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Attorneys for the City of Idaho Falls

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

**CITY OF IDAHO FALLS
STATEMENT OF ISSUES**

The City of Idaho Falls (“Idaho Falls” or “City”), by and through its counsel, Holden, Kidwell, Hahn & Crapo, P.L.L.C., submits this *City of Idaho Falls Statement of Issues*.

On April 21, 2023, the Director of the Idaho Department of Water Resources (“IDWR” or “Department”) issued a *Fifth Amended Methodology Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand And Reasonable Carryover* (the “Methodology Order”) and a *Final Order Regarding April 2023 Forecast Supply* (“2023 As-Applied Order”). Idaho Falls timely filed a *Challenge and Request for Hearing* on May 4, 2023. Pursuant to the Director’s May 2, 2023, *Scheduling Order and Order Authorizing Remote Appearance at Hearing*, Idaho Falls files its statement of issues in the above captioned matter.

Based on what is known now, and without the benefit of discovery, including the ability to conduct depositions, counsel for Idaho Falls identifies the following issues for the hearing:

1. Whether IDWR's new reliance on transient modeling as opposed to steady-state modeling are reasonable;
2. Whether the Eastern Snake Plain Aquifer Model has been shown to be sufficiently accurate to support the proposed transient groundwater modeling to determine curtailment dates;
3. Whether a baseline demand that incorporates increases in SWC member diversions in recent years is a valid basis for conjunctive administration;
4. The reasonableness of Project efficiencies of the SWC members, trends in the efficiencies in recent years, and how the efficiency values are used in determining reasonable in-season demands;
5. Whether IDWR failed to consider all sources of water supply to the SWC;
6. Whether 2018 is a reasonable new baseline year;
7. Whether changes to determination of the reasonable in-season demand for the SWC members are reasonable and appropriate;
8. Whether IDWR's failure to fully evaluate potential changes to the methodology used to determine the crop water needs of the SWC members is reasonable;
9. Whether IDWR's failure to fully evaluate potential changes to the methodology for forecasting the irrigation supplies of the SWC members is reasonable;
10. Whether IDWR's failure to fully evaluate changes to the methodology for determining reasonable carryover for the SWC members is reasonable;

11. Whether IDWR's failure to fully evaluate changes to the timing and procedures for updating the forecast shortages to the SWC members after the initial determination in April is reasonable;
12. Whether IDWR's failure to investigate whether the SWC members are using the water they divert efficiently and without waste, and in compliance with the terms of their decreed water rights;
13. Whether it was lawful and/or appropriate for IDWR to fail to apply all factors in the Department's Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11, including but not limited to CM Rule 20.03 and principles of reasonableness generally; and
14. IDWR's violation of due process rights of all interested water users:
 - a. by engaging in an ineffective public process related to the Department's convening of the "Technical Work Group" to discuss modifications to the Fourth Methodology Order; and
 - b. by setting the hearing without regard to the time required for discovery and without consideration of the existing obligations of the parties, their legal representatives, and consultants.

The above is based upon Idaho Falls' current understanding issues involved in this proceeding, but without the benefit of discovery and other due process. Additional issues may be identified as this matter develops.

Dated this 5th day of May, 2023.

/s/ Robert L. Harris
Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 2023, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed below by the method(s) indicated.

DOCUMENT SERVED: CITY OF IDAHO FALLS STATEMENT OF ISSUES

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