

**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 REQUEST
FOR HEARING**

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*”), prepared by the Cities’ consultant, Spronk Water Engineers, Inc. (“SWE”). 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 in the April 2026 Forecast Supply Order (Methodology Steps 1-3). *Cities’ Motion*, at 2.

On April 16, 2026, the Director issued the *Final Order Regarding April 2026 Forecast Supply (Methodology Steps 1-3)* (“*As-Applied Order*”). In the *As-Applied Order*, the Director stated TFCC submitted an electronic shapefile delineating its total irrigated acres, listing 193, 638 acres for the 2026 irrigation season. *As-Applied Order*, at 1–2. The Director also noted that the *Cities’ Motion* “was filed only days before the deadline for this order, leaving the Department insufficient time to evaluate its merits. The Director may revisit, and if appropriate, modify TFCC’s total irrigated acres in orders issued later this irrigation season.” *Id.* at 2 n.4.

On May 1, 2026, the Cities filed the *Cities 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*”). The *Cities’ Request* asks the Director to consider and evaluate the merits of the Cities’ information submitted in the *SWE Memorandum*, and reconsider TFCC irrigated acres that were submitted during the 2026 irrigation season. *Cities’ Request*, at 1–2.

ORDER DENYING SURFACE WATER COALITION’S REQUEST FOR HEARING

On May 14, 2026, the Director issued the *Final Order Curtailing Ground Water Rights Junior to October 11, 1900* (“*May Curtailment Order*”). The *May Curtailment Order* provided:

that effective May 14, 2026, ground water users holding water rights bearing priority dates junior to October 11, 1900, within the ESPA ACGWS, and listed in Attachment A to the order, shall curtail/refrain from diversion and use of ground water pursuant to those water rights unless notified by the Department that the order of curtailment has been modified or rescinded as to their water rights.

May Curtailment Order, at 3.

On July 14, 2026, the Director issued an *Order Setting Deadline for Submission of Technical Working Group Report* (“*Order*”). In the *Order*, the Director acknowledged the importance of revisiting and evaluating the total irrigated acres of SWC members because “beneficial use cannot occur on acres that have been hardened or are otherwise not irrigated.” *Sixth Methodology Order*, at 11. The Director determined “the information submitted by the Cities, including the *SWE Memorandum*, raises technical questions regarding TFCC’s reported irrigated acres that warrant further review.” *Order*, at 2. To accomplish the review and evaluation of the *SWE Memorandum*, the Director assigned the limited task of reviewing the *SWE Memorandum* and providing a report on TFCC’s total irrigated acres to the SWC Methodology Technical Working Group. *Id.*

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 § 42-1701(A)(3). *Request for Hearing*, at 1. In its *Request for Hearing*, the SWC states that the *Order* is violative of various District Court and Supreme Court water law decisions, the *Methodology Order*, and the Idaho Constitution and various statutes. *Request for Hearing*, at 2.

On August 4, 2026, the Cities filed with the Department, *Cities’ Response to Surface Water Coalition’s Request for Hearing On Director’s Order Setting Deadline for Submission of Technical Working Group Report* (“*Cities’ Response*”). The Cities argue that the *Request for Hearing* should be dismissed for being defective and insufficient because the SWC fails to cite any legal authority for its assertions. *Cities Response*, at 3. In the alternative, the Cities argue the *Request for Hearing* should be denied because the Director has the authority to convene the technical working group.

ANALYSIS

I. The SWC Has Not Established that it is “Aggrieved” Under Idaho Code § 42-1701A(3)

ORDER DENYING SURFACE WATER COALITION’S REQUEST FOR HEARING

Idaho Code § 42-1701A(3) governs petitions requesting a hearing before the Department. It states, in pertinent part:

[A]ny person aggrieved by any action of the director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, 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.

For the SWC to be entitled to a hearing pursuant to I.C. § 42-1701(A)(3), it must show it is aggrieved by the Director's *Order*. "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, 311–12 (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 orders.'" *Id.* (quoting *Ashton Urban Renewal Agency v. Ashton Mem'l, Inc.*, 155 Idaho 309, 311, 311 P.3d 730, 732 (2013)).

The SWC's *Request for Hearing* should be denied because it has not established that it was aggrieved by the *Order*. The *Request for Hearing* identifies alleged legal deficiencies in the Director's action, but it does not explain how the *Order*, as written, affects a personal, pecuniary, or property interest of the SWC or its members. The *Order* itself does not reduce Twin Falls Canal Company's irrigated acreage, alter any water right, or otherwise modify the SWC's entitlement to water. Rather, it directs further investigation and evaluation of information concerning Twin Falls Canal Company's irrigated acreage. Any effect on the SWC's interests therefore depends upon the outcome of the evaluation and subsequent action by the Director. As such, the SWC is not aggrieved by this *Order* because it did not affect the SWC's present interests. Any effect on those interests would only occur as a product of a future order or action of the Director. *See Vickers*, 167 Idaho at 311–12. Accordingly, the allegations in the *Request for Hearing* do not establish that the SWC is presently aggrieved by the *Order* within the meaning of Idaho Code § 42-1701A(3). Nor do the legal deficiencies alleged by the SWC establish otherwise. As discussed below, none of the SWC's asserted legal deficiencies demonstrate that the *Order* presently affects a personal, pecuniary, or property interest of the SWC.

