

Travis L. Thompson, ISB #6168
 Abby R. Bitzenburg, ISB #12198
 PARSONS BEHLE & LATIMER
 P.O. Box 63
 Twin Falls, Idaho 83303-0063
 Telephone: (208) 733-0700
 Email: tthompson@parsonsbehle.com
abitzenburg@parsonsbehle.com

*Attorneys for A&B Irrigation District,
 Burley Irrigation District, Milner Irrigation
 District, North Side Canal Company, and
 Twin Falls Canal Company*

Norman M. Semanko, ISB #4761
 Garrett M. Kitamura, ISB #11502
 PARSONS BEHLE & LATIMER
 800 W. Main St. Suite 1300
 Boise, Idaho 83702
 Telephone: (208) 562-4900
 Email: nsemanko@parsonsbehle.com
gkitamura@parsonsbehle.com

*Attorneys for American Falls Reservoir
 District #2 and Minidoka Irrigation District*

**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

**SURFACE WATER COALITION'S
 PETITION FOR REVIEW AND
 RECONSIDERATION OF DIRECTOR'S
 ORDER DENYING REQUEST FOR
 HEARING**

**REQUEST TO DESIGNATE ORDER
 AS FINAL**

COME NOW, 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 (the "Coalition" or "SWC"), by and through their undersigned
 attorneys of record, and pursuant to IDAPA 37.01.01.711 hereby requests the Director to review
 and reconsider the *Order Denying Surface Water Coalition's Request for Hearing* (Aug. 20,
 2026) ("Order").

For the reasons set forth below the Director should reconsider and withdraw the order. If the Director denies this request for review and reconsideration the Coalition alternatively requests the Director to designate the *Order Setting Deadline for Submission of Technical Working Group Report* (“*TWG Order*”) as a final order pursuant to IDAPA 37.01.01.750.

BACKGROUND

The Department’s *Sixth Methodology Order* (“*Sixth Order*”) prescribes a defined process for conjunctive administration of the Surface Water Coalition’s delivery call. *See Sixth Order* (July 19, 2023). Pursuant to Step 1, SWC members are required to submit shapefiles or confirm that the existing shapefile has not varied by more than five percent by April 1st each year. *Sixth Order* at 41. Step 6 provides that the Director “will, for each member of the SWC: (1) recalculate RISD; (2) issue a revised FS; and (3) estimate the Time of Need date.” *Id.* at 42. The step further provides that “RISD will be calculated utilizing the project efficiency, BD, and the cumulative actual CWN determined up to that point in the irrigation season. The cumulative CWN volume will be calculated for all land irrigated with surface water within the boundaries of each member of the SWC.” *Id.* Nothing in any of these steps states that the Director is authorized to use a third party Technical Working Group as part of his decision process.

This season, Twin Falls Canal Company (TFCC) submitted an updated shapefile pursuant to Step 1. *See Final Order Regarding April 2026 Forecast Supply* at 1 (*Methodology Steps 1-3*) (Apr. 16, 2026). The Director found that he “will use the following total irrigated acres” for TFCC for 2026: 193,638.¹ *See Steps 1-3 Order* at 2. On April 10, 2026, the Cities filed a *Motion to Consider Information When Determining Surface Water Coalition’s Irrigated Acres Under Methodology Step 1*. The Director stated IDWR did not have sufficient time to evaluate

¹ The Director indicated that staff reviewed this information and “reduced” it “for overlapping acres and acres outside of the service area.” *Steps 1-3 Order* at 2.

the merits of the Cities' motion and memorandum and noted that he "may revisit, and if appropriate, modify TFCC's total irrigated acres in orders issued later this irrigation season."

Steps 1-3 Order at 2, n.4.

On May 1, 2026 the Cities filed a *Request to Revisit Twin Falls Canal Company's Total Irrigate Acres, or, in the Alternative, Request for Hearing on Final Order Regarding April 2026 Forecast Supply (Methodology Steps 1-3)*. The Director did not rule on this request or perform any "aggrieved person" analysis to determine whether or not the Cities were entitled to a hearing pursuant to section 42-1701A(3).²

On July 14, 2026 the Director issued an *Order Setting Deadline for Submission of Technical Working Group Report ("TWG Order")* regarding "technical questions regarding TFCC's reported irrigated acres" by February 1, 2027. *See TWG Order* at 2. The Director's basis for this request is stated as follows:

A thorough evaluation of the *SWE Memorandum* and any other relevant technical information will require significant Department staff time and technical analysis. Given the demands on staff during the irrigation season, the Department does not have sufficient staff resources to complete that evaluation before conclusion of the current irrigation season.

