

3. In December of 1979, I went to work for the Twin Falls Canal company as Water Master in the Twin Falls Division. As part of my duties as Water Master, I ordered all water for the entire system and oversaw 12 ditch riders in the delivery of water to 100,000 acres of the project. I left Twin Falls Canal Company in August of 1991. While employed by the Twin Falls Canal Company, I attended the United States Bureau of Reformation Water Management Workshop in Denver, and several other schools on water management and employee supervision.

4. In June of 1992, I was employed by the city of Twin Falls in the Waste Water Collection Department. I worked with the city of Twin Falls in that capacity until January of 1997. While employed by the City of Twin Falls in that capacity, I have obtained my Class I and Class II Waste Collection Operators License.

5. In January of 1997, I was hired as General Manager of the Big Wood Canal Company in American Falls Reservoir District #2, where I am still employed in that capacity and have been continuously employed since that time. As part of my duties as the General Manager of the American Falls Reservoir District #2, I monitor past water supplies, current water supplies, and anticipated water supplies for advice to our board of directors concerning delivery of water.

6. It is my understanding that the Surface Water Coalition, on behalf of AFRD #2, has provided the Director with information detailing historical water diversions and crop irrigation requirements on the AFRD #2 project. Specifically, the Coalition has made the following filings for purposes of the Director's evaluation:

- a. March 15, 2005 - *Surface Water Coalition's Response to Director's Request for Information*
- b. April 15, 2005 - *Surface Water Coalition's Supplemental Response to Director's Information Request*

- c. July 12, 2006 – *Affidavit of Charles E. Brockway in Support of Surface Water Coalition's Petition for Reconsideration of Third Supplemental Order Amending Replacement Water Requirements Final 2005 & Estimated 2006*
- d. April 13, 2007 – *Surface Water Coalition 2007 Water Supply Assessment*
- e. June 18, 2007 – *Updated SWC 2007 Water Supply Assessment*

7. In addition, on June 5, 2007, I sent the Director of the Department of Water Resources the attached letter, which is incorporated herein as though set forth in full.

8. In addition to these previous filings I am providing the following information for the Director's review and consideration for water right administration during the 2007 irrigation season. I am providing this information for the Director's benefit with respect to AFRD #2's water supply and operations for this year and looking ahead to 2008.

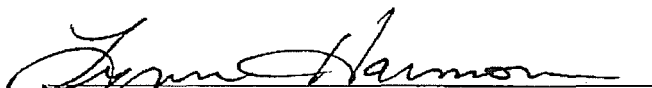
9. The full head gate delivery for American Falls Reservoir District #2 based upon the duty of water under American Falls Reservoir District #2's beneficial use and water rights is 5/8 an inch per acre. American Falls Reservoir District #2 was delivering 1/2 inch per acre and has been delivering only 1/2 inch per acre since the commencement of the irrigation season in 2007 up until June 15. We have been constrained to limiting our deliveries to less than full head gate deliveries because of the Department's refusal to assure that water will be available for full head gate deliveries. The current absence of prospective administration makes water supplies too uncertain to deliver water prospectively.

10. For purposes of management of the American Falls Reservoir District #2 system, I must each year be attentive to and calculate to the best of my ability the supply and expected needs in the system. Attached are my most recent calculations concerning the needs American Falls Reservoir District #2 faces for the remainder of the 2007 season, showing a 19,600 acre per foot deficit for the 2007 season.

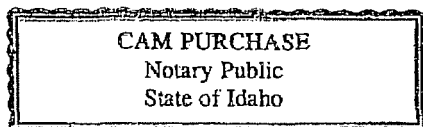
11. Although we cannot agree that a senior water user carries the burden of re-proving its water right or, that junior water users may cause depletions without first showing that such depletions will not have injured senior water users, the record is now ripe under any interpretation for reconsideration by the department of its use of the 1995 year as a prototypical year for assessing the needs of American Falls Reservoir District #2 because it is now demonstrated that the 1995 year is a completely atypical year and not comparable to this year.

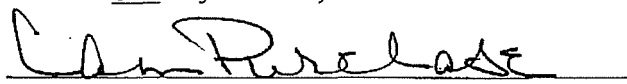
12. The director is therefore requested to forthwith administer the aquifer such that American Falls Reservoir District #2 timely received 19,600 acre/feet for use during June, July, August and September of the 2007 irrigation season so that American Falls Reservoir District #2 immediately can commence full head gate deliveries of 5/8 inch per acre.

13. In the event any effected junior user should desire hearing of this matter before the department it is requested that the director incorporate such hearing in the hearing set for June 22, 2007 upon the current 2007 replacement plan and the departments' Fifth Supplemental order awarding replacement water requirements, Final 2006 and Estimated 2007 ["May 23 Order"].


