. The SRBA District Court also held that if

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<sup>1</sup> Swan Falls Agreement at 3-4 & Exhibit 6. The Swan Falls Agreement, including the exhibits appended to it, is attached to *Memorandum Decision* as "Exhibit 1." *Memorandum Decision* at 9.

<sup>2</sup> The three Basin 36 water rights addressed by the Swan Falls Agreement (36-2013, 36-2018 and 36-2026) were exceptions. They were reported prior to and separately from the other hydropower water rights that are the subject of the Swan Falls Agreement. The Director's reports for the three Basin 36 water rights did not contain any references to the Swan Falls Agreement, and the rights were decreed without objection. The SRBA District Court subsequently determined this "was an oversight in uncontested subcases" and the Basin 36 water rights "should have been withheld from decree until the rest of Idaho Power's claims covered by the Swan Falls Agreement were reported." *Memorandum Decision* at 42.

<sup>3</sup> The Attorney General in 2006 filed with the Department "Notices of Change in Water Right Ownership," based on the Swan Falls Agreement and its implementing legislation, for the following hydropower water rights: 02-2001A, 02-2001B, 02-2032, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000, 02-4001, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710.

<sup>4</sup> The legislation proposed by Exhibit 7B was enacted in 1985 and codified at Idaho Code § 42-203B. 1985 Idaho Sess. Laws 25. Subsection (2) of this statute was amended the following year to include, among other provisions, the following:

[A]pplication of the provisions of this section to water rights for hydropower purposes on the Snake River or its tributaries downstream from Milner dam shall not place in trust any water from the Snake River or surface or ground water tributary to the Snake River upstream from Milner dam. For the purposes of the determination and administration of rights to the use of the waters of the Snake River or its tributaries downstream from

the flow of the Snake River at the Murphy Gaging Station is less than the minimum flow level, the hydropower water rights held in trust by the State

are not subordinate to subsequent appropriations. As a result, these subsequent appropriations may be subject to curtailment in order to meet the minimum flows. However, this is an issue pertaining to the administration of Idaho Power's water rights, as well as the rights of subsequent appropriators, and needs to be brought before IDWR in the context of an administrative proceeding.

*Id.* at 47-48.

5. Following the SRBA District Court's summary judgment decision, the State and Idaho Power Company jointly developed proposed partial decrees for the hydropower water rights consistent with the Swan Falls Agreement and the SRBA District Court's summary judgment decision.<sup>5</sup> All of the proposed partial decrees included provisions subordinating the hydropower water rights to uses of water that either were already established or were being developed at the time the Swan Falls Agreement was executed.<sup>6</sup> The proposed partial decrees also included a provision stating that no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam may be considered for purposes of administering the hydropower water rights.<sup>7</sup>

6. Beyond these common provisions, the proposed partial decrees fell into two groups. The first group collectively provided for otherwise "unsubordinated" hydropower water rights, in the name of Idaho Power Company, to an "average daily flow" of 3,900 cfs from April 1 to October 31 and 5,600 cfs from November 1 to

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Milner dam, no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner dam shall be considered.

1986 Idaho Sess. Laws 309. The 1986 amendment was intended as a "clarification" of the settlement, *Minutes of the Senate Resources & Environment Committee, Feb. 19, 1986*, at 1, and "to clarify language in all Sections regarding minimum stream flows, ground water and tributary waters upstream and downstream from Milner Dam, actions the Director may take to review permits relating to trust waters, etc." *Minutes of the House Resources & Conservation Committee, Mar. 13, 1986*, at 1.

<sup>5</sup> *State of Idaho's and Idaho Power Company's Joint Motion to Enter Order Temporarily Withholding Rulings on Pending Summary Judgment Motions, In re SRBA Case No. 39576, Consolidated Subcase No. 00-92023 (92-23)* (Mar. 26, 2009), at 2 & Exhibits A-B.

<sup>6</sup> Paragraphs 7(C) and 7(D) of the Swan Falls Agreement provide that the hydropower water rights are "subordinate" to uses of water existing or in development at the time of the settlement. The partial decrees as originally proposed by the State and Idaho Power Company included provisions closely tracking the language of Paragraphs 7(C) and 7(D). *Id.* These provisions were clarified in the partial decrees entered by the SRBA District Court. *See Partial Decrees* for water rights nos. 02-100, 02-201, 02-223, 02-224, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 ("*Partial Decrees*").

<sup>7</sup> The proposed Milner remark in the partial decrees incorporated language from the 1986 amendment to Idaho Code § 42-203B(2). 1986 Idaho Sess. Laws 309.

March 31, as measured at the Murphy Gaging Station.<sup>8</sup> The proposed partial decrees were for all Idaho Power Company facilities between Milner Dam and Brownlee Dam except C.J. Strike,<sup>9</sup> including tributary facilities.

7. The second group of proposed partial decrees provided that the remaining water rights Idaho Power Company had claimed for these facilities would be held in the name of the State as trustee. The proposed partial decrees for the hydropower water rights held in trust by the State provided the water rights were subject to subordination to any other water right acquired pursuant to state law, unless the water right is exercised unlawfully or depletes the “average daily flow” as measured at the Murphy Gaging Station below 3,900 cfs from April 1 to October 31 or 5,600 cfs from November 1.