TWG Order at 2.

The Coalition filed a timely request for hearing of the Director's *TWG Order* on July 27, 2026. However, the Director denied the Coalition's request for hearing alleging the Coalition is not "aggrieved" by the *TWG Order*. *See Order* at 3-5. The Director essentially ruled on the merits of the Coalition's "issues" requested for hearing, without actually providing for an administrative hearing as required by law. The Coalition seeks review and reconsideration of the *TWG Order* accordingly.

² The outstanding request for hearing on the *Steps 1-3 Order*, assuming it is granted, creates a contested case that follows the Department's formal proceedings requirements. *See* IDAPA 37.01.01.102.

ARGUMENT

I. The Coalition is Aggrieved by the Director's *TWG Order*.

Section 42-1701A(3) plainly provides that “any person aggrieved by any action of 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.” (emphasis added). The statute uses mandatory, not permissive language. See *In re: Order Certifying Question to the Idaho Supreme Court (Goodrick v. Field)*, 167 Idaho 280, 283, 469 P.3d 608, 611 (2020) (“The word ‘shall’ when used in a statute is mandatory”). Therefore, if a person is aggrieved by the Director’s action and files a timely request for hearing, the agency must provide for one, there is no discretion otherwise.

The Director initially claimed the Coalition is not aggrieved by the Director’s *TWG Order*. *Order* at 3. The Director stated that the Coalition’s request for hearing does not “explain how the Order, as written, affects a personal, pecuniary, or property interest of the SWC or its members.” *Id.* At the outset, the statute does not require a person’s “request” to provide a comprehensive brief or detailed list of issues that might be developed through a contested case.³ See e.g. *Fulfer*, 171 Idaho at 301, 520 P.3d at 713 (“notice pleading requires the complaint to provide ‘some indication’ of the basis for relief, but not always an exact statutory basis or formal cause of action”). Instead, the statute only requires a written petition “stating the grounds for contesting the action by the director and requesting a hearing.” I.C. § 42-1701A(3). The Coalition’s request for hearing satisfied this requirement as it listed three initial bases for the

³ Moreover, Idaho is a “notice pleading” state where courts or agencies “should ‘make every intendment to sustain’ a complaint that contains a ‘concise statement of the facts constituting the cause of action and a demand for relief.’” *Fulfer v. Sorrento Lactalis, Inc.*, 171 Idaho 296, 301, 520 P.3d 708, 713 (2022). IDWR’s rules must be “liberally construed to ensure just, speedy and economical determination of all issues presented to the agency.” IDAPA 37.01.01.51.

request. *See SWC Request for Hearing* at 2 (July 27, 2026). Further, the contested case in which the order was issued concerns the Coalition’s delivery call pursuant to the CM Rules (CM-DC-2010-001). As senior water right holders subject to the Director’s implementation of the *Sixth Order*, the Coalition members clearly have a “property” interest at stake in this proceeding. *See* I.C. § 55-101.

Rather than evaluate the relevant statutory language set forth in section 42-1701A(3), the Director relies upon cases interpreting Idaho’s APA judicial review statute, section 67-5270. *See Order* at 3. For example, *Vickers v. Idaho Board of Veterinary Medicine*, 167 Idaho 306, 469 P.3d 634 (2020) concerned a cat owner’s lack of standing to pursue judicial review under Idaho’s APA.⁴ The Court concluded that the appellant could not initiate a contested case before the Board by filing a grievance letter. *See* 167 Idaho at 309-10, 469 P.3d 637-38. Consequently, the Court also found that the appellant had “not articulated an actual personal, pecuniary, or property interest in this case” and that nothing in the relevant statute “grants Vickers a private right to initiate a contested case under the APA, nor does it guarantee him specific due process rights when writing a grievance letter to the Board.” 167 Idaho at 312, 469 P.3d 640.

Without a contested case under the APA or a final agency action or order, the district court did not have subject matter jurisdiction pursuant to section 67-5270(2)-(3). *See id.* Unlike the facts in *Vickers*, the Coalition does have a statutory right to request a hearing on the Director’s *TWG Order*, and has particular “pecuniary” and “property” interests that are affected.