II. The SWC's Legal Objections Do Not Establish That It Is Aggrieved by the Order

A. The Order is Consistent with the Methodology Order

The SWC's first asserted basis for a hearing—that the Director's *Order* does not comply with the requirements of the *Methodology Order*—is incorrect. The purpose of the Director's *Order* is to evaluate Twin Falls Canal Company's irrigated acres for future irrigation seasons to ensure the acreage count used in the *Methodology Order* accurately reflects the lands on which beneficial use may occur. As the *Methodology Order* recognizes, "beneficial use cannot occur on acres that have been hardened or are otherwise not irrigated." *Sixth Methodology Order*, at 11. Updating SWC entity's total irrigated acres is an explicit step in the *Methodology* process. The

Order advances that process by bringing various stakeholders together to investigate information submitted by the Cities concerning Twin Falls Canal Company's total irrigated acreage count prior to the 2027 irrigation season's Step 1 Methodology order. Ordering an evaluation is consistent with, rather than contrary to, the *Methodology Order*. Accordingly, the SWC's allegation that the Order is inconsistent with the *Methodology Order* does not identify a present personal, pecuniary, or property interest affected by the Order and does not establish that the SWC is aggrieved.

B. The Order Is Consistent with the May 31, 2024 District Court Decision

Contrary to the SWC's argument, the *Order* complies with the District Court's May 31, 2024, *Memorandum Decision and Order*. The *Memorandum Decision and Order* describes the steps of the *Methodology Order*, and provides "[i]f junior users believe that the seniors will receive water they cannot beneficially use, 'it is their burden under the established evidentiary standards and burdens of proof to prove that fact by clear and convincing evidence.'" *Memorandum Decision and Order*, Ada County Case No. CV01-23-13173, p. 19. (2024) (quoting *Memorandum Decision and Order*, Gooding County Case No. CV-2010-382, p.31. (2014)). The *Memorandum Decision and Order* affirming Twin Falls Canal Company's irrigated acres does not have a binding or lasting impact on Twin Falls Canal Company's total irrigated acres. The District Court affirmed the Director's determination of which shapefile to use for that particular irrigation season. It did not affirm that TFCC's irrigated acres must always be evaluated using the 2013 shapefile. Thus, the District Court's decision did not establish a continuing right to have TFCC's irrigated acreage determined using the 2013 shapefile in future irrigation seasons. Because the Order is not contrary to the District Court's decision, the SWC's reliance on that decision does not establish that it is aggrieved by the Order.

C. Referral to the Technical Working Group Does Not Violate Idaho Law

Finally, the SWC's objection to the Director's use of the SWC Methodology Technical Working Group does not establish that the SWC is aggrieved by the Order. The use of the SWC Methodology Technical Working Group does not violate the constitutional duty to administer water in accordance with prior appropriation, it doesn't violate Idaho Code, nor the CM rules. The Order does not authorize the Technical Working Group to determine TFCC's irrigated acreage, modify any water right, determine material injury, or otherwise exercise authority committed to the Director. Rather, the 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. The Director retains authority to determine what action, if any, should be taken based upon that report.

The Director's use of the Technical Working Group is also consistent with the administration of the SWC Delivery Call, Docket No. CM-DC-2010-001. Over the course of the SWC Delivery Call, the Director has, at certain times, convened and relied upon the technical expertise of the SWC Methodology Technical Working Group to provide recommendations and conclusions regarding particular topics. The technical working group has consisted of experts from the parties, Department staff, and other stakeholders. Asking this group of stakeholders, experts, and Department staff to evaluate and provide a report on the materials submitted by the

Coalition of Cities regarding Twin Falls Canal Company's total irrigated acres is consistent with historical practices, and furthers the constitutional and legal requirements of the Director to evaluate water rights based on beneficial use and administer said rights in priority. *See Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.*, 143 Idaho 862, 876 (2007) ("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 this group and requesting a report is not violative of or not in accordance with any Idaho law. Whether the Technical Working Group will recommend any adjustment to TFCC's total irrigated acres, and whether the Director will ultimately adopt any such recommendation in the future, remains undetermined. Any effect upon the SWC's interests resulting from those potential future actions is therefore, at this stage, no more than a possible or remote consequence of the present Order. *See Vickers*, 167 Idaho at 311-12.