8. Both groups of proposed partial decrees stated that the “average daily flow” as measured at the Murphy Gaging Station was to be based upon “actual flow conditions; thus, any fluctuations resulting from the operation of Idaho Power Company facilities shall not be considered in the calculation of such flows.” *Partial Decrees*. The proposed partial decrees further provided that “[f]lows of water purchased, leased, owned or otherwise acquired by Idaho Power Company” from sources upstream of its power plants, including above Milner Dam, and conveyed to and past its plants below Milner Dam, “shall be considered fluctuations resulting from the operation of Idaho Power Company facilities.” *Id.*

9. In subsequent proceedings to address other parties’ objections to and/or concerns with the proposed partial decrees, the State and Idaho Power Company agreed that “fluctuations” resulting from Idaho Power Company operations “are the ‘sole exclusion’ to the rule that all flows actually present at the Murphy Gaging Station constitute actual flow conditions,” and that flows purchased, leased, owned or otherwise acquired “by other entities such as the Bureau of Reclamation are not considered fluctuations for purposes of enforcement of the proposed decrees.” *Order on Motion for Approval of Settlement, In re SRBA Case No. 39576, Consolidated Subcase No. 00-92023*

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<sup>8</sup> The Swan Falls Agreement and the *Partial Decrees* provide that the “Murphy Gaging Station” is located on the Snake River at latitude 43 degree 17 minutes 31 seconds, longitude 116 degrees 25 minutes 12 seconds, in the northwest quarter of the northeast quarter of the southeast quarter of Section 35, Township 01 South, Range 01 West, Boise Meridian, Ada County, Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls power plant, 7.5 miles northeast of Murphy, Idaho at river mile 453.5. Swan Falls Agreement ¶ 7; *Partial Decrees*. In the course of field work undertaken in connection with developing a plan for measuring and reporting the “average daily flow” at the Murphy Gaging Station, *see infra* Finding Of Fact No. 12, it was found that this location is prone to aquatic growth problems that can result in inaccurate and/or unreliable measurements during low-flow periods. An alternative location for flow measurement has been identified and if accepted by the parties will become the measurement point for purposes of this order.

<sup>9</sup> The water right license for Idaho Power Company’s C.J. Strike facility “was issued in 1953 and contained the first unrestricted subordination language on record,” *Idaho Power Co. v. State*, 104 Idaho 575, 580, 661 P.2d 741, 746 (1983), and was not at issue in the Swan Falls controversy. The C.J. Strike water right was not addressed or modified by the Swan Falls settlement, and was decreed in SRBA proceedings independent from the proceedings on the Swan Falls Agreement, and with the subordination language of the license. *Partial Decree, Subcase No. 02-2080*.

(92-23) (Jan. 4, 2010), at 12. The SRBA District Court therefore ordered that the following passages be added to all of the proposed partial decrees:

Fluctuations resulting from Idaho Power Company operations are the sole exclusion to the rule that all flows actually present at the Murphy Gaging Station constitute actual flow conditions. Flows of water purchased, leased, owned or otherwise acquired by other entities are not considered fluctuations.

*Id.* at 20; *Order On Motions For Reconsideration [etc.], In re SRBA Case No. 39576, Consolidated Subcase No. 00-92023 (92-23)* (Mar. 25, 2010), at 8.

10. Other parties raised concerns that the proposed partial decrees did not sufficiently address “how adjustments to the actual flow at the Murphy gauge will be made to account for ‘fluctuations resulting from the operation of Company facilities.’” *Order On Motion For Approval Of Settlement, Consolidated Subcase No. 00-92023 (92-23)* (Jan. 4, 2010), at 15. The SRBA District Court held that such concerns are “administrative in nature and beyond the scope of [SRBA] proceedings,” and “should be addressed if and when an issue arises over the administration of Idaho Power’s right.” *Id.*

11. The amended partial decrees for hydropower water rights nos. 02-100, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, as proposed by the State and Idaho Power Company and modified by the SRBA District Court, were entered on January 12, 2012. In separate subcases, the SRBA Court also entered partial decrees for minimum stream flow water rights nos. 02-201, 02-223, and 02-224 in the name of the Idaho Water Resource Board. These three minimum flow water rights collectively provide for an “average daily flow” of 3,900 cfs from April 1 to October 31 and 5,600 cfs from November 1 to March 31 as measured at the Murphy Gaging Station.

## **II. The Murphy Flow Measurement Report.**

12. Concurrently with the SRBA proceedings to finalize the partial decrees, the parties to the litigation and the Department initiated a cooperative effort to jointly develop a plan for measuring and reporting the “average daily flow” at the Murphy Gaging Station. This effort began in 2009. The parties met in numerous meetings, field surveyed measurement locations, and measured flows at numerous locations. The parties prepared a final draft report titled “Streamflow Measurement and Monitoring Plan For Purposes of Distributing Water to Hydropower and Minimum Streamflow Water Rights in the Milner Dam to Murphy Gaging Station Reach of the Snake River, Idaho” (hereinafter, “Report”).<sup>10</sup>

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<sup>10</sup> The Report is available for viewing on the “Swan Falls Agreement” page of the Department’s website. [http://www.idwr.idaho.gov/News/Issues/SwanFalls/swan\\_falls\\_agreement.htm](http://www.idwr.idaho.gov/News/Issues/SwanFalls/swan_falls_agreement.htm)

13. The Report outlines “a protocol for measuring, monitoring, and reporting average daily flows” at the Murphy Gaging Station “for the purpose of distribution of water to [the] hydropower water rights . . . and [the Murphy] minimum streamflow water rights.” Report at ii. The Report states the partial decrees require calculation of the “average daily flow” at the Murphy Gaging Station are to be based on “actual flow conditions as adjusted to account for fluctuations resulting from the operation of Idaho Power facilities.” *Id.* at ii. The purpose of the Report is “to outline a measurement and reporting protocol for making this adjustment.” *Id.*