⁴ Contrary to the Director’s analysis, the “SWC’s interests” do not simply depend “upon the outcome of the evaluation and subsequent action the Director.” *Order* at 3. The Coalition’s interests are affected by the Director not following the *Sixth Order* and deferring conjunctive administration decisions to a third party “working group” on the basis that IDWR staff cannot complete the review due to inadequate time and resources. This new process that is not provided for by the *Sixth Order* also forces TFCC to expend time and resources responding to the Cities’ report, thereby affecting its “pecuniary” interests.

The aggrieved aspect of the Director’s order is intertwined with the very process that is proposed, and as explained below, does not conform to the *Sixth Order* and the District Court’s approval of the same on judicial review. Moreover, the Director has impermissibly transferred a junior groundwater user’s “defense” that must be proven by clear and convincing evidence to an informal “workgroup” made up primarily of consultants representing groundwater users and other non-parties.⁵ Notably, of the fifteen people included on Mr. Giesler’s email, only four are affiliated with the Coalition. *See* Ex. A. The Coalition is clearly “aggrieved” by this new and unauthorized process as it forces the Coalition to spend resources, a “pecuniary interest,” in the form of employees’ time and resources as well as hiring consultant(s) to participate in the workgroup. The issue is not the “end result” of what the Director may or may not decide, it’s the fact that he is proposing to defer his in-season conjunctive administration responsibility to a “working group” that is apparently a substitute for the well-established burden of proof ordered by the Idaho Supreme Court. Whether the proposed process itself is lawful is the issue that should be the subject of the Coalition’s requested hearing. Stated another way, the Director cannot defer a junior’s alleged defense to administration to a third-party working group for a “report,” which is what is being proposed here.

The Coalition 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

⁵ IDWR staff Ethan Giesler sent out an email on August 27, 2026 to the following individuals requesting availability to meet “to investigate Twin Falls Canal Company’s irrigated acres”: IDWR staff – Phil Blankenau, Kara Ferguson, Jennifer Sukow, Brian Ragan; Groundwater Users consultants – Jaxon Higgs, Sophia Sigstedt, Heidi Netter, and Greg Sullivan; BOR employee – Peter Cooper; Idaho Power employee – Frank Gariglio; and finally TFCC employees – Jay Barlogi, Jason Brown; and SWC consultants – Dave Colvin, and Dave Shaw. *See* Ex. A. The email sets up a “pseudo decision” process whereby “the TWG is tasked with evaluating the technical information submitted on this issue and providing a written report of its findings and recommendations to the Director. . .” (emphasis added). The process itself is undefined and aggrieves TFCC by relieving junior groundwater users of their burden to prove any defenses to the SWC Call by “clear and convincing evidence.” Instead, the recommendation is apparently placed in the hands of the groundwater users’ consultants and other non-parties.

participating and monitoring the process. TFCC has already expended considerable resources in developing the 2026 shapefile that was submitted to IDWR earlier this year. Contrary to the Director's statement, TFCC is not alleging the 2013 shapefile "must always be evaluated." *Order* at 4. Indeed, that is why new shapefiles have been developed and submitted in 2025 and 2026. The Director accepted TFCC's information and has an obligation under the *Sixth Order* to review and consider that information in implementing the steps for conjunctive administration. *See Sixth Order* at 41, *Steps 1-3 Order* at 2. The *Sixth Order* does not provide for or contemplate deferring analysis on the Coalition's irrigated acreage to a technical working group. The Director's decision to vary from the plain terms of the *Sixth Order* is the issue that the Coalition has a right to a hearing on, hence the reason for the timely request pursuant to section 42-1701A(3). *See e.g. Vickers*, 167 Idaho at 312, 469 P.3d at 634 ("Put in another way, we ask, 'Would the party have had the thing if the erroneous judgment had not been entered? If the answer is yea, he is a party aggrieved.'"). The Coalition is entitled to have the Director follow the methodology steps and implement conjunctive administration accordingly. The Director cannot deflect such decisions to non-agency personnel on the basis that he claims his agency staff do not have the time or resources.

