

**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 GRANTING REQUESTS
FOR HEARING AND LIMITING
SCOPE OF HEARING**

**NOTICE OF PREHEARING
CONFERENCE**

BACKGROUND

On July 19, 2023, the Department issued its *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“*Sixth Methodology Order*”). The *Sixth Methodology Order* established nine steps for determining material injury to members of the Surface Water Coalition (“SWC”).

On August 25, 2026, the Department issued a *Notice of Opportunity for Hearing Pursuant to Idaho Code § 42-1701A(5)* (“*Notice*”), providing notice that prior to the start of the 2027 irrigation season, the Director intends to revise the *Sixth Methodology Order* “to account for the physical configurations of the SWC entities’ diversion works that limit the amount of water that can physically be diverted over a specific period.” *Notice* at 1. The *Notice* further stated that the maximum historical daily diversion of each SWC member, as reported by the Water District 01 watermaster, would be used to determine maximum physical diversion capacity and thereby establish an upper limit for reasonable in-season demand (“RISD”). *Id.*

The *Notice* set out the proposed revision as two new paragraphs to be inserted into the *Sixth Methodology Order*. Proposed paragraph 44 identifies maximum historical diversion values and corresponding monthly diversion-potential values for each SWC member for May through September. *Notice* at 1–2. Proposed paragraph 45 provides that, when calculated CWN/Ep exceeds the applicable maximum diversion capacity, RISD for that month is limited to the maximum diversion capacity. *Id.*

The *Notice* advised affected persons that they had through September 1, 2026, to request a hearing on the issuance of an order revising the *Sixth Methodology Order* “as outlined above.” *Notice* at 2.

On August 31, 2026, the SWC filed the *Surface Water Coalition’s Request for Hearing* (“*SWC Request*”). The *SWC Request* asks for “a hearing on the Director’s Notice of Opportunity for Hearing” and does not identify any issues for hearing or relief sought. *SWC Request* at 1.

On September 1, 2026, the City of Pocatello, City of Idaho Falls, and Coalition of Cities (collectively, the “Cities”) filed the *Cities’ Joint Request for Hearing* (“*Cities’ Request*”). The Cities request a hearing concerning whether the maximum historical diversion and maximum historical diversion potential values identified in the *Notice* properly reflect the SWC members’ historical operations. *Cities’ Request* at 2. The Cities also request an opportunity to address whether the phrase “under reported” in an existing provision of the *Sixth Methodology Order* should be changed to “misreported.” *Id.*

Also on September 1, 2026, Jerry D. Bingham and Valerie H. Bingham (“Binghams”) filed *Jerry D. Bingham’s and Valerie H. Bingham’s Request for Hearing* (“*Binghams’ Request*”). The Binghams request a hearing pursuant to the *Notice* and Idaho Code § 42-1701A(5). *Binghams’ Request* at 1. The “Binghams challenge whether the methodology behind the revisions to the Sixth Methodology Order properly allocate responsibilities in a manner that is consistent, priority based, and equitable.” *Id.* at 2.

On September 2, 2026, Idaho Ground Water Appropriators, Inc. (“IGWA”) filed *IGWA’s Notice of Intent to Participate in Requested Hearings* (“*IGWA’s Notice of Intent*”). IGWA states that it has been a party to Docket No. CM-DC-2010-001 since its inception and intends to participate as a party in the hearing concerning the proposed revisions. *IGWA’s Notice of Intent*, at 1.

ANALYSIS

Idaho Code § 42-1701A(5) requires the Director, before issuing an order establishing a new or revised methodology for determining material injury under the Conjunctive Management Rules, to provide “affected persons notice and an opportunity to request a hearing . . . prior to the issuance of such an order” Further, it requires that any such order “be issued no later than December 1 prior to the year such order takes effect.” I.C. § 42-1701A(5).

The SWC, Cities, and Binghams timely requested a hearing in response to the *Notice*. The Director will therefore grant the requests for hearing. Each request is addressed in more detail below.

The hearing opportunity created by the *Notice* is strictly tied to the methodology revision identified in the *Notice*. The *Notice* specifically identifies a particular proposed change: accounting for physical limitations on SWC diversion works by using maximum historical daily diversion information to establish a maximum physical diversion capacity and, when applicable, an upper limit on monthly RISD. *Notice* at 1. The *Notice* then provides affected persons an opportunity to request a hearing before issuance of an order that would put said revisions into effect, pursuant to Idaho Code § 42-1701A(5). *Id.* at 2. Therefore, the *Sixth Methodology Order* remains final and closed to further challenges, with the sole exception of the newly proposed revisions. Accordingly, the hearing will only address whether and how the *Sixth Methodology Order* should be revised in the manner identified in the *Notice*.