14. The Report states that the average daily flow “historically calculated and reported” at the various gaging stations on the Snake River, including the Murphy Gaging Station, is “the average of measurements collected at 15-minute intervals over a 24-hour period” and “has *not* been adjusted to account for fluctuations resulting from Idaho Power operations.” Report at 2 (emphasis in original). The Report therefore defines the term “unadjusted average daily flow” to mean and refer to the average daily flow “as historically calculated and reported” at the Murphy Gaging Station. *Id.* The Report defines the term “adjusted average daily flow” to mean and refer to the average daily flow at the Murphy Gaging Station “that has been adjusted to account for Idaho Power operations as provided in the . . . partial decrees.” *Id.* at 3.

15. The Report states that “Idaho Power operations influence Snake River flow at the Murphy Gaging Station in two ways. First, flows purchased, leased owned, or otherwise acquired by Idaho Power add to flow at the Murphy Gaging Station . . . . Second, changes in reservoir storage at Idaho Power facilities result in downstream flow fluctuations.” Report at 18.

16. With respect to the first type of “fluctuation,” i.e., flows of water purchased, leased, rented, owned or otherwise acquired by Idaho Power Company, the Report states that under the partial decrees “the unadjusted average daily flow as measured at the Murphy Gaging Station must be reduced to account for releases past Milner Dam resulting from such flows.” Report at 18. The Report states “[t]he impact on flow at the Murphy Gaging Station in response” to such an upstream release “depends on the magnitude of the release, duration of the release, and the amount of base flow to which the release is added.” *Id.* at 19. The Report also states “[i]t may take several days” for such releases to reach the Murphy Gaging Station, “and it may take several days after such a release ends for the residual effect at Murphy Gaging Station to subside.” *Id.* at 19. “Thus,” the Report states, “the adjustment must take into account the travel time for such releases to arrive at the Murphy Gaging Station and the time for the impacts to dissipate.” *Id.*

17. With respect to the second type of “fluctuation,” i.e., Idaho Power Company reservoir operations below Milner Dam, the Report states that under the partial decrees “[i]ncreases in reservoir storage at these facilities require that the unadjusted average daily flow at the Murphy Gaging Station be adjusted upward,” while “decreases in reservoir storage . . . require a downward adjustment in the unadjusted average daily flow at the Murphy Gaging Station.” Report at 19. The Report states that “[c]hanges in

storage in CJ Strike and Swan Falls reservoirs have greater potential to impact flows at the Murphy Gaging Station than other [Idaho Power Company] dams in the Milner Dam to Murphy Gaging Station reach,” in part because the CJ Strike and Swan Falls reservoirs “have substantially larger operational storage volumes” than Idaho Power Company’s other facilities. *Id.* at 19. The Report also states that while “Swan Falls operations directly influence the flow measured at the Murphy Gaging Station,” fluctuations resulting from the operation of Idaho Power Company’s upstream facilities “are attenuated with river distance,” and by reservoir storage. *Id.* at 21.

18. The Report discusses and describes two methods for quantifying increases or decreases in reservoir storage at Idaho Power Company facilities below Milner Dam. The first method is the “Reservoir-Stage Method,” under which “changes in reservoir volume [are] derived from measured reservoir water level changes.” Report at 22. The second method is the “Flow Method,” under which “[c]hange in reservoir volume is estimated based on the difference between reservoir inflows and outflows.” *Id.* at 25.

19. The Report states that “[b]oth methods require tracking (i.e., routing) of flows from water leased, purchased, owned or otherwise acquired by Idaho Power from upstream sources,” and “require the tracking of fluctuations . . . associated with storage releases at Milner Dam and storage changes” in Idaho Power Company’s reservoirs. Report at 27; *id.* at iii. The Report also states that “[b]oth methods have some inherent error and uncertainty” as a result of uncertainty in measurements and travel time estimates, lack of attenuation data, etc. *Id.* at 27.

20. The Report recommends the Reservoir-Stage Method “as the primary approach for determining changes in reservoir storage as a result of Idaho Power operations.” Report at ii; *see also id.* at 39. The Report states the Reservoir-Stage Method “requires only reservoir stage measurements to quantify changes in reservoir storage,” while the Flow Method “requires multiple streamflow measurements above and below each reservoir and measurements of other inflows and outflows,” and each additional measurement “introduces potential bias and uncertainty.” *Id.* at 39; *id.* at ii-iii. The Report also states the Reservoir-Stage Method “is conceptually straightforward and easier to implement than the Flow Method,” and is “not vulnerable to some of the factors that contribute error to flow measurements, such as changes in channel morphology, changes in aquatic growth, and other factors.” *Id.* at 27. The Report discusses and describes the initial evaluation of the Reservoir-Stage Method from 2011 through 2013 using a “spreadsheet model”<sup>11</sup> that was developed for the purpose of calculating the “adjusted average daily flow” at the Murphy Gaging Station, *id.* at 28-33, and recommends implementing the Reservoir-Stage Method “for at least a year to evaluate method reliability and routing assumptions.” *Id.* at iii.

21. The Report also states, however, that “reservoir stage measurements are vulnerable to inaccurate bathymetry data, the effects of wind loading, and wave action,” Report at 27, and that “Reservoir-Stage Method accuracy may be reduced during times of substantial wind-loading.” *Id.* at 39. The Report therefore states that while “[t]he Flow

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<sup>11</sup> The Report also refers to the “spreadsheet model” as the “spreadsheet tool.” *Id.* at 39.

