

**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

**NOTICE OF HEARING, NOTICE
OF PREHEARING CONFERENCE,
AND ORDER AUTHORIZING
DISCOVERY**

On April 21, 2023, the Director of the Idaho Department of Water Resources (“Department”) issued his *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”) as well as his *Final Order Regarding April 2023 Forecast Supply* (“As-Applied Order”). The Methodology Order revises the nine steps used to determine material injury to members of the Surface Water Coalition (“SWC”). The As-Applied Order predicts a shortfall for the 2023 irrigation season, which will result in mitigation requirements or curtailment for ground water rights with priority dates junior to December 30, 1953.

The Director anticipates that one or more parties will request a hearing pursuant to Idaho Code § 42-1701A(3) in response to one or both of the orders. Normally, a party has 15 days to request a hearing. However, time is of the essence because the irrigation season has commenced for many water users. Idaho's Constitutional Convention intended that there be no unnecessary delays in the delivery of water pursuant to a valid water right. *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.*, 143 Idaho 862, 874, 154 P.3d 433, 445 (2007). “Clearly, a timely response is required when a delivery call is made and water is necessary to respond to that call.” *Id.* Accordingly, the Director, consistent with the obligation to timely administer water rights, will take the proactive step of setting the matter for hearing, will set a prehearing conference, and will authorize discovery. Should the parties mutually agree that a hearing is unwarranted, the parties may file a stipulated motion to vacate.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Department will hold a hearing on the Methodology Order and As-Applied Order on **June 6–10, 2023**. **The hearing will begin on June 6 at 9:00 a.m. (MST)**. Subsequent starting and ending times will be scheduled during the hearing. The last day of the hearing, June 10, is a Saturday. The day is reserved if needed to complete the hearing.

The hearing will take place at the Department’s State Office, located at **322 E. Front Street, 6th Floor, Conference Rooms 602A–D, Boise, Idaho**.

All parties wishing to participate in the hearing shall be present in person. Remote participation will be allowed for those who wish to observe the hearing. To request remote participation information, contact Sarah Tschohl at the phone number or email listed below.

The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, as well as 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 hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodation to attend, participate in, or understand the hearing, please advise the Department no later than five (5) days prior to the hearing. Inquiries for special accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone: (208) 287-4815, email sarah.tschohl@idwr.idaho.gov.

NOTICE OF PREHEARING CONFERENCE

NOTICE IS HEREBY GIVEN that the Department will hold a prehearing conference on the Methodology Order and As-Applied Order on **April 28, 2023, at 1:30 p.m. (MST)**. The conference will take place at the Department's State Office, located at **322 E. Front Street, 6th Floor, Conference Rooms 602B–D, Boise, Idaho**. All parties wishing to participate in the prehearing conference must appear in person or by video conferencing. The parties shall come prepared to identify the issues to be addressed at the hearing.

To attend the conference via computer or smartphone, please click the following Webex link, follow the prompts, and wait to be admitted by the meeting host:
<https://idahogov.webex.com/idahogov/j.php?MTID=mb39d4fed7de1bfefe8462aaefafd3dbb>.

To join the conference via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2450 253 0090.

The prehearing 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 conference will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodation to attend, participate in, or understand the conference, please advise the Department no later than one (1) day before the conference. Inquiries for special accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone: (208) 287-4815, email sarah.tschohl@idwr.idaho.gov.

ORDER AUTHORIZING DISCOVERY

IT IS HEREBY ORDERED that the parties are authorized to immediately conduct and engage in discovery pursuant to IDAPA 37.01.01.521.

IT IS FURTHER ORDERED that, pursuant to IDAPA 37.01.01.053, documents filed in this proceeding may be served on the parties and the Department via email. Service on the Department shall be made by email to file@idwr.idaho.gov. Service on the parties shall be made by email to the email addresses listed in the Certificate of Service below.

Dated this 21st day of April 2023.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of April 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

<p>John K. Simpson MARTEN LAW LLP P.O. Box 2139 Boise, ID 83701-2139 jsimpson@martenlaw.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Travis L. Thompson MARTEN LAW LLP P.O. Box 63 Twin Falls, ID 83303-0063 tthompson@martenlaw.com jnielsen@martenlaw.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318 wkf@pmt.org</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Thomas J. Budge Elisheva M. Patterson RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 tj@racineolson.com elisheva@racineolson.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Kathleen Marion Carr US Dept. Interior 960 Broadway Ste 400 Boise, ID 83706 kathleenmarion.carr@sol.doi.gov</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th St., South Terrace, Suite 370 Denver, CO 80202 david.gehlert@usdoj.gov</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@usbr.gov</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email

<p>Sarah A Klahn Somach Simmons & Dunn 1155 Canyon Blvd, Ste. 110 Boulder, CO 80302 sklahn@somachlaw.com dthompson@somachlaw.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83205 rdiehl@pocatello.us</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83702 cbromley@mchughbromley.com cmchugh@mchughbromley.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Robert E. Williams WILLIAMS, MESERVY, & LOTHSPREICH, LLP P.O. Box 168 Jerome, ID 83338 rewilliams@wmlattys.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405 rharris@holdenlegal.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Randall D. Fife City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 rfife@idahofallsidaho.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC P.O. Box 3005 Idaho Falls, ID 83403 sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Tony Olenichak IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 Tony.Olenichak@idwr.idaho.gov</p>	<p><input checked="" type="checkbox"/> Email</p>

Corey Skinner IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033 corey.skinner@idwr.idaho.gov	<input checked="" type="checkbox"/> Email
COURTESY COPY TO: William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318 wparsons@pmt.org	<input checked="" type="checkbox"/> Email



Sarah Tschohl
Paralegal