Lynn Harmon

SUBSCRIBED & SWORN to before me this 21 day of June, 2007




Notary Public in and for the State of Idaho
Residing at: Bliss
My Commission Expires: 7/16/10

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of June, 2007, I served a true and correct copy of the foregoing document on the persons listed below, in the manner indicated:

Via Email: U.S. Mail

Director Karl Dreher
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83720-0098
victoria.wigle@idwr.idaho.gov

IDWR – Eastern Region
900 N. Skyline Dr., Suite A
Idaho Falls, Idaho 83402-1718
ron.carlson@idwr.idaho.gov
lewis.rounds@idwr.idaho.gov

Matt Howard
U.S. Bureau of Reclamation
1150 N. Curtis Road
Boise, Idaho 83706-1234
mhoward@pn.usbr.gov

IDWR – Southern Region
1341 Fillmore St., Suite 200
Twin Falls, Idaho 83301-3380
allen.merritt@idwr.idaho.gov
cindy.yenter@idwr.idaho.gov

Jeffrey C. Fereday
Michael C. Creamer
Givens Pursley LLP
601 Bannock St., Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
cf@givenspursley.com
mcc@givenspursley.com

Kathleen Marion Carr
U.S. Department of Interior
550 West Fort St., MSC-020
Boise, Idaho 83724
kmarioncarr@yahoo.com

James C. Tucker
Idaho Power Company
1221 West Idaho St.
Boise, Idaho 83702
jamestucker@idahopower.com

Jo Beeman
Beeman & Assoc.
409 W. Jefferson St.
Boise, Idaho 83702
jo.beeman@beemanlaw.com

Scott L. Campbell
Moffatt Thomas Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, Idaho 83701
slc@moffatt.com

Sarah Klahn
White Jankowski
511 16th St. Suite 500
Denver, Colorado 80202
sarahk@white-jankowski.com


James S. Lochhead

Michael Gilmore

Adam T. DeVoe
Brownstein, Hyatt & Farber P.C.
410 17th St., 22nd Floor
Denver, Colorado 80202
jlochhead@bhf-law.com
adevoe@bhf-law.com

Attorney General's Office
P.O. Box 83720
Boise, Idaho 83720-0010
mike.gilmore@ag.idaho.gov

Terry T. Uhling
J.R. Simplot Company
999 Main St.
Boise, Idaho 83702
tuhling@simplot.com



Travis L. Thompson

American Falls Reservoir District No. 2
112 South Apple St.
Shoshone, Idaho 83352
Tel (208) 886-2331 Fax (208) 886-2010

June 5, 2007

Dave Tuthill, Director
Idaho Department of Water Resources

Re: 2007 Water Supply AFRD# 2

Dear Director Tuthill,

I am writing you in reference to providing full headgate deliveries to American Falls Reservoir District # 2 during the 2007 irrigation season.

The May 2, 2005 Amended Order indicated that each senior water user was entitled to "the minimum amount of combined natural flow and storage releases diverted recently that provided for full headgate deliveries, recognizing that climatic growing conditions do affect the minimum amount of water needed and such *effects can be significant.*" Paragraph 91, page 20 [Emphasis supplied].

The Amended Order continued at paragraph 92 to discuss a year comparable to 2005 in order to make a prediction for 2005:

For American Falls Reservoir District # 2 and the North Side Canal Company, the total diversions of natural flow and storage releases were the lowest while maintaining full headgate deliveries most recently in 1995. The total quantity of water diverted during the irrigation year ending October 31, 1995, by the American Falls Reservoir District # 2 was 405,600 acre-feet and by the North Side Canal Company was 988,200 acre-feet.

And again, at page 25, paragraph 115:

To predict the shortages in surface water supplies that are reasonably likely for members of the Surface Water Coalition in 2005, the amounts of water diverted in 1995 are deemed to be the minimum amounts needed for full deliveries to land owners and shareholders. *If crop evapotranspiration is greater in 2005 than in 1995, the amounts of water diverted in 1995 may be less than what is needed for a full supply in 2005. If crop evapotranspiration is less in 2005 than in 1995, the amounts of water diverted in 1995 may be more than what is needed for a full supply in 2005.* [Emphasis supplied.]

And summarized again at paragraph 50, page 44:

The amounts of water diverted in 1995 are deemed to be the minimum amounts needed for full deliveries to land owners and shareholders served by the members of the Surface Water Coalition. The Director has used 1995 diversions *to predict the shortages in surface water supplies that are reasonably likely for Coalition members in 2005*. See Findings of Fact 116. [Emphasis added].

Finally, at page 47, paragraph 10, the Amended Order provided what action was to be taken in the event that the prediction that 2005 would be like 1995 turned out to be wrong:

The Director will monitor water supply requirements and the water supplies available throughout the irrigation season and may issue additional orders or instructions to the water masters as *conditions warrant*. [Emphasis added.]

Thus, the Amended Order made clear that using the amount of water supplied in 1995 as the minimum full supply for 2005 was only a prediction; that the Director would monitor influences and outcomes during the irrigation season; and, that the Director would timely respond with additional orders in the event that the *prediction* proved incorrect.

At paragraph 8 at page 18 of the current Fifth Amended Order of May 23, 2007, this entire process is recounted and summarized.

