

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

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY OR FOR THE BENEFIT OF A&B
IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2,
BURLEY IRRIGATION DISTRICT,
MILNER IRRIGATION DISTRICT,
MINIDOKA IRRIGATION DISTRICT,
NORTH SIDE CANAL COMPANY, AND
TWIN FALLS CANAL COMPANY

Docket No. CM-DC-2010-001

**ORDER DENYING SURFACE WATER
COALITION'S PETITION FOR
REVIEW AND RECONSIDERATION
OF THE DIRECTOR'S ORDER
DENYING REQUEST FOR HEARING;
ORDER DENYING REQUEST TO
DESIGNATE ORDER AS FINAL**

BACKGROUND

On April 10, 2026, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (the "Coalition of Cities"), along with the City of Pocatello and City of Idaho Falls (collectively, the "Cities"), filed the *Cities' Motion to Consider Information When Determining Surface Water Coalition's Irrigated Acres Under Methodology Step 1* ("Cities' Motion"). Attached to the *Cities' Motion* was a technical memorandum titled, *Preliminary Review and Refinement of 2026 TFCC Irrigated Area Shapefile* ("SWE Memorandum"). The *Cities' Motion* asked the Director to consider the information contained in the *SWE Memorandum* when determining Twin Falls Canal Company's ("TFCC") total irrigated acres for the 2026 irrigation season. *Cities' Motion*, at 2.

On July 14, 2026, the Director of the Idaho Department of Water Resources ("Department") issued an *Order Setting Deadline for Submission of Technical Working Group Report* ("TWG Order"), directing the Surface Water Coalition Methodology Technical Working Group ("TWG") to review the *SWE Memorandum* and submit a report with its findings to the Director by February 1, 2027. *TWG Order*, at 3.

On July 27, 2026, 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 (collectively, the "Surface Water Coalition" or "SWC"), filed *Surface Water Coalition's Request for Hearing on Director's Order Setting Deadline for Submission of Technical Working Group Report* ("Request for Hearing") pursuant to Idaho Code § 42-1701A(3). *Request for Hearing*, at 1. In its *Request for Hearing*, the SWC stated that the *TWG Order* violates various District Court and Supreme Court water law decisions, the *Methodology Order*, various statutes, and the Idaho Constitution. *Id.* at 2.

On August 20, 2026, the Director issued the *Order Denying Surface Water Coalition's Request for Hearing* ("Order Denying Request for Hearing"), concluding that the SWC had not established that it was aggrieved by the *TWG Order* and that the TWG process was not

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inconsistent with applicable court decisions, the *Methodology Order*, or Idaho law. *Order Denying Request for Hearing*, at 5.

On September 2, 2026, the SWC filed the *Surface Water Coalition's Petition for Review and Reconsideration of Director's Order Denying Request for Hearing; Request to Designate Order as Final* (“*Petition*”). The *Petition* requests the Director reconsider and withdraw the *Order Denying Request for Hearing. Petition*, at 2. Alternatively, the *Petition* requests the Director designate the *TWG Order* as final. *Id.*

On September 14, 2026, the Cities filed the *Cities' Response to Surface Water Coalition's Petition for Review and Reconsideration of Director's Order Denying Request for Hearing; Request to Designate Order as Final* (“*Cities' Response*”). The Cities request denial of the *Petition* and oppose designation of the *TWG Order* as a final order. *Cities' Response*, at 3, 7.

The Director has reviewed the *Petition* and the *Cities' Response*. For the reasons explained below, the *Petition* is denied.

ANALYSIS

Idaho Code § 42-1701A(3) states, in relevant part:

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person aggrieved by any 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 SWC first argues that Idaho Code § 42-1701A(3) requires the Director to grant its request for hearing because the statute “uses mandatory, not permissive language.” *Petition* at 4. Section 42-1701A(3), however, conditions the right to a hearing on the requesting party being “aggrieved by” an action of the Director. Thus, while the statute requires a hearing when its requirements are met, the SWC must first establish that it is aggrieved by the *TWG Order*. As discussed below, the *TWG Order* does not presently affect a personal, pecuniary, or property interest of the SWC. Accordingly, the SWC has not established that it is entitled to a hearing under Idaho Code § 42-1701A(3).