Method cannot be recommended at the current time . . . . [e]fforts should continue to implement the Flow Method as a backup to the Reservoir-Stage Method,” and to “verify conclusions drawn using the Reservoir-Stage Method.” *Id.* at 41.

22. The Report further recommends “use of a multi-day rolling average (minimum 3-day rolling average)” in calculating the “adjusted average daily flow” at the Murphy Gaging Station, “to reduce the effects of natural flow variability, measurement error, and method (e.g., routing and attenuation) uncertainty.” Report at 40; *id.* at 27, 32. The Report states that “[a] rolling average can be calculated as a ‘trailing’ multi-day average or a ‘centered ‘multi-day’ average.” *Id.* at 32-33. The Department has historically used a trailing multi-day average and will continue to do so.

23. The Report recommends “frequent manual flow measurements at the Murphy Gaging Station if Snake River flows approach established minimum flows provided in the partial decrees.” Report at 40.

24. The Report discusses sources of measurement error and data uncertainty in connection with flow measurements at the Murphy Gaging Station, flow adjustment calculations under both the Reservoir-Stage Method and the Flow Method, and determinations of flow routing and attenuation. Report at 34-38. The Report recommends that routing assumptions, travel time, and the attenuation effects of Idaho Power Company operations, which currently are based on “rule of thumb” empirical estimates, be tested and better quantified through analysis of historical data, modeling, channel hydraulics and/or tracer studies. *Id.* at 40. The Report also recommends quantification of the effect of, and error associated with, wind-loading in Idaho Power Company reservoirs under different wind conditions. *Id.* at 40.

25. The Report also contains additional information and analysis, and therefore is incorporated in its entirety by this reference into these “Findings of Fact.”

### **CONCLUSIONS OF LAW**

1. The SRBA District Court has issued partial decrees for hydropower water rights nos. 02-100, 02-2032A, 02-4000A, and 02-4001A in the name of Idaho Power Company, and partial decrees for hydropower water rights nos. 02-2001A, 02-2001B, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000B, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 in the name of the State of Idaho as trustee. The SRBA District Court also has issued partial decrees for minimum stream flow water rights nos. 02-201, 02-223, and 02-224 in the name of the Idaho Water Resource Board.

2. All of the partial decrees for the above-identified hydropower and minimum stream flow water rights are defined with reference to an “average daily flow” of 3,900 cfs from April 1 to October 31 and 5,600 cfs from November 1 to March 31 as measured at the Murphy Gaging Station. *Partial Decrees.*



3. The term “average daily flow,” as used and referenced in the partial decrees for water rights identified above, “shall be based upon actual flow conditions,” and “all flows actually present at the Murphy Gaging Station constitute actual flow conditions” with the “sole exception” of “[f]luctuations resulting from Idaho Power’s operations.” “[A]ny fluctuations resulting from the operation of Idaho Power Company facilities shall not be considered in the calculation of such flows.” While “[f]lows of water purchased, leased, owned or otherwise acquired by Idaho Power Company from sources upstream of its power plant, including above Milner Dam, and conveyed to and past its plants below Milner Dam shall be considered fluctuations resulting from the operation of Idaho Power Company facilities,” any “[f]lows of water purchased, leased, owned or otherwise acquired by other entities are not considered fluctuations.” *Partial Decrees*.

4. The determination of when the water rights identified above have been satisfied depends on determining the “average daily flow” as measured at the Murphy Gaging Station in accordance with the partial decrees for the hydropower and minimum stream flow water rights. The regulation of diversions under some water rights junior in priority to the hydropower and minimum stream flow water rights identified above also depends on determining the “average daily flow” as measured at the Murphy Gaging Station in accordance with the partial decrees for the hydropower and minimum stream flow water rights. *See Memorandum Decision* at 47-48 (stating that some “subsequent appropriations may be subject to curtailment in order to meet the minimum flows”).

5. The Director and the watermasters, as supervised by the Director, are authorized and required to distribute water and regulate diversions in accordance with decreed water rights and the prior appropriation doctrine as established by Idaho law. Idaho Code §§ 42-602, 42-607.

6. The SRBA District Court has determined that the question of “how adjustments to the actual flow at the Murphy gauge will be made to account for ‘fluctuations resulting from the operation of Company facilities’” is “administrative in nature and beyond the scope of [SRBA] proceedings” and “should be addressed if and when an issue arises over the administration of Idaho Power’s right.” *Order On Motion For Approval Of Settlement, Consolidated Subcase No. 00-92023 (92-23)* (Jan. 4, 2010), at 15.

7. It is necessary for the Director to establish the method for determining the “average daily flow” at the Murphy Gaging Station for purposes of distributing water and regulating diversions in accordance with the partial decrees for the hydropower and minimum stream flow water rights identified above and the prior appropriation doctrine as established by Idaho law. *See In re SRBA Case No. 39576, Subcase no. 00-91017 (Basin-Wide Issue 17)*, 2014 WL 3810591 (Idaho) (Aug. 4, 2014), at \*7 (“Idaho Code section 42-602 gives the Director broad powers to direct and control distribution of water . . . [and] . . . a ‘clear legal duty’ to distribute water. . . . However, ‘the details of the performance of the duty are left to the director’s discretion.’”) (internal citations omitted).