Accordingly, the SWC's objection to the Director's referral of the technical issues to the Technical Working Group does not establish that the SWC is presently aggrieved by the Order within the meaning of Idaho Code § 42-1701A(3).

III. Conclusion

The SWC has not established that it is aggrieved by the *Order* within the meaning of Idaho Code § 42-1701A(3). The *Order* does not presently affect a personal, pecuniary, or property interest of the SWC; it directs only further technical investigation and evaluation. Nor do the legal objections raised by the SWC establish the requisite aggrievement. The *Order* is consistent with the *Methodology Order*, the May 31, 2024 District Court decision, and governing Idaho law. Therefore, the *Request for Hearing* should be denied.

ORDER

For the reasons discussed above, IT IS HEREBY ORDERED that the *Surface Water Coalition's Request for Hearing on the Director's Order Setting Deadline for Submission of Technical Working Group Report* is DENIED.

Dated this 20th day of August 2026.



MATHEW WEAVER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of August 2026, the above and foregoing was served by the method indicated below, and addressed to the following:

John K. Simpson IdaH20, PLLC PO Box 152 Boise, ID 83701-0152 jks@idahowaters.com	☒ U.S. Mail, postage prepaid ☒ Email
Travis L. Thompson Abby R. Bitzenburg PARSONS BEHLE & LATIMER PO Box 63 Twin Falls, ID 83303-0063 tthompson@parsonsbehle.com abitzenburg@parsonsbehle.com	☒ U.S. Mail, postage prepaid ☒ Email
Norman M. Semanko Garrett M. Kitamura PARSONS BEHLE & LATIMER 800 W. Main Street, Suite 1300 Boise, Idaho 83702 nsemanko@parsonsbehle.com gkitamura@parsonsbehle.com	☒ U.S. Mail, postage prepaid ☒ Email
Thomas J. Budge RACINE OLSON PO Box 1391 Pocatello, ID 83204-1391 tj@racineolson.com	☒ U.S. Mail, postage prepaid ☒ Email
David W. Gehlert Natural Resources Section U.S. DOJ, Environment and Natural Resources Div. 999 18 th St., South Terrace, Suite 370 Denver, CO 80202 david.gehlert@usdoj.gov	☒ U.S. Mail, postage prepaid ☒ Email
Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@usbr.gov	☒ U.S. Mail, postage prepaid ☒ Email
Sarah A Klahn Maximilian C. Bricker Somach Simmons & Dunn 1155 Canyon Blvd, Ste. 110 Boulder, CO 80302 sklahn@somachlaw.com mbricker@somachlaw.com	☒ U.S. Mail, postage prepaid ☒ Email
Rich Diehl City of Pocatello PO Box 4169 Pocatello, ID 83205 rdiehl@pocatello.us	☒ U.S. Mail, postage prepaid ☒ Email

Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC PO Box 107 Boise, ID 83701 cmchugh@mchughbromley.com cbromley@mchughbromley.com	☒ U.S. Mail, postage prepaid ☒ Email
Robert E. Williams WILLIAMS, MESERVY, & LOTHSPREICH, LLP PO Box 168 Jerome, ID 83338 rewilliams@wmlattys.com	☒ U.S. Mail, postage prepaid ☒ Email
Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC PO Box 50130 Idaho Falls, ID 83405 rharris@holdenlegal.com	☒ U.S. Mail, postage prepaid ☒ Email
Zachary H. Jones City Attorney, City of Idaho Falls PO Box 50220 Idaho Falls, ID 83405 zjones@idahofalls.gov	☒ U.S. Mail, postage prepaid ☒ Email
Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC PO Box 3005 Idaho Falls, ID 83403 sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com	☒ U.S. Mail, postage prepaid ☒ Email
Dylan Anderson DYLAN ANDERSON LAW PLLC PO Box 35 Rexburg, Idaho 83440 dylan@dylanandersonlaw.com	☒ U.S. Mail, postage prepaid ☒ Email

COURTESY COPIES VIA EMAIL TO:

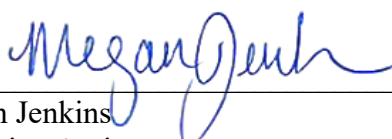
Craig Chandler
IDWR—Eastern Region
craig.chandler@idwr.idaho.gov

Corey Skinner
IDWR—Southern Region
corey.skinner@idwr.idaho.gov

William A. Parsons
PARSONS, LOVELAND, SHIRLEY & MILLER, LLP
wparsons@pmt.org
wparsons@magicvalley.law

Jerry R. Rigby
Michelle Mortimer
RIGBY, ANDRUS & RIGBY LAW, PLLC
jrigby@rex-law.com
mmortimer@rex-law.com

Andrew J. Waldera
SAWTOOTH LAW OFFICES, PLLC
andy@sawtoothlaw.com


Megan Jenkins
Executive Assistant