

DEPARTMENT OF
WATER RESOURCES

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*Attorneys for American Falls Reservoir
District #2*

Attorneys for Minidoka Irrigation District

IN THE MATTER OF)
WATER RIGHT NO. 1-6)
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**SURFACE WATER COALITION'S
PETITION FOR RECONSIDERATION
OF FINAL ORDER REGARDING
INSTRUCTIONS TO WATER
DISTRICT 01 WATERMASTER**

SURFACE WATER COALITION'S PETITION FOR RECONSIDERATION OF FINAL ORDER
REGARDING INSTRUCTIONS TO WATER DISTRICT 01 WATERMASTER – Page 1

(IDAPA 37.01.01 *et seq.*) and hereby submit their *Petition for Reconsideration of Final Order Regarding Instructions to Water District 01 Watermaster* (hereinafter “Final Order”). The issue identified for reconsideration and the supporting basis is set forth below.

I. The Water Master’s Failure to Properly Account for Diversions under Water Right 1-6 Resulted in Erroneous Determinations of Storage Allocations and Carryover.

On May 1, 2012, the Snake River Basin Adjudication District Court (“SRBA”) issued a partial decree for water right 1-6 to the Bureau of Reclamation (“Reclamation”). That water right authorizes the diversion of 1,700 c.f.s. from the Snake River for irrigation and storage. Importantly, the water right includes the following condition under the “Quantity” element of the Partial Decree which authorizes diversions of water under the right to either natural flow or storage:

The right to divert as natural flow during each irrigation season under this water right, having a March 20, 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 the maximum of 1,700 cubic feet per second during that 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 diversion 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 requires a unique administration process for diversions under water right 1-6. In particular, the condition recognizes that water available under water right 1-6 will accumulate to both natural flow and storage account(s) under certain circumstances.

Notwithstanding this provision, the Water Master for Water District 01 failed to properly account for water right 1-6. In particular, accounting records show that, at certain times of the 2012 irrigation season, the water district was not accumulating diversions to storage in American Falls Reservoir under water right 1-6 to storage even though portions of water right 1-6 were being diverted as natural flow. Yet, accumulation to storage is required by the plain language of water right 1-6. As a result, the Director's *Final Order* incorrectly identifies the material injury suffered by SWC members for reasonable carryover.

CONCLUSION

The Water Master's failure to properly account for diversions under water right 1-6 has resulted in an erroneous determination of reasonable carryover for SWC members and, very likely, other Spaceholders in American Falls Reservoir. Without proper accounting, the *Final Order*'s determination of material injury is flawed and should be reconsidered.

DATED this 22nd day of February, 2013.

BARKER ROSHOLT & SIMPSON LLP

FLETCHER LAW OFFICE



Travis L. Thompson

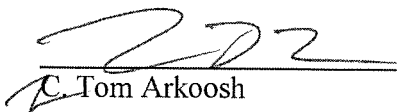


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CERTIFICATE OF MAILING

I hereby certify that on this 22nd day of February, 2013, the above and foregoing was

sent to the following in the manner indicated below.

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FEB 25 2013

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