I. The SWC has not shown that it is aggrieved by the *TWG Order*.

The SWC argues that the Director erred in concluding that the SWC is not “aggrieved” by the *TWG Order* for purposes of Idaho Code § 42-1701A(3). *Petition*, at 4–8. The SWC argues that it is aggrieved by the *TWG Order* in two ways. First, the SWC asserts that participation in the TWG process will require the expenditure of employee time, consultant fees and possible legal resources. *Id.* at 6–7. Second, the SWC contends that the TWG process impermissibly shifts the burden of proving junior ground water users’ defenses. *Id.* at 8.

A. The SWC’s claimed participation costs do not establish that it is aggrieved.

“[A] person is aggrieved by an order when the order affects his or her present personal, pecuniary, or property interest.” *Vickers v. Idaho Board of Veterinary Medicine*, 167 Idaho 306, 312, 469 P.3d 634, 640 (2020) (quoting *Ashton Urban Renewal Agency v. Ashton Mem’l, Inc.*, 155 Idaho 309, 311, 311 P.3d 730, 732 (2013)). “The effect on those interests, however, ‘must be more than a possible or remote consequence of the order.’” *Id.*

The SWC argues that the implementation of the TWG “forces the Coalition to spend resources in the form of employees’ time and resources as well as hiring consultants to participate in the workgroup.” *Petition*, at 6. From this, the SWC argues it is aggrieved by the *TWG Order* because “it affects at a minimum TFCC’s pecuniary interests in having to subject employees, consultants, and likely counsel’s time in participating and monitoring the process.” *Id.* at 6–7. Idaho case law, however, distinguishes between expenses associated with participating in a process and the invasion of a protected interest. In *Application of Fernan Lake Village*, the Idaho Supreme Court explained:

The mere fact that a person may be hurt in his feelings, or be disappointed over a certain result, or be subjected to inconvenience, annoyance or discomfort, *or even expense*, does not constitute him a party ‘aggrieved,’ since he must be aggrieved in a legal sense. To render a party aggrieved by an order, so as to entitle him to appeal therefrom, the right invaded must be immediate, not merely some possible, remote consequence, or mere possibility arising from some unknown and future contingency

Application of Fernan Lake Village, 80 Idaho 412, 415, 331 P.2d 278, 279 (1958) (quoting 4 C.J.S. *Appeal and Error* § 183(b), at 561) (*emphasis added*).

The *TWG Order* created a working group and invited various stakeholders to participate with Department staff in reviewing the information submitted by the Cities and providing a report on the same. The *TWG Order* did not compel or mandate participation in the TWG by any party to the delivery call or stakeholder. Even if, as a practical matter, the SWC elects to participate in or monitor the TWG process, paying the expenses does not rise to the level of aggrieving a pecuniary interest. *Application of Fernan Lake Village*, 80 Idaho 412, 415 (1958).

The SWC attempts to distinguish *Vickers* because it involved Idaho’s Administrative Procedure Act judicial review statute, Idaho Code § 67-5270. *Petition*, at 5. Although *Vickers* arose in the context of appellate or judicial review, it, along with *Ashton* and *Fernan Lake Village*, articulates Idaho’s longstanding understanding of when a person is “aggrieved”: the challenged action must presently affect a legally cognizable interest, rather than merely impose inconvenience, an expense, or create the possibility of future injury.

B. The *TWG Order* does not shift the burden of proof or presently affect the SWC's interests.

The SWC also argues “the [*TWG Order*] process aggrieves the coalition by impermissibly shifting the burden of proof on the juniors’ defenses to the call” *Petition*, at 8. The *TWG Order*, however, does not determine which party bears a burden of proof in any subsequent proceeding, nor does it adjudicate whether a junior ground water user has established a defense to the delivery call. The TWG is tasked with reviewing technical information and reporting its findings to the Director. The *TWG Order* confers no authority to the TWG to decide TFCC’s irrigated acres for purposes of administration and does not act as a substitute for Step 1 of the *Methodology Order*. The collection and evaluation of technical information is distinct from adjudicating whether a party has satisfied an evidentiary burden. Any burden of proof applicable to a future determination remains applicable when the Director makes that determination. The TWG’s report itself does not resolve whether any such burden has been met.