Given the narrow scope of the hearing, the issues for hearing are limited to: (1) the factual basis for the proposed maximum historical diversion and diversion-potential values; (2)

whether those values accurately and appropriately represent the physical diversion limitations and historical operations of the SWC entities; (3) whether maximum historical daily diversion is an appropriate basis for establishing maximum physical diversion capacity; and (4) the operation and effect of proposed paragraphs 44 and 45 on the calculation of RISD. The parties may present evidence and legal argument bearing directly on those issues.

Idaho Code § 42-1701A(5) requires any final order revising the methodology for the 2027 irrigation season to be issued no later than December 1, 2026. Accordingly, the Director will convene a prehearing conference to establish an expedited schedule for this proceeding.

SWC Request

Although the *SWC Request* does not identify specific issues for hearing, the Director will grant the request because the *Notice* itself identifies a discrete and narrowly defined proposed revision. The SWC's participation, like that of all parties, will be limited to matters within the scope of the revision identified in the *Notice*.

Cities' Request

The first issue identified in the *Cities' Request* falls within the limited scope of the hearing. The Cities' second issue does not. The proposed change from “under reported” to “misreported” concerns existing language elsewhere in the *Sixth Methodology Order* and is not part of the revision identified in the *Notice*. The Cities acknowledge that this request goes beyond the scope of the *Notice*. *Cities' Request* at 2 n.3. As such, this issue will be excluded from the hearing.

Binghams' Request

The *Binghams' Request* likewise will be heard to the extent it challenges the proposed revision identified in the *Notice*. However, the Binghams seemingly challenge broader aspects of the *Sixth Methodology Order*, including proportionate-share mitigation, priority administration, and the validity of other orders that rely on the *Sixth Methodology Order*. *Binghams' Request* at 1–3. But this proceeding is not a vehicle to reopen or collaterally challenge provisions of the *Sixth Methodology Order* that are unchanged by the proposed revision, the general use of proportionate-share mitigation, prior administration under the *Sixth Methodology Order*, or prior, current, or future as-applied or curtailment orders. Those matters are outside the scope of the hearing noticed under Idaho Code § 42-1701A(5).

IGWA's Notice of Intent

The hearing authorized by this order is a proceeding within Docket No. CM-DC-2010-001, to which IGWA is already a party. *IGWA's Notice of Intent* to participate is acknowledged. The scope limitation established in this order will likewise apply to IGWA.

ORDER

IT IS HEREBY ORDERED that the *Surface Water Coalition's Request for Hearing*, the *Cities' Joint Request for Hearing*, and *Jerry D. Bingham's and Valerie H. Bingham's Request for Hearing* are GRANTED, subject to the scope of hearing defined in the *Notice* and this order.

IT IS FURTHER ORDERED that the hearing is limited to the proposed revision identified in the *Notice of Opportunity for Hearing*, including the factual basis for and appropriateness of the proposed maximum historical diversion and diversion-potential values, the use of maximum historical daily diversion to establish maximum physical diversion capacity, and the operation and effect of proposed paragraphs 44 and 45 on the calculation of RISD. The limited scope of hearing established by this order applies to all parties to the proceeding intending to participate in the hearing.

NOTICE OF PREHEARING CONFERENCE

NOTICE IS HEREBY GIVEN that Director Weaver will hold a prehearing conference in this matter on **September 28, 2026, at 2 p.m. (MT)**, at the Department's State Office, located at 322 E. Front Street, 6th Floor, Conference Rooms 602C–D, Boise, Idaho. The parties may appear in person or remotely. All parties intending to participate in the hearing shall be represented at the prehearing conference and shall be prepared to discuss the issues for hearing, scheduling and procedural matters, and any other matters that may aid in the orderly and efficient resolution of this contested case.

To join the conference via computer or smartphone, please click the following Webex link and follow the prompts:

<https://idahogov.webex.com/idahogov/j.php?MTID=m92b0e57b6acaa3ead4dc00f365e9991a>

To join the conference via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: **2870 275 5525**

The conference will be held in accordance with the provisions of Chapter 17, Title 42, and Chapter 52, Title 67, Idaho Code, and the Department's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at <https://adminrules.idaho.gov/rules/current/37/370101.pdf>.

The prehearing conference will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require reasonable accommodation to attend, participate in, or understand the conference, please advise the Department no later than five (5) days before the conference. Inquiries for reasonable accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4815, or email sarah.tschohl@idwr.idaho.gov.

DATED this 14th day of September 2026.



MATHEW WEAVER, Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of September 2026, the above and foregoing was served by the method indicated below, and addressed to the following:

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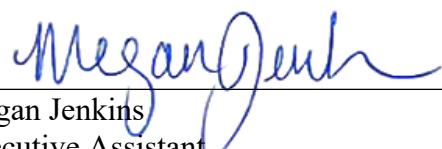
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