8. The purpose of this order is to establish the method for determining the “average daily flow” at the Murphy Gaging Station for purposes of distributing water and regulating diversions in accordance with the partial decrees for the hydropower and minimum stream flow water rights identified above and the prior appropriation doctrine as established by Idaho law.

9. Under the partial decrees for the water rights identified above, the “average daily flow” at the Murphy Gaging Station is the daily average of the measurements of all flows actually present at the Murphy Gaging Station, as adjusted to account for and remove the effects of fluctuations resulting from the operation of Idaho Power Company facilities, including the effects of flows of water purchased, leased, owned or otherwise acquired by Idaho Power Company from sources upstream of its power plant, including above Milner Dam, and conveyed to and past its plants below Milner Dam. *Partial Decrees*. This will be referred to as the “adjusted average daily flow.”

10. To remain consistent with established practice, the “adjusted average daily flow” should be determined on the basis of flow measurements collected at the Murphy Gaging Station at 15-minute intervals over a 24-hour period. These measurements should include all flows actually present at the Murphy Gaging Station, and be averaged over a 24-hour period to determine the “unadjusted average daily flow.” In addition, consistent with the Report, flow at the Murphy Gaging Station should frequently be manually measured when the flow of the Snake River approaches the unadjusted average daily flows of 3,900 cfs from April 1 to October 31, and/or 5,600 cfs from November 1 to March 31, to reduce bias associated with aquatic growth and ensure the accuracy and reliability of automated gage measurements.<sup>12</sup>

11. The “unadjusted average daily flow” must be adjusted to account for and remove the effects of “fluctuations resulting from the operation of Idaho Power Company facilities” as discussed above and as that term is defined in the partial decrees. *Order On Motion For Approval Of Settlement, Consolidated Subcase No. 00-92023 (92-23)* (Jan. 4, 2010), at 15.

12. The “Streamflow Measurement and Monitoring Plan For Purposes of Distributing Water to Hydropower and Minimum Streamflow Water Rights in the Milner Dam to Murphy Gaging Station Reach of the Snake River, Idaho” (“Report”) recommends the “Reservoir-Stage Method” for purposes of quantifying and removing the effects of “fluctuations” resulting from Idaho Power operations from the “unadjusted average daily flow,” and also recommends use of the “spreadsheet tool” developed to implement the “Reservoir-Stage Method.”

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<sup>12</sup> As previously noted, field investigations have revealed that the Murphy Gaging Station site is prone to aquatic growth problems that can result in inaccurate and/or unreliable measurements during low-flow periods. An alternative location has been identified and may by agreement of the parties be used for purposes of administration of the rights that are the subject of this order. *See supra* note 8.

13. The Report, including its specific proposals and recommendations regarding the “Reservoir-Stage Method” is supported by the holders of the hydropower water rights and the minimum stream flow water rights, and by Department staff.

14. The “Reservoir-Stage Method” as described and discussed in the Report is a well-reasoned, transparent, and straightforward method for quantifying “fluctuations” resulting from Idaho Power Company operations and removing their effects from the “unadjusted average daily flow” as measured at the Murphy Gaging Station. Adopting the Report’s recommendation to use the “Reservoir-Stage Method” would promote efficient water distribution and water rights administration in accordance with the elements of decreed water rights, and would reduce the potential for future disputes or litigation regarding determination of the “Adjusted Average Daily Flow” at the Murphy Gaging Station.

15. The effect of “fluctuations” from the “unadjusted average daily flow” at the Murphy Gaging Station should be removed using the “Reservoir-Stage Method” as recommended in the Report. The “Adjusted Average Daily Flow” at the Murphy Gaging Station should be monitored, measured, calculated and reported as recommended in the Report.

16. To facilitate adjustments and calculations as recommended in the Report, Idaho Power Company should notify the Department of releases of any flows of water purchased, leased, owned or otherwise acquired by Idaho Power Company from sources upstream of its power plants, including above Milner Dam, no later than the date the flows are expected to reach Milner Dam.

17. The “Reservoir Stage Method” should be implemented initially by using the “spreadsheet tool” recommended by the Report. While the existing “spreadsheet tool” is the best tool for implementing the “Reservoir Stage Method” at this time, it is possible that the existing “spreadsheet tool” can be improved by the incorporation of new information, analytical techniques, and/or technology; or that an alternative tool, model, technique, or methodology that provides better information will be developed in the future. This Order, therefore, should not and does not “freeze” or “lock” the existing “spreadsheet tool” into place. The existing “spreadsheet tool” may be improved, upgraded or revised to improve precision, accuracy, reliability, efficiency, or to incorporate or reflect new information, analytical techniques or technology. Improvements, upgrades or revisions must be consistent with this Order and with the assumptions, analyses, explanations and/or recommendations of the Report. Department staff must maintain a record of all improvements, upgrades or revisions made to the “spreadsheet tool.” The “spreadsheet tool” may also be replaced or superseded with a new or alternative tool, model, technique, or methodology, provided that the new or alternative tool, model, technique, or methodology must be consistent with this Order and with the assumptions, analyses, explanations and/or recommendations of the Report. Department staff must maintain a record of the basis for implementing the new or alternative tool, model, technique, or methodology.

18. The Report recommends a multi-day rolling average, which is also supported by the holder of the hydropower water rights, the holder of the minimum streamflow water rights, and by Department staff. A three-day rolling average minimizes the impacts of measurement error and imprecise flow routing in the calculation of the “adjusted average daily flow” for distribution of water to the above-identified water rights and regulating diversions under certain other junior-priority water rights. A three-day rolling average will also promote efficient water right administration, and reduce the potential for future disputes or litigation over water distribution and water rights regulation actions taken on the basis of the “adjusted average daily flow” at the Murphy Gaging Station.

