

**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 MATERIALS
DEPARTMENT WITNESSES MAY
RELY UPON AT HEARING AND
INTENT TO TAKE OFFICIAL
NOTICE**

On May 2, 2023, the Director issued a *Scheduling Order and Order Authorizing Remote Appearance at Hearing* (“Scheduling Order”). In the Scheduling Order, the identified two Idaho Department of Water Resources (“Department”) employees who will testify at the hearing—Jennifer Sukow and Matthew Anders. The Director set a deadline of May 5, 2023, for the Department to provide the materials Ms. Sukow and Mr. Anders may rely upon at the hearing as well as a summary of topics Ms. Sukow and Mr. Anders may testify to. *Scheduling Order* at 2. The Department may augment its list of materials Ms. Sukow and Mr. Anders may rely upon at the hearing, if needed, by May 10, 2023. *Id.*

A. Materials Ms. Sukow and Mr. Anders may rely upon during the June 6-10 hearing.

The materials Ms. Sukow and Mr. Anders may rely upon at the hearing have been divided into four separate folders and are publicly available on the Department’s website¹ as a downloadable zipped file labeled “Materials Department Witnesses May Rely Upon at Hearing”.

- 1st Folder:** “2022 Technical Working Group (“TWG”)”. Presentations, agendas, data and communications related to the TWG meetings this fall.
- 2nd Folder:** “2023 5th Amended Methodology Order”. Data files and notes related to baseline year, irrigated acres, project efficiency, reasonable carryover.
- 3rd Folder:** “2023 April As-Applied Order”. Copies of all files in the April Background Information folder on IDWR’s website.
- 4th Folder:** “ESPAM Report”. ESPAM documentation reports from Jennifer Sukow.

¹ The webpage for the above-captioned matter can be located at: <https://idwr.idaho.gov/legal-actions/delivery-call-actions/SWC/>.

B. Topics Ms. Sukow may testify about at the hearing:

- Steady-state vs. transient modeling / simulations for the Eastern Snake Plain Aquifer Model (ESPAM).
- Calculation of curtailment priority dates for the SWC's delivery call.

C. Topics Mr. Anders may testify about at the hearing:

- Base Line Year (BLY)
- Forecast Supply
- SWC Irrigated Acres
- Crop Water Need
- Near Real Time Mapping Evapo Transpiration at high Resolution with Internalized Calibration (NRT METRIC)
- Project Efficiency
- Reasonable Carryover
- Twin Falls Canal Company's increase in diversions
- The 2023 Technical Working Group meetings

D. Director's intent to take official notice.

Department Rule of Procedure 602 states in pertinent part:

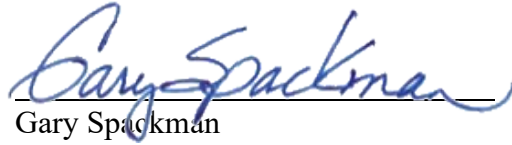
The [Director] may take official notice of any facts that could be judicially noticed in the courts of Idaho, of generally recognized technical or scientific data or facts within the agency's specialized knowledge and records of the agency. The [Director] may ask agency staff to prepare reports or memoranda to be used in deciding a contested case, and all such reports and memoranda shall be officially noticed by the [Director]. The [Director] shall notify the parties of specific facts or material noticed and the source of the material noticed, including any agency staff memoranda and data. This notice should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material officially noticed. Parties must be given an opportunity to contest and rebut the facts or material officially noticed.

IDAPA 37.01.01.602.

The Director hereby notifies the parties that he intends to take official notice of the facts and data in the "2022 Technical Working Group ("TWG")" folder, "2023 5th Amended Methodology Order" folder, "2023 April as Applied Order folder", and "ESPAM Report" folder.

Concurrent with this notice, copies of those documents will be posted to the Department's docket for this proceeding. Pursuant to Rule of Procedure 602, any party may file a written objection "to contest and rebut the facts or material to be officially noticed" on or before June 4, 2023. IDAPA 37.01.01.602.

DATED this 5th day of May 2023.

A handwritten signature in blue ink that reads "Gary Spackman". The signature is written in a cursive style and is positioned above a horizontal line.

Gary Spackman
Director

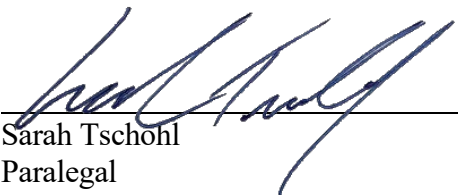
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th 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 jsimpson@martenlaw.com</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 tthompson@martenlaw.com jnielsen@martenlaw.com</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 wkf@pmt.org</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 tj@racineolson.com elisheva@racineolson.com</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 david.gehlert@usdoj.gov</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 mhoward@usbr.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<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>Dylan Anderson Dylan Anderson Law PLLC P.O. Box 35 Rexburg, Idaho 83440 dylan@dylanandersonlaw.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 Tschöhl
Paralegal