Accordingly, the SWC has not established that the *TWG Order* presently affects a personal, pecuniary, or property interest. Any effect on those interests remains dependent on future events and subsequent action by the Director. The SWC therefore has not established that it is aggrieved by the *TWG Order*.

II. The Director’s use of the TWG is not contrary to law.

As previously explained in the *Order Denying Request for Hearing*, the Director’s use of the TWG is consistent with the *Methodology Order*, past practices in the administration of the delivery call, and does not violate Idaho law. *Order Denying Request for Hearing*, at 5. The *TWG Order* does not “defer a junior’s alleged defense to administration to a third-party working group” as the SWC suggests. *Petition*, at 6. Nor does it establish the TWG as a “Groundwater Users’ Defense Forum.” *Id.* at 8. Instead, the *TWG Order* “directs the Technical Working Group to review the technical information submitted by the Cities and provide a report concerning TFCC’s reported irrigated acreage.” *Order Denying Request for Hearing*, at 4. The TWG’s role is advisory and technical. It has no authority to determine TFCC’s irrigated acreage for purposes of administration or otherwise resolve the Cities’ claims. As stated in the order, “[t]he Director retains authority to determine what action, if any, should be taken based upon that report.” *Id.*

III. The Director declines to designate the *TWG Order* as final.

Rule 750 of the Department’s Rules of Procedure provides, in relevant part:

If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary, or final, as appropriate.

IDAPA 37.01.01.750.

The SWC requests the Director designate the *TWG Order* as final because the Director himself issued the order and, according to the SWC, the “decision appears final as the TWG process is being initiated.” *Petition*, at 9.

The *TWG Order* is an intermediate step in the Department’s consideration of the report submitted by the Cities concerning TFCC’s irrigated acreage. It does not determine or alter TFCC’s irrigated acreage, modify TFCC’s water rights, or decide any issue concerning future administration. Rather, the *TWG Order* requests a technical review of the materials submitted by the Cities and asks the TWG to report its findings to the Director. The TWG has no authority under the *TWG Order* to make a binding determination concerning TFCC’s irrigated acreage. Even if the TWG recommends that TFCC’s irrigated acres be changed for the 2027 irrigation season, the Director retains authority to determine what action, if any, should be taken upon receipt and review of the TWG report. The administrative process concerning the Cities’ request therefore remains ongoing. The Director has not determined whether the information developed through the TWG process warrants any change to TFCC’s irrigated acreage. Designating the *TWG Order* as final at this time would be premature because the technical review remains ongoing and the Director has not yet determined whether any further action is warranted.

As discussed above, the *TWG Order* does not presently aggrieve the SWC. If the Director subsequently issues an order affecting TFCC’s irrigated acreage or otherwise affecting the SWC’s interests, the SWC may pursue any administrative or judicial remedies available with respect to that action. Accordingly, the Director declines to designate the *TWG Order* as a final order.

CONCLUSION

The SWC has not established that it is aggrieved by the *TWG Order* within the meaning of Idaho Code § 42-1701A(3). The *TWG Order* does not presently affect a personal, pecuniary, or property interest of the SWC; rather, it directs further technical review and evaluation. Nor do the legal objections raised by the SWC establish the requisite aggrievement. Additionally, the *TWG Order* is consistent with the *Methodology Order* and governing Idaho law. Finally, because the TWG process is an intermediate technical review that will result in a report for the Director’s consideration, the Director declines to designate the *TWG Order* as final. Therefore, the *Petition* should be denied.

ORDER

For the reasons discussed above, IT IS HEREBY ORDERED that the *Surface Water Coalition’s Petition for Review and Reconsideration of Director’s Order Denying Request for Hearing; Request to Designate Order as Final* is DENIED.

Dated this 23rd day of September 2026.



MATHEW WEAVER, Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of September 2026, the above and foregoing was served by the method indicated below, and addressed to the following:

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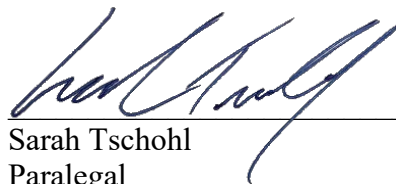
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