19. A three-day rolling average should be used for purposes of distributing water to the water rights identified above, and for regulating diversions under certain other junior-priority water rights. For such purposes, the three-day rolling average of “adjusted average daily flow” for a given date should be calculated as a “trailing” average of the “adjusted average daily flow” as described in the Report.

20. The Report does not permanently establish the method for measuring and reporting the “adjusted average daily flow” at the Murphy Gaging Station. The Report recommends ongoing study and development of the “Reservoir-Stage Method,” the “spreadsheet tool,” the “Flow Method,” and various other matters identified in the Report. Ongoing study and development will improve the accuracy and reliability of the methods and information used to distribute water and regulate diversions on the basis of the “adjusted average daily flow” at the Murphy Gaging Station.

21. This Order is not intended to address, govern, or preclude the study or development of methods and proposals for proactive efforts to anticipate or predict low flows at the Murphy Gaging Station, or to address, govern or preclude the implementation of actions or measures to prevent or remediate low flows at the Murphy Gaging Station, such as, but not limited to, releases of the Idaho Water Resource Board’s storage water in Palisades Reservoir.

22. This Order should be amended in the future if necessary to incorporate or reflect improvements in the methods to determine the “adjusted average daily flow” at the Murphy Gaging Station for purposes of distributing water to the water rights identified above and regulating diversions under junior-priority water rights. The Director has jurisdiction and authority to update or amend this Order in the future for these purposes. The Parties also may collectively or individually petition the Director to amend the Order for such purposes.

## **ORDER**

IT IS HEREBY ORDERED that the “average daily flow” as measured at the Murphy Gaging Station, as referenced and defined in the partial decrees for water rights nos. 02-100, 02-201, 02-223, 02-224, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-

4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 will be determined as follows:

All flows actually present at the Murphy Gaging Station will be measured at 15-minute intervals during each 24-hour period and the arithmetic average of these measurements will be calculated, and the result of this calculation will be termed the “unadjusted average daily flow”;

The “unadjusted average daily flow” will be adjusted to remove the effects of “fluctuations” resulting from Idaho Power Company operations as they are defined in the partial decrees, by using the “Reservoir-Stage Method” as discussed and recommended in the “Streamflow Measurement and Monitoring Plan For Purposes of Distributing Water to Hydropower and Minimum Streamflow Water Rights in the Milner Dam to Murphy Gaging Station Reach of the Snake River, Idaho,” and the result of this adjustment will be termed the “adjusted average daily flow”;

IT IS FURTHER ORDERED that Idaho Power Company shall notify the Department of releases of any flows of water purchased, leased, owned or otherwise acquired by Idaho Power Company from sources upstream of its power plants, including above Milner Dam, no later than the date such flows are expected to reach Milner Dam;

IT IS FURTHER ORDERED that, when determined necessary by the Director, all flow at the Murphy Gaging Station shall frequently measured by hand during periods when the “unadjusted average daily flow” of the Snake River approaches 3,900 cfs from April 1 to October 31, and/or 5,600 cfs from November 1 to March 31, and these hand measurements will be used to refine or correct the “unadjusted average daily flow” and the “adjusted average daily flow”;


IT IS FURTHER ORDERED that a three-day rolling “trailing” average of the “adjusted average daily flow” will be calculated by the Department;

IT IS FURTHER ORDERED that for purposes of distributing water to water rights no. 02-100, 02-201, 02-223, 02-224, 02-2001A, 02-2001B, 02-2032A, 02-2032B, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000A, 02-4000B, 02-4001A, 02-4001B, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, and for purposes regulating diversions by junior-priority water rights, administrative action by the watermaster and/or the Director will be based on the three-day rolling “trailing” average of the “adjusted average daily flow”;

IT IS FURTHER ORDERED that the Director may amend this Order to incorporate or reflect improvements in the methods used to determine the “adjusted average daily flow” at the Murphy Gaging Station for purposes of distributing water to the water rights identified above and regulating diversions under junior-priority water rights; and

IT IS FURTHER ORDERED that the parties that participated in developing the analyses, discussions, results, and/or recommendations in the “Streamflow Measurement and Monitoring Plan For Purposes of Distributing Water to Hydropower and Minimum Streamflow Water Rights in the Milner Dam to Murphy Gaging Station Reach of the Snake River, Idaho” and/or the holders of any water rights subject to administration or regulation in favor of the water rights that are the subject of this Order may petition the Director to amend this Order to incorporate or reflect improvements in the methods used to determine the “adjusted average daily flow” at the Murphy Gaging Station for purposes of distributing water to the water rights identified above and regulating diversions under junior-priority water rights.

Dated this 27<sup>th</sup> day of October, 2014.

  
GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October <sup>27<sup>th</sup></sup>~~27~~, 2014, a true and correct copy of the *Final Order Regarding Measuring and Reporting the "Average Daily Flow" at the Murphy Gaging Station* was mailed first class, postage prepaid to the following:

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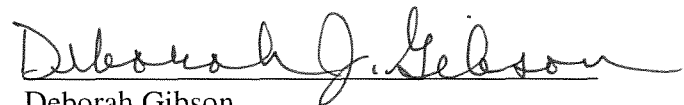
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Water District 02 Waterusers  
Separate mailing list is attached.

