

**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

**SCHEDULING ORDER AND  
ORDER AUTHORIZING REMOTE  
APPEARANCE AT HEARING**

**BACKGROUND**

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, anticipating that one or more parties would request a hearing pursuant to Idaho Code § 42-1701A(3) in response to one or both of the orders, issued a *Notice of Hearing, Notice of Prehearing Conference, and Order Authorizing Discovery* (“Notice of Hearing”) on April 21, 2023. In addition to scheduling an in-person hearing on the Methodology Order and As-Applied Order for June 6–10, 2023, the Notice of Hearing authorized the parties to begin conducting discovery immediately and scheduled a prehearing conference, which the Director held on April 28, 2023.

During the prehearing conference, the Director identified two Department witnesses who will be made available to the parties for deposition and will testify at the hearing—Jennifer Sukow, Engineer, Technical 2, and Matthew Anders, Technical Services Bureau Chief. The Director stated he did not intend to request a technical staff memorandum in advance of the hearing. Some counsel expressed concern about having enough time to respond to discovery given the compressed period for the hearing. The Director agreed to limit the scope and timing of discovery to address the concerns. Counsel for the Coalition of Cities<sup>1</sup> and McCain Foods USA, Inc., Candice McHugh, notified the Director of an out-of-state conflict with the hearing dates and requested that the Director allow her to formally appear virtually instead of in-person on June 6–10, 2023. No parties objected to attorney McHugh’s remote participation request

---

<sup>1</sup> In this matter, the Coalition of Cities refers to the Idaho cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell.

during the prehearing. Further, the Director and the parties discussed and agreed upon a discovery and hearing schedule. The order below memorializes the various schedules and deadlines articulated during the prehearing conference on April 28, 2023.

## **ORDER**

**IT IS HEREBY ORDERED** that discovery will be limited as follows: (1) The parties shall not engage in interrogatories or requests for admissions; (2) The parties may request production of documents. The party upon whom a request for production of documents is served shall respond to the request within 10 days from the date the request is served.

**IT IS FURTHER ORDERED** that the following schedule is ADOPTED:

- |  |   |
|--|---|
| <b>May 5, 2023</b>                               | <ol style="list-style-type: none"><li>1) Deadline for the Department to identify materials Ms. Sukow and Mr. Anders may rely upon at the hearing.</li><li>2) Deadline for the Department to summarize topics Ms. Sukow and Mr. Anders will testify about at the hearing.</li><li>3) Deadline for the parties to submit to the Department a written statement of proposed issues for the hearing.</li></ol>                |
| <b>May 10, 2023</b>                              | Deadline for the Department to augment its above-mentioned list of materials Ms. Sukow and Mr. Anders may rely on at the hearing, if needed.  |
| <b>7 Days Prior to Hearing Day 1<sup>2</sup></b> | <ol style="list-style-type: none"><li>1) Deadline for the parties to complete all discovery.</li><li>2) Deadline for the parties to deliver copies of their expert reports to the other parties.</li><li>3) Deadline for the parties to exchange and file with the Department their proposed lay and expert witness lists. The parties should include a general summary of each witness' anticipated testimony.</li></ol> |

---

<sup>2</sup> During the hearing one of the parties astutely suggested that the discovery deadline should be pinned to the hearing date, rather than an agreed upon calendar date, in the event the hearing date was moved.

- 4) Deadline for the parties to exchange and file with the Department their proposed exhibit lists. The parties shall also exchange and submit to the Department an electronic copy (via e-file email, USB thumb drive, or disc(s)) of their pre-marked exhibits using the following reserved exhibit numbers:

Exhibit Numbers	Assigned Party
1–99	Surface Water Coalition
100–199	Idaho Ground Water Appropriators
200–299	Coalition of Cities
300–399	City of Pocatello
400–499	City of Idaho Falls
500–599	Bonneville-Jefferson Ground Water District
600–699	McCain Foods USA, Inc.

Any future parties who have yet to appear and wish to submit exhibits at the hearing shall request a set of designated exhibit numbers from the Department by emailing [sarah.tschohl@idwr.idaho.gov](mailto:sarah.tschohl@idwr.idaho.gov) at least two business days prior to this deadline.

**Hearing  
Day 1**

Prior to the start of the hearing, the parties shall submit to the Department three physical copies of their pre-marked and numbered, proposed hearing exhibits.

