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 Burley, Carey, Declo, Dietrich,
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 Paul, Richfield, Rupert, Shoshone, and
 Wendell*

**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

**CITIES' RESPONSE TO SURFACE
 WATER COALITION'S REQUEST FOR
 HEARING ON DIRECTOR'S ORDER
 SETTING DEADLINE FOR
 SUBMISSION OF TECHNICAL
 WORKING GROUP REPORT**

COME NOW the City of Pocatello, City of Idaho Falls, and the Coalition of Cities¹
 (collectively, the "Cities"), by and through their respective undersigned counsel of record,
 pursuant to Rule 210 of the Rules of Procedure of the Idaho Department of Water Resources,²
 and hereby responds to the *Surface Water Coalition's Request for Hearing on Director's Order*

¹ The Coalition of Cities is composed of the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell.

² Any use of the term "Rule" herein refers to the Rules of Procedure of the Idaho Department of Water Resources unless otherwise stated.

Setting Deadline for Submission of Technical Working Group Report dated July 27, 2026 (“*SWC Request*”). The Cities respectfully request that the Director dismiss the *SWC Request* or, in the alternative, deny the request for hearing.

BACKGROUND

On April 10, 2026, the Cities filed a *Motion to Consider Information When Determining Surface Water Coalition’s Irrigated Acres Under Methodology Step 1* (“*Cities’ Motion*”). On May 1, 2026, the Cities filed a *Request to Revisit Twin Falls Canal Company’s Total Irrigated Acres or, in the Alternative, Request for Hearing on Final Order Regarding April 2026 Forecast Supply (Methodology Steps 1-3)* (“*Cities’ Request*”). These pleadings requested that the Department consider the information provided by the Cities’ technical consultants when determining the irrigated acres of the Twin Falls Canal Company for purposes of implementing the *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* dated July 19, 2023 (“*Sixth Methodology Order*”).

In response, on July 14, 2026, the Director issued an *Order Setting Deadline for Submission of Technical Working Group Report* (“*TWG Order*”). The *TWG Order* called for the SWC Methodology Technical Working Group to convene meetings and submit a report to the Director with its findings and recommendations on the subject by February 1, 2027. The Director deferred consideration of the *Cities’ Request* until he reviews said report.

On July 27, 2026, the Surface Water Coalition (“SWC”) filed the *SWC Request*. The *SWC Request* alleges that the *TWG Order* “does not comply with” the *Sixth Methodology Order* and the District Court’s *Memorandum Decision and Order* in Case No. CV01-23-13173 dated

May 31, 2024 (“*District Court Order*”), and that the *TWG Order* and resultant process and report “violates” various sources of Idaho legal authority. *See SWC Request* at 2.

ARGUMENT

I. **The *SWC Request* is Defective as it Fails to Cite Any Legal Authority for Its Assertions**

The Department should dismiss the *SWC Request* because it is defective and insufficient on its face. *See* Rule 302 (“Defective, insufficient or late pleadings may be returned or dismissed.”).

Under Idaho law, parties must cite the specific legal authority they allege an agency action violates; conclusory assertions that an action is unlawful are insufficient. *See Dickenson v. Benewah Cnty. Sheriff*, 172 Idaho 144, 150 (2023) (“It is not the role of this Court to search the record on appeal for citation or argument. Indeed, [j]udges are not like pigs, hunting for truffles buried in briefs.”) (quotations and citations omitted); *Groveland Water & Sewer, Dist. (GWSD) v. City of Blackfoot*, 169 Idaho 936, 941 (2022) (“The days of simply restating rote, conclusory phrases such as ‘the court erred,’ or ‘the court abused its discretion,’ without citations to the record or transcript and the appropriate law are long past.”); *Bach v. Bagley*, 148 Idaho 784, 790 (2010) (“A general attack on the findings and conclusions of the district court, without specific reference to evidentiary or legal errors, is insufficient to preserve an issue.”). Idaho courts decline to consider a party’s argument that fails to cite applicable legal authority with particularity. *Dickenson*, 172 Idaho at 150 (“[w]e will not consider issues that lack citations to the record, citations of applicable authority, or comprehensible argument.”) (quotation omitted); *Bach*, 148 Idaho at 790 (“Where an appellant fails to assert his assignments of error with particularity and to support his position with sufficient authority, those assignments of error are too indefinite to be heard by the Court.”).

The *SWC Request* is fatally flawed in that regard. It alleges the *TWG Order* “does not comply with” the *Sixth Methodology Order* and the *District Court Order* but does not identify a single provision in either order that forecloses the issuance of the *TWG Order*. *SWC Request* at 2. Similarly, it alleges the *TWG Order* and resultant process and report “violates” the Idaho Constitution, Idaho Code, the Conjunctive Management Rules, and Idaho law regarding such rules, but does not identify any provision within these sources of authority that precludes such a process or report. *Id.* Thus, the SWC’s general assertions that the *TWG Order* is unlawful is legally insufficient, and the Director should summarily dismiss the defective *SWC Request* accordingly.

II. The Director Has Discretion to Convene the Technical Working Group

Were the Director to consider the merits of the *SWC Request*, the Director should deny the request for hearing. As the Director notes, the Director has convened the SWC Methodology Technical Working Group multiple times throughout this ongoing delivery call matter. *TWG Order* at 2. The SWC did not challenge the Director’s authority to do so in 2022-2023. *See id.* n.2. The Director has a duty to “distribute the waters of the public ... water supply ... among the several ditches taking water therefrom according to the prior rights of each respectively, in whole or in part” and part of that duty is to evaluate the senior’s need and water supply available to it. Idaho Code § 42-607; *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep’t of Water Res.*, 143 Idaho 862, 876 (2007) (*AFRD#2*) (“Specifically, the Director ‘has the duty and authority’ to consider circumstances when the water user is not irrigating the full number of acres decreed under the water right.”) Convening the Technical Working Group to evaluate irrigated acres is properly within the Director’s discretion. *See AFRD#2*, 143 Idaho at 880 (“Somewhere between the absolute right to use a decreed water right and an obligation not to waste it and to protect the

public's interest in this valuable commodity, lies an area for the exercise of discretion by the Director"); *Rangen, Inc. v. Idaho Dep't of Water Res.*, 160 Idaho 119, 128-34 (2016) (citing CM Rule 20.03 and Idaho Constitution Article XV, section 7 as a basis for the Director's discretion). There is no need to hold a hearing to determine that the issuance of the *TWG Order* and resultant process/report is within the Director's discretionary authority, and therefore the request for hearing should be denied.

CONCLUSION

The SWC fails to identify any legal provision or requirement that the instant *TWG Order* or resultant process/report fails to comply with or violates. If any legal authority existed to support the *SWC Request*, the SWC would have cited the pertinent provisions. The fact is that there is no legal basis for the SWC's argument. Therefore, the Cities respectfully request that the Director dismiss the *SWC Request* in its entirety because it is defective and insufficient, or in the alternative, deny the request for rehearing.

DATED this 4th day of August 2026.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 4th day of August 2026, the foregoing document was served via email to the following:

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