Although the Cities may dispute this information as they submitted a memorandum and request for hearing, they carry the burden to prove any defense to the Coalition's call by "clear and convincing evidence." *See A&B Irr. Dist. v. IDWR*, 153 Idaho 500, 524, 284 P.3d 225, 249 (2012) ("It is Idaho's longstanding rule that proof of 'no injury' by a junior appropriator in a water delivery call must be by clear and convincing evidence. Once a decree is presented to an administering agency or court, all changes to that decree, permanent or temporary, must be supported by clear and convincing evidence.") (emphasis added); *AFRD#2 v. IDWR*, 143 Idaho

862, 878, 154 P.3d 433, 449 (2007) (“Once the initial determination is made that material injury is occurring or will occur, the junior then bears the burden of proving that the call would be futile or to challenge, in some other constitutionally permissible way, the senior’s call”). The Cities, not the Technical Working Group, carries the burden to prove defenses to the Coalition’s delivery call. If the Cities believe the Department is using the wrong irrigated acreage count, they have the burden to show that. Although the Cities requested a hearing on this issue, the Director has yet to address it. If the Cities’ request for hearing is granted, then the contested case process must follow IDWR’s Rules of Procedure. The Director cannot defer addressing the Cities’ request for hearing and create new process that is not authorized by statute, IDWR’s rules, or the orders in this proceeding.

Moreover rather than address the Cities’ pending request for hearing by either granting or denying it, which under the reasoning in the *Order*, it is unclear how the Cities would be able to show how they are “aggrieved” in 2026, the Director has created a new loophole by initiating the “technical working group” process. The process aggrieves the Coalition by impermissibly shifting the burden of proof on the juniors’ defenses to the call, aggrieves TFCC’s pecuniary interests by creating a process that incurs employees’ time and resources, as well as fees for consultants, and deflects decisions required by the agency and the Director.

II. The Technical Working Group is Not a Groundwater Users’ Defense Forum.

The Technical Working Group was convened in 2022 to specifically evaluate potential updates to the Methodology Order, it was not set up as a forum to judge or make recommendations on defenses that junior groundwater users carry the burden to prove in this proceeding. *See* Ex. B. In other words, the working group was not involved in or a substitute for the Director’s implementation of the *Sixth Order* and decisions he is required to make in that

process through the various Steps 1-9 in a given year. Accordingly, the Director's proposed use of the TWG is not consistent with administration of the delivery call and is not similar to its use for past recommendations or evaluations related to the methodology order itself.

For the reasons set forth above the Director should review, reconsider, and withdraw the *TWG Order* accordingly. The Director should reconsider the proposed process, and if the Cities believe they have information to disprove the Director's report irrigated acreage for TFCC for 2026, then their request for hearing should be granted and the parties can proceed through a contested case with the appropriate burdens of proof required by Idaho law.⁶

Finally, the issue for 2027 is not ripe as the SWC is entitled to submit new information to IDWR, or confirm that it has not varied by 5%, on or before April 1st next year. The Director's proposed process violates the Methodology Order in this regard and should be reconsidered.

III. Request to Designate Order as Final.

If the Director does not reconsider the *Order* as requested above, in the alternative, the Coalition requests the Director to designate the *Order* denying the request for hearing as a final order pursuant to IDAPA 37.01.01.750. The order is not designated as a final order yet the Director, the agency head, issued it. The decision appears final as the TWG process is being initiated as indicated in Mr. Giesler's email. *See* Ex. A.

For purposes of exhausting administrative remedies if the Director is not going to grant the Coalition a hearing on the *Order* as required by section 42-1701A(3), then the order should be designated as final so that the Coalition may pursue judicial review and protect its rights and ensure conjunctive administration follows governing Idaho law.

⁶ This assumes the Cities qualify as an "aggrieved person" under section 42-1701A(3). The Coalition reserves all rights and arguments concerning the Director's decision on this issue.

DATED this 2nd day of September, 2026.

PARSONS BEHLE & LATIMER

/S/: Travis L. Thompson

Travis L. Thompson
Abby R. Bitzenburg

*Attorneys for A&B Irrigation District,
Burley Irrigation District, Milner Irrigation
District, North Side Canal Company, and
Twin Falls Canal Company*

PARSONS BEHLE & LATIMER

/S/: Norman M. Semanko

Norman M. Semanko
Garrett M. Kitamura

*Attorneys for American Falls Reservoir
District #2 and Minidoka Irrigation District*

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2026, I served a true and correct copy of the foregoing on the following by the method indicated:

Director Mat Weaver Garrick Baxter Sarah Tschohl State of Idaho Dept. of Water Resources 322 E Front St. Boise, ID 83720-0098 *** service by electronic mail mat.weaver@idwr.idaho.gov garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov file@idwr.idaho.gov	Gail McGary U.S. Bureau of Reclamation 1150 N. Curtis Rd. Boise, ID 83706-1234 *** service by electronic mail only emcgarry@usbr.gov	John K. Simpson IdaH2O, PLLC 4354 N. Hackberry Way Boise, ID 83702-1667 *** service by electronic mail only jks@idahowaters.com
T.J. Budge Racine Olson P.O. Box 1391 Pocatello, ID 83204-1391 *** service by electronic mail only tj@racineolson.com	Sarah A. Klahn Maximillian C. Bricker Somach Simmons & Dunn 1155 Canyon Blvd., Ste. 110 Boulder, CO 80302 *** service by electronic mail only sklahn@somachlaw.com vfrancisco@somachlaw.com mbricker@somachlaw.com	Michelle Nkeng ENRD – DOJ 950 Pennsylvania Ave NW Washington, DC 20530-0001 *** service by electronic mail only michelle.nkeng@usdoj.gov
Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83201 *** service by electronic mail only rdiehl@pocatello.us	Candice McHugh Chris M. Bromley McHugh Bromley, PLLC 380 South 4th Street, Ste. 103 Boise, ID 83702 *** service by electronic mail only cbromley@mchughbromley.com cmchugh@mchughbromley.com	Robert E. Williams William, Meservy & Lothspeich, LLP P.O. Box 168 Jerome, ID 83338 *** service by electronic mail only rewilliams@wmlattys.com
Dylan Anderson Dylan Anderson Law PLLC P.O. Box 35 Rexburg, ID 83440 *** service by electronic mail only dylan@dylanandersonlaw.com	Robert L. Harris Holden, Kidwell, Hahn & Crapo, PLLC P.O. Box 50130 Idaho Falls, ID 83405 *** service by electronic mail only rharris@holdenlegal.com	Zachary H. Jones City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 *** service by electronic mail only zjones@idahofalls.gov

Skyler C. Johns Nathan M. Olsen Steven L. Taggart Olsen Taggart PLLC P.O. Box 3005 Idaho Falls, ID 83403 *** service by electronic mail only sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com	Tanner F. Crowther Chief Counsel, Office of Chief Counsel US Dept. of Energy – Idaho Operations Office 1955 Fremont Ave. Idaho Falls, ID 83402 Mailstop 1209 *** service by electronic mail only crowthtf@id.doe.gov	
--	--	--

COURTESY COPY TO:

William A. Parsons Parsons, Loveland, Shirley & Lindstrom LLP P.O. Box 910 Burley, ID 83318 *** service by electronic mail only wparsons@pmt.org wparsons@magicvalley.law	Corey Skinner IDWR – Southern Region 650 Addison Ave W, Ste. 500 Twin Falls, ID 83301-5858 *** service by electronic mail only corey.skinner@idwr.idaho.gov	Craig Chandler IDWR – Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 *** service by electronic mail only craig.chandler@idwr.idaho.gov
Jerry R. Rigby Rigby, Andrus & Rigby Law, PLLC P.O. Box 250 Rexburg, ID 83440 *** service by electronic mail only jrigby@rex-law.com	Andrew J. Waldera Sawtooth Law Offices, PLLC 1101 W. River Street, Ste. 110 Boise, ID 83702 *** service by electronic mail only andy@sawtoothlaw.com	

/s/ Jeni Wood

Jeni Wood

Legal Assistant for Travis L. Thompson and
Abby Bitzenburg

Exhibit A

From: Jay Barlogi <jbarlogi@tfcanal.com>
Sent: Friday, August 28, 2026 8:51 AM
To: Travis Thompson <TThompson@parsonsbehle.com>
Subject: FW: SWC Methodology TWG inquiry



This Message Is From an External Sender

This message came from outside your organization.

[Report Suspicious](#)

From: Geisler, Ethan <Ethan.Geisler@idwr.idaho.gov>
Sent: Thursday, August 27, 2026 3:28 PM
To: Blankenau, Phil <Philip.Blankenau@idwr.idaho.gov>; Ferguson, Kara <Kara.Ferguson@idwr.idaho.gov>; jaxon@waterwellconsultants.com; Sophia Sigstedt <ssigstedt@lynker.com>; dave.colvin@lrewater.com; dshaw@erresources.com; hnetter@spronkwater.com; Greg Sullivan <gsullivan@spronkwater.com>
Cc: Sukow, Jennifer <Jennifer.Sukow@idwr.idaho.gov>; Ragan, Brian <Brian.Ragan@idwr.idaho.gov>; Jay Barlogi <jbarlogi@tfcanal.com>; Jason Brown <brown@tfcanal.com>; Peter Cooper <pcooper@usbr.gov>; fgariglio@idahopower.com
Subject: SWC Methodology TWG inquiry

Hello All,

I'm reaching out because you (or your predecessor) were part of the Surface Water Coalition (SWC) Methodology Technical Working Group (TWG) when it last convened in Nov/Dec 2022. The IDWR Director has instructed that this same TWG be reconvened to investigate Twin Falls Canal Company's irrigated acres, following a motion filed by the Cities investigating TFCC's reported acreage for the 2026 irrigation season.