**IT IS FURTHER ORDERED** that in accordance with IDAPA 37.01.01.552 and for good cause shown, counsel for the Coalition of Cities and McCain Foods USA, Inc., Candice McHugh, may appear virtually by video link on June 6–10, 2023. Sarah Tschohl, on behalf of the Department, will email the remote participation link to Candice McHugh no later than May 30, 2023.

DATED this 2<sup>nd</sup> day of May 2023.

  
 Gary Spackman  
 Director

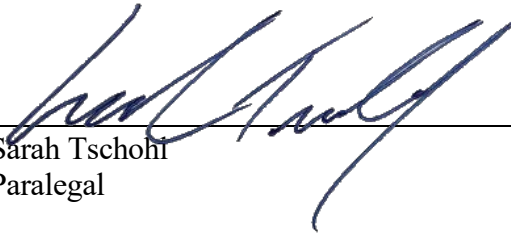
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May 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  <a href="mailto:jsimpson@martenlaw.com">jsimpson@martenlaw.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>Travis L. Thompson  MARTEN LAW LLP  P.O. Box 63  Twin Falls, ID 83303-0063  <a href="mailto:tthompson@martenlaw.com">tthompson@martenlaw.com</a>  <a href="mailto:jnielsen@martenlaw.com">jnielsen@martenlaw.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>W. Kent Fletcher  FLETCHER LAW OFFICE  P.O. Box 248  Burley, ID 83318  <a href="mailto:wkf@pmt.org">wkf@pmt.org</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>Thomas J. Budge  Elisheva M. Patterson  RACINE OLSON  P.O. Box 1391  Pocatello, ID 83204-1391  <a href="mailto:tj@racineolson.com">tj@racineolson.com</a>  <a href="mailto:elisheva@racineolson.com">elisheva@racineolson.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<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  <a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>Matt Howard  US Bureau of Reclamation  1150 N Curtis Road  Boise, ID 83706-1234  <a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>Sarah A Klahn  Somach Simmons &amp; Dunn  1155 Canyon Blvd, Ste. 110  Boulder, CO 80302  <a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a>  <a href="mailto:dthompson@somachlaw.com">dthompson@somachlaw.com</a></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  <a href="mailto:rdiehl@pocatello.us">rdiehl@pocatello.us</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Candice McHugh  Chris Bromley  MCHUGH BROMLEY, PLLC  380 South 4th Street, Suite 103  Boise, ID 83702  <a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a>  <a href="mailto:cmchugh@mchughbromley.com">cmchugh@mchughbromley.com</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Robert E. Williams  WILLIAMS, MESERVY, &amp; LOTHSPREICH, LLP  P.O. Box 168  Jerome, ID 83338  <a href="mailto:rewilliams@wmlattys.com">rewilliams@wmlattys.com</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Robert L. Harris  HOLDEN, KIDWELL, HAHN &amp; CRAPO, PLLC  P.O. Box 50130  Idaho Falls, ID 83405  <a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Randall D. Fife  City Attorney, City of Idaho Falls  P.O. Box 50220  Idaho Falls, ID 83405  <a href="mailto:rfife@idahofallsidaho.gov">rfife@idahofallsidaho.gov</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Skyler C. Johns  Nathan M. Olsen  Steven L. Taggart  OLSEN TAGGART PLLC  P.O. Box 3005  Idaho Falls, ID 83403  <a href="mailto:sjohns@olsentaggart.com">sjohns@olsentaggart.com</a>  <a href="mailto:nolsen@olsentaggart.com">nolsen@olsentaggart.com</a>  <a href="mailto:staggart@olsentaggart.com">staggart@olsentaggart.com</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Tony Olenichak  IDWR—Eastern Region  900 N. Skyline Drive, Ste. A  Idaho Falls, ID 83402  <a href="mailto:Tony.Olenichak@idwr.idaho.gov">Tony.Olenichak@idwr.idaho.gov</a></p>	<input checked="" type="checkbox"/> Email
<p>Corey Skinner  IDWR—Southern Region  1341 Fillmore St., Ste. 200  Twin Falls, ID 83301-3033  <a href="mailto:corey.skinner@idwr.idaho.gov">corey.skinner@idwr.idaho.gov</a></p>	<input checked="" type="checkbox"/> Email

<p>COURTESY COPY TO: William A. Parsons PARSONS SMITH &amp; STONE P.O. Box 910 Burley, ID 83318 <a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a></p>	<p><input checked="" type="checkbox"/> Email</p>
--	--



---

Sarah Tschohl  
Paralegal