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STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE DISTRIBUTION
OF WATER TO VARIOUS WATER RIGHTS
HELD BY AND 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

I.R.C.P. 30(b)(6) NOTICE OF TAKING DEPOSITION DUCES TECUM OF IDWR

To: Idaho Department of Water Resources and ITS counsel of record

PLEASE TAKE NOTICE that counsel for Idaho Ground Water Appropriators, Inc., Bingham Ground Water District, Bonneville-Jefferson Ground Water District, and the Cities of Idaho Falls, Pocatello, Jerome, Burley, Bliss, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Paul, Richfield, Rupert, Shoshone, and Wendell will take the deposition of Idaho Department of Water Resources (“Department”) before M&M Court Reporting (“M&M”) in accordance with the *Order Authorizing Discovery* issued April 21, 2023, IDAPA 37.01.01.520.01.a and 37.01.01.520.02, and Idaho Rules of Civil Procedure 26, 30(a), 34 and 30(b)(6). The deposition will commence on a trailing docket immediately following the deposition of Matthew Anders scheduled to begin at

9:00 a.m. on May 12, 2023, and continuing from day to day thereafter until completion, at the office of the **Idaho Department of Water Resources, 322 E. Front Street, Boise, Idaho 83702**. The deponent must be present in person. The court reporter will participate in person. Attorney may participate in person or via the Zoom video platform, hosted by M&M. Participants will receive a Zoom link via email from M&M the day before the deposition.

The Department is required to designate one or more persons to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify, regarding any information considered by Department staff and/or the Director in developing the *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* issued April 21, 2023 (“Fifth Methodology Order”) and/or the *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* (“As-Applied Order”) issued April 21, 2023, that is not included among the materials that Ms. Sukow and Mr. Anders may rely upon and the topics they may testify about pursuant to the *Notice of Materials Department Witnesses May Rely Upon at Hearing And Intent to Take Official Notice* issued May 5, 2023, including but not limited to the following:

1. The futile call doctrine pursuant to rules 10.08 and 20.04 of the Rules for Conjunctive Management of Surface and Ground Water Resources (“CM Rules”).
2. The policy of full economic development of underground water resources pursuant to CM Rules 10.07 and 20.03.
3. The policy that an appropriator is not entitled to command the entirety of large volumes of water in a surface or ground water source to support his appropriation contrary to the public policy of reasonable use of water pursuant to CM Rule 20.03.
4. The reasonableness of the diversion and use of water by the Surface Water Coalition pursuant to CM Rules 20.03, 20.05, 40.03, and 42.
5. The extent to which the water needs of the Surface Water Coalition could be met with their existing facilities and water supplies by employing reasonable diversion and conveyance efficiency and conservation practices pursuant to CM Rule 42.
6. The change from a steady-state to a transient-state application of the ESPA Model in the Fifth Methodology Order.
7. The Department’s review of comments submitted by outside consultants in response to the *Summary of Recommended Technical Revisions to the 4th Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover for the Surface Water Coalition* issued by Department staff dated December 23, 2023.


8. Any alleged non-compliance by groundwater users the so-called IGWA-Surface Water Coalition Settlement Agreement approved as a mitigation plan in IDWR Docket No. CM-MP-2016-001.
9. The documents identified below.

The deponent is required to bring with him or her true and correct copies of all documents reviewed by Department staff and/or the Director in connection with development of the Fifth Methodology Order or the As-Applied Order that relate, directly or indirectly, to the topics identified above, including but not limited to the following:

1. Documents relating to the implementation of a trim line or any other mechanism that could be used to implement the futile call doctrine, the policy of full economic development of underground water resources, and/or the policy that an appropriator is not entitled to command the entirety of large volumes of water in a surface or ground water source to support his appropriation contrary to the public policy of reasonable use of water.
2. Letters, emails, text messages and other correspondence sent by Department personnel to any person not employed by the Department, or received by Department personnel from any person not employed by the Department, concerning the Fifth Methodology Order and/or the April 2023 As-Applied Order, or the development of such orders, prior to 6:45 p.m. mountain daylight time, April 21, 2023.
3. Documents showing the actual or estimated total number of water rights that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans; the total number of water rights by beneficial use (irrigation, municipal, industrial, commercial, etc.) that would be curtailed; and/or the total number of acres authorized for irrigation that would be curtailed.
4. Documents showing the actual or estimated total number of water rights that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.
5. Documents showing the number of water rights by beneficial use (irrigation, municipal, commercial, etc.) that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.
6. Documents showing the actual or estimated total number of acres authorized for irrigation that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.
7. Documents showing the actual or estimated total diversion rate (cubic feet per second) authorized for diversion under water rights that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.
8. Documents showing the actual or estimated total volume of water (acre-feet) authorized for diversion under water rights that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2023, I served the foregoing document on the persons below via email or as otherwise indicated:



 Thomas J. Budge

Director Gary Spackman Garrick Baxter Sarah Tschohl Idaho Department of Water Resources 322 E Front St. Boise, ID 83720-0098	gary.spackman@idwr.idaho.gov garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov file@idwr.idaho.gov
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<p><i>COURTESY COPY TO:</i> William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318</p>	<p>wparsons@pmt.org</p>