A handwritten signature in cursive script, reading "Deborah Gibson", written over a horizontal line.

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Admin. Assistant for the Director  
Idaho Department of Water Resources



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C/O TERRY T UHLING  
999 MAIN ST STE 1300  
PO BOX 27  
BOISE ID 83707

GARY A NEWTON  
8751 W OSPREY  
HAMMETT ID 83627-0131

J R SIMPLOT CO  
ENV AND REGULATORY AFFAIRS  
ATTN: GRAY YOUNG OR TERRY UHLING  
PO BOX 27  
BOISE ID 83707-0027

ROGER G YOUNG  
PO BOX 430  
MOUNTAIN HOME ID 83647

LELAND M SHETLER CO-TRUSTEE  
6936 SW SHETLER DR  
MOUNTAIN HOME ID 83647

LAVERNE AND MAC C DUGGAN  
53 BELL RAPIDS RD  
HAGERMAN ID 83332-6039

WARREN BURNS  
385 EDWARDS DR  
TWIN FALLS ID 83301

RABO AGRIFINANCE INC  
12443 OLIVE BLVD STE 50  
ST LOUIS MO 63141

RIVENDALE LLC  
52356 HWY 78  
HAMMETT ID 83627-5003

TOM AND VONNIE MALLANE  
1004 GRIDLEY DR  
HAGERMAN ID 83332

FRANCIS L AND TAMZY L HOUSE  
9143 W SNAKE RIVER ST  
HAMMETT ID 83627



JOHN ANCHUSTEGUI  
3054 E RIVERNEST DR  
BOISE ID 83706-6914

CRAIG BAKER  
R T NAHAS COMPANY RANCH MGR  
NAHAS RANCH  
BOX 127  
MURPHY ID 83650

BRUNEAU GRAND VIEW JOINT SCHOOL DISTRICT  
#365  
PO BOX 310  
GRAND VIEW ID 83624

JAMES R MARTELL  
643 N ELK RANCH DR  
GLENN'S FERRY ID 83623-5040

TIM LANDIS  
HC 85 BOX 29  
MOUNTAIN HOME ID 83647

KENDALL L AND TERRY E WIDNER  
1873 S JOE KING RD  
HAMMETT ID 83627

DALE AND DIANA HOOLEY  
26796 INDIAN COVE LN  
HAMMETT ID 83627-5016

STATE OF IDAHO  
DEPARTMENT OF LANDS  
300 N 6TH ST STE 103  
PO BOX 83720  
BOISE ID 83720-0050

STATE OF IDAHO  
STATEHOUSE  
PO BOX 83720  
BOISE ID 83720

JOYCE WUNDERLICH PEARSON  
117 HOMESTEAD DR  
HAILEY ID 83333

CONNIE AND ROBERT SMITH  
94 WALKLEY RD  
BURBANK WA 99323

WELLS FARGO FINANCIAL LEASING INC  
800 WALNUT ST  
MAC F4031-050  
DES MOINES IA 58039

CHARLES F AND PHYLLIS M WHIPPLE  
1106 NW BEAMAN ST  
MOUNTAIN HOME ID 83647-5191

BRUCE AND REBECCA LAMPMAN  
PO BOX 567  
BRUNEAU ID 83604

JAMES AND SHIRLEY STRALEY  
PO BOX 562  
PINEDALE WY 82941

FLOPET INC  
PO BOX 229  
SUN VALLEY ID 83353

DALE W HOOLEY  
26796 INDIAN COVE LN  
HAMMETT ID 83627-50

IRREVOCABLE TRUST OF RYAN L MC CARTHY  
MICHAEL J MC CARTHY TRUSTEE  
PO BOX 6683  
KETCHUM ID 83340

COLYER HEREFORDS INC  
31058 COLYER RD  
BRUNEAU ID 83604-5117

MECHELLE AND ROBERT G DIRKS  
24762 A & A RD  
GRAND VIEW ID 83624

J R SIMPLOT CO  
PO BOX 27  
BOISE ID 83702-0027

LOUIS D JEFFREY  
PO BOX 1040  
GLENNS FERRY ID 83623

ENVIROSAFE SERVICES OF IDAHO INC  
C/O MARY LOUISE GONZALES  
PO BOX 400  
GRAND VIEW ID 83624

CASA DEL NORTE LP  
11204 N BAR 21 DR  
GLENNS FERRY ID 83623

DELL D OLSON  
810 N 9TH E  
MOUNTAIN HOME ID 83647

KATHI L AND ROBERT J MEYERS  
3921 N 3300 E  
TWIN FALLS ID 83301

LINDEN E AND LOWELL K BECK  
PO BOX 1016  
SUN VALLEY ID 83353

DAVISON COPPLE COPPLE & COPPLE LLP  
C/O TERRY C COPPLE  
199 NORTH CAPITOL BLVD #600  
PO BOX 1583  
BOISE ID 83701

HAROLD A AND LUCY B GLERUM  
27031 JOE BLACK RD  
HAMMETT ID 83627-5023

CLOVER HOLLOW CO LLC  
PO BOX 606  
MOUNTAIN HOME ID 83647

ELLA AND VERLIN GINGERICH  
19285 HWY 51  
MOUNTAIN HOME ID 83647

ANNA LEE AND JASON BRANDT  
PO BOX 296  
BUENA PARK CA 90621

GIVENS PURSLEY LLP  
ATTN JOHN MARSHALL  
601 W BANNOCK ST  