8. The Director will continue to monitor water supply and climatic conditions through the 2007 irrigation season and issued additional orders regarding replacement water needs in 2007 or further instructions to the water masters for Water Districts No. 34, 110, 120 and 130 should material injury be predicted to occur to rights held by or for the benefit of the members of the Surface Water Coalition.

The May 2, 2005, Amended Order, in the above call indicates that material injury occurs absent "full headgate deliveries" which, in the instance of AFRD# 2, the Amended Order indicated amounted to 5/8 inches. See Amended Order at paragraph 89.

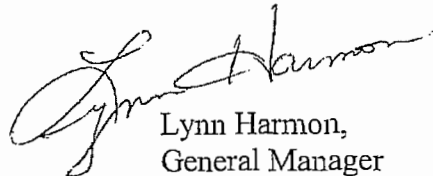
AFRD# 2 has to date this irrigation season limped along with delivery of only 80% of full headgate deliveries, or ½ inch per acre, in consideration of the amount of carryover with which we began the season, as well as the past and anticipated very hot and dry conditions of this year. As a consequence, we have arrived at the date of allocation (May 28, 2007), the last day upon which water will accrue to storage, with approximately 318,000 acre feet of usable storage for the remainder of the year, taking into account expected evaporation acting upon the stored water.

We wish to make full headgate deliveries for the remainder of the irrigation season until October 1, 2007, and therefore ask that you review whether the prediction that the amount of water supplied in the 1995 year provided for an accurate prediction of the minimum full supply for full headgate deliveries in 2007, given the climatic conditions and the evapotranspiration that are occurring and have occurred during this irrigation season. Our historical experience with this system shows that in wet to normal years we require 2700 to 2800 acre feet per day on average to deliver 5/8 inches. In dry years, as we expect now, we could require more. Therefore, the 122 days remaining until October 1 will require at least 341,600 acre feet, or 19,600 acre feet more than we now have, anticipating that our storage will be empty at the conclusion of the irrigation season. In short, the prediction that the amount of water that sufficed as a minimum full supply in 1995 will suffice in 2007 is proving inaccurate because of increased needs caused by hot conditions. We ask to be immediately provided the necessary water under the provisions of the above call so that we may commence full headgate deliveries as we enter the months of June, July, August and September.

This letter is not intended to suggest acquiescence to the methods of administration the Department has thus far adopted under the above call, or otherwise, but is instead to merely seek enough water to allow full headgate deliveries between now and October 1 so that further shortages may be avoided during the remainder of this irrigation season, and to hopefully invoke the promised benefit of paragraph 8 set above. We especially disagree with commencing the season with a calculation based on the 1995 year rather than our decree and more realistic conditions. We do concur that the Director does administer water, and can do so as the season progresses based upon review of conditions and changing conditions. We also are not intending to accede to management that is premised on an empty reservoir at the end of the irrigation season, a practice we perceive to be a guarantee for disaster.

We look forward to your cooperation in helping to resolve the shortages for this year.

Sincerely,



Lynn Harmon,
General Manager

2007 Water Supply Estimate for AFRD# 2

Storage Supply totals for AFRD# 2 for June 1st to Oct 1st is approximately 318,000 acre feet for 2007.

To arrive at an estimate of water needed for full headgate delivery for 2007, we will review water diversion for 1998 to 2000 then, 2005 and 2006, all years when water was delivered at 5/8" per share (full headgate delivery) from June 1st to Oct 1st.

1998 Water Delivery- 6-1 to 10 -1

June -- 73,716
July -- 93,322
Aug -- 86,722
Sept -- 73,096
326,856 acre feet

1999 Water Delivery 6-1 to 10-1

June – 80,704
July – 96,086
Aug – 81,090
Sept - 70,940
328,820 acre feet

2000 Water Delivery 6-1 to 10-1

June – 89,102
July – 96,352
Aug – 85,374
Sept - 64,164
334,992 acre feet

2005 Water Delivery – 6-1 to 10-1

Month
June – 82,608
July – 97,070
Aug - 88,516
Sept - 69,568
337,762 acre feet

2006 Water Delivery 6-1 to 10-1

Month

June – 82,228

July -- 96,226

Aug -- 87,938

Sept-- 60, 872

327,264 acre feet

The average water diversion for the 5 years at 5/8 inch or full headgate delivery from June 1 to October 1 is 331, 139 acre feet. This is approximately 13, 139 acre feet less than the 2007 estimated storage as of May 28, 2007.

Historical diversions for June, July and Aug average of 2900 acre feet per day. We expect an increase of approximately 2.5% more corn. This means that with normal conditions we can expect a possible increase in daily diversions of 72 acre per day during June, July and Aug. This would increase the total diversions by 6,552 acre feet on the average from 331,139 up to 337,691 acre feet, which is approximately 19,600 acre feet more water than our allotted storage supply for 2007, this along with more hay acreage is the reason for our request to up to 341,000 acre feet of water for 2007.

In comparison to the above is the diversions for 1995 to show just how much shorter the diversions were for that year than normal years.

1995 Water Diversions for June to Oct.

June – 61,422

July – 85,792

Aug – 83,504

Sept – 72,174

302,892 acre feet.