Per the Director's July 14, 2026 order, the TWG is tasked with evaluating the technical information submitted on this issue and providing a written report of its findings and recommendations to the Director no later than February 1, 2027.

For background, here are the most relevant filings:

1. Cities' Motion to Consider Information When Determining SWC's Irrigated Acres Under Methodology Step 1, with attached SWE Technical Memorandum (April 10, 2026)
 - o <https://idwr.idaho.gov/wp-content/uploads/2025/08/CM-DC-2010-001-20260410-Letter-Cities-Motion-to-Consider-Information-When-Determining-Surface-Water-Coalitions-Irrigated-Acres-Under-Methodology-Step-1.pdf>
2. Order Setting Deadline for Submission of Technical Working Group Report (July 14, 2026)
 - o <https://idwr.idaho.gov/wp-content/uploads/2025/08/CM-DC-2010-001-20260714-Order-Setting-Deadline-for-Submission-of-Technical-Working-Group-Report.pdf>

I'd like to get this group together to discuss. Please fill out the "when2meet" link below with your availability by EOB Friday, September 4th, and I'll schedule a time that works for the majority of the group:

<https://www.when2meet.com/?38145983-bbsfn>

Please forward to anyone who should be included in this Technical Working Group.

Thanks,
Ethan

Ethan Geisler, P.G. | Technical Services Bureau Chief
Idaho Department of Water Resources
Office: 208-287-4816 | Email: ethan.geisler@idwr.idaho.gov
P.O. Box 83720 | Boise, ID 83720 | <https://idwr.idaho.gov>

Exhibit B



**Summary of Recommended Technical Revisions to the 4th Amended Final Order Regarding
Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable
Carryover for the Surface Water Coalition**

12/23/2022

By: Kara Ferguson, Staff Hydrologist & Matt Anders, Hydrology Section Supervisor

In a status conference on August 5, 2022, the Director of the Idaho Department of Water Resources (IDWR) issued a directive to IDWR staff to convene a committee of experts to review and provide comments on potential technical changes to the "Fourth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover" (Methodology) issued on April 19, 2016. IDWR staff created a technical working group composed of IDWR staff, experts representing the parties to the ongoing Surface Water Coalition (SWC) delivery call, and other interested parties. IDWR identified potential technical changes to the Methodology and presented them to the technical working group for discussion.

IDWR hosted six technical working group meetings between November 16 and December 14, 2022. Before each meeting, IDWR staff circulated PowerPoint presentations and agendas to the working group. The meetings were attended by interested members of the public and consultants and attorneys for parties to the SWC delivery call. Department staff and attorneys also participated. The meetings included presentations by IDWR staff and working group members, as well as open discussion on the topics presented. During the final meeting on December 14, 2022, IDWR staff stated that IDWR would provide a document summarizing staff's preliminary recommendations on potential technical changes to the Methodology.

Based on the information presented at the meetings and distributed to the technical working group, IDWR staff have the following preliminary technical recommendations:

- Update the Baseline Year (BLY) irrigation demand used to determine reasonable in-season demand from the current average of diversion demands for the 2006, 2008, and 2012 irrigation seasons to the diversion demand for the 2018 irrigation season.
- Update the BLY irrigation demand used to determine reasonable carryover for each SWC member from the current average of the diversion demands for the 2006, 2008, and 2012 irrigation seasons to the diversion demand for the 2018 irrigation season.
- Update the project efficiency value used to calculate monthly reasonable in-season demand from a rolling average of the previous eight years to a rolling average of the previous fifteen years.

At this time, staff do not have recommendations on utilizing near real time METRIC for determining crop water need, updating April and July regressions to improve their predictive power for natural flow supply, or using transient model simulation for determining curtailment priority dates. IDWR will continue to evaluate the integration of these and other techniques into the methodology.

IDWR requests written comments from the technical working group on the above recommendations or any other topic covered during the meetings. Please submit any comments no later than January 16, 2023, to matthew.anders@idwr.idaho.gov.