BOISE ID 83702

JOAN LEE WALTON  
1827 GRANADA CIRCLE  
TWIN FALLS ID 83301-4228

WALKER PLOW LLP  
PO BOX 650  
QUEEN CREEK AZ 85242

GRINDSTONE BUTTE MUTUAL CANAL CO  
PO BOX 2673  
BOISE ID 83701

K TERRY MILLER REVOCABLE TRUST  
876 S FARRIS LN  
GLENNS FERRY ID 83623

DONALD L AND KRISTI SCHIERMEIR AND DONALD  
L AND KRISTINE S SCHIERMEIER  
29393 DAVIS RD  
BRUNEAU ID 83604

VICTORIA R AND WILLIAM R WOLFE  
PO BOX 368  
GRAND VIEW ID 83624

ANDREW AND LORNA JOHNSON  
PO BOX 35  
HAMMETT ID 83627

CATHERINE AND DAVID CHRIS UNRUH  
25289 HIPWELL LN  
GRAND VIEW ID 83624

O STEVEN AND ROBIN L BOIES  
HC 34 BOX 300  
WELLS NV 89835

JAMES C TUCKER  
C/O IDAHO POWER CO  
PO BOX 70  
BOISE ID 83707

PAUL AND SARA PETIT  
PO BOX 2094  
KETCHUM ID 83333

THOMAS M RICKS  
1560 N PARK LN  
EAGLE ID 83616

DOUGLAS E AND TAMARA S STANDLEY  
3336 N LAKE HARBOR LN #J-302  
BOISE ID 83703

UNITED WATER IDAHO INC  
ATTN: ROGER DITTUS  
8248 W VICTORY RD  
BOISE ID 83709

KEITH L NIEFFENEGGER  
1032 GRIDLEY LN  
HAGERMAN ID 83333

CHRISTY AND GORDON JOHN ZITO  
2188 S RIMVIEW DR  
HAMMETT ID 83627

DONALD R AND DONNA L CARNAHAN  
PO BOX 93  
GLENN'S FERRY ID 83623

PACIFIC INTERMOUNTAIN MORTGAGE CO  
2420 MAIN ST  
BAKER CITY OR 97814

IDAHO SOIL & WATER CONSERVATION  
COMMISSION  
C/O TERI MURRISON  
650 W STATE ST ROOM NO 145  
BOISE ID 83702

STATE OF IDAHO  
IDAHO WATER RESOURCE BOARD  
322 E FRONT ST  
PO BOX 83720  
BOISE ID 83720-0098

ZIONS FIRST NATIONAL BANK  
C/O ZIONS AGRICULTURAL FINANCE  
500 5TH  
AMES IA 50010

ESTATE OF MARGARET A LE MOYNE AND JOHN R  
LE MOYNE  
901A GRIDLEY ISLAND  
HAGERMAN ID 83332

GINGERICH BROTHERS FARMS  
47589 STATE HWY 78  
MOUNTAIN HOME ID 83647-5081

TERRIE E AND WALTER L TRAIL  
5308 E TRAIL RD  
KING HILL ID 83633

WILSON & WILSON CO INC  
PO BOX 33  
HAMMETT ID 83627

CANYON SPRINGS AND J R SIMPLOT SELF  
DECLARATION REVOCABLE TRUST  
PO BOX 27  
BOISE ID 83707-0027

CHRISTIAN HATCHETT AND CHRISTOPHER LAIB  
52612 STATE HWY 78  
HAMMETT ID 83627

EDWARD T POTUCEK  
1890 E POTUCEK LN  
KING HILL ID 83633

UNITED STATES OF AMERICA ACTING THROUGH  
USDI BUREAU OF LAND MANAGEMENT  
IDAHO STATE OFFICE  
1387 S VINNELL WAY  
BOISE ID 83709-1657

BRENDA AND DON J BRYANT  
PO BOX 215  
GLENN'S FERRY ID 83623

WEST INDIAN COVE WATER CO INC  
27097 INDIAN COVE LN  
HAMMETT ID 83627

BROCKWAY ENGINEERING PLLC  
C/O CHARLES G BROCKWAY  
2016 N WASHINGTON ST STE 4  
TWIN FALLS ID 83301

RINGERT CLARK CHARTERED  
CHARLES L HONSINGER  
PO BOX 2773  
BOISE ID 83701-2773

DOROTHY GAYLE AND ROBERT E UPTMOR  
PO BOX 560  
GLENN'S FERRY ID 83623

MERRILL J AND SANDRA J BROWN  
10789 HWY 78  
HAMMETT ID 83627

JULIANNE CROSBY  
1565 S ORIOLE WAY  
BOISE ID 83709

A CLAY AND JACOBA S ATKINS  
PO BOX 276  
BRUNEAU ID 83604

SANDY AND TED CANTRELL  
28294 RIVER RD  
BRUNEAU ID 83604

CUNNINGHAM FAMILY LTD PARTNERSHIP  
909 HEARTLAND DR  
NAMPA ID 83686

ALICE AND LLOYD JENSEN  
1016 GRIDLEY DR  
HAGERMAN ID 83332-5622

TIMOTHY J STOVER  
WORST FITZGERALD & STOVER  
PO BOX 5226  
TWIN FALLS ID 83303-5226

LINDA K AND STUART MININGER  
24253 TWENTY MILE RD  
GRANDVIEW ID 83624

CHARLES H HOWARTH  
4120 N LINDER RD  
MERIDIAN ID 83642

GREG AND NANCY MELLUM  
1683 S NANSEA LN  
HAMMETT ID 83627

## 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.