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**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

**DEPARTMENT'S RESPONSE TO
GROUNDWATER USERS'
REQUEST FOR PRODUCTION
AND REQUEST FOR PUBLIC
RECORDS**

This document contains the Idaho Department of Water Resources' ("Department") responses to the *Groundwater Users' First Set of Request for Production to IDWR; Or, Alternatively, Request for Public Records*.

GENERAL OBJECTIONS

1. The Department has not completed its own investigation. Accordingly, the responses that follow are based upon the best knowledge, information, and belief of the Department at this time. The Department reserves the right to make any further responses if it appears that any omission or error has been made in connection with these responses or that more accurate information has become available. These responses are made without prejudice to the Department's right to use such evidence as may later be discovered or evaluated.

2. The Department objects to any and all definitions, instructions and requests, or any part thereof, to the extent they call for material subject to the attorney-client privilege, the work product doctrine, investigative privilege or any other privilege, immunity or statutory prohibition. This objection applies to all production requests that seek such information. This objection is intended to apply to all of the requests that seek such information and will not be repeated for each request to which it applies. The Department has, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

3. The Department objects to any and all requests, or any part thereof, to the extent that they require identification of facts or information not relevant to the *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”) or the *Final Order Regarding April 2023 Forecast Supply* (“As-Applied Order”) and are outside the scope of discovery. The responses are made subject to all objections as to competence, relevance, materiality, and admissibility.

4. The Department objects to any and all requests, or any part thereof, to the extent they purport to impose burdens on the Department in excess of those allowed by the Idaho Rules of Civil Procedure.

RESPONSES TO REQUESTS FOR PRODUCTION

Request for Production No. 1: Produce true and correct copies of all documents indicating when the Department first began considering a review and/or revision of the Fourth Methodology Order.

Response to Request for Production No. 1: Objection. The request calls for the production of documents protected by the attorney-client privilege and/or work product doctrine. Without waiving any objections, including the General Objections, the Department responds that documents the Department determines to be responsive will be posted to the Department’s publicly available website. To access please visit: <https://idwr.idaho.gov/legal-actions/delivery-call-actions/SWC/>.

Request for Production 2: Produce true and correct copies of all documents indicated when the Department decided to proceed with a review and/or revision of the Fourth Methodology Order.

Response to Request for Production No. 2: Objection. The request calls for the production of documents protected by the attorney-client privilege and/or work product doctrine. Without waiving any objections, including the General Objections, the Department responds that documents the Department determines to be responsive will be posted to the Department’s publicly available website. To access please visit: <https://idwr.idaho.gov/legal-actions/delivery-call-actions/SWC/>.

Request for Production 3: Produce true and correct copies of all documents relating to the Department's consideration of, in connection with the Fifth Methodology Order, the futile call doctrine, the policy of full economic development of underground water resources, the policy of reasonable use of water, or the policy of optimum development of water resources.

Response to Request for Production No. 3: The Department has no such documents at this time.

Request for Production 4: Produce true and correct copies of all documents relating to the Department's consideration of, in connection with the Fifth Methodology Order, the extent to which the water needs of the Surface Water Coalition or its members could be met with their existing facilities and water supplies by employing reasonable diversion and conveyance efficiency and conservation practices.

Response to Request for Production No. 4: The Department has no such documents at this time.

Request for Production 5: Produce true and correct copies of all documents generated, prepared, considered, discussed, utilized, reviewed, evaluated, analyzed, or relied upon by the Department in connection with development of the Fifth Methodology Order and/or the April 2023 As-Applied Order.

Response to Request for Production No. 5: Objection. The request calls for the production of documents protected by the attorney-client privilege and/or work product doctrine. The Department objects to this document request as overly broad and unduly burdensome. Without waiving any objections, including the General Objections, the Department responds that it already provided responsive documents when the Department posted technical analysis documents to the Department's publicly available website on May 5 and May 15, 2023. Additional documents the Department determines to be responsive will be posted to the Department's publicly available website. To access please visit: <https://idwr.idaho.gov/legal-actions/delivery-call-actions/SWC/>.

Request for Production 6: Produce true and correct copies of all letters, emails, text messages and other written 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, prior to 6:45 p.m. mountain daylight time, April 21, 2023, concerning the Fifth Methodology Order, the April 2023 As-Applied Order, or the development, formulation, drafting, implication, application or effect of such orders.

Response to Request for Production No. 6: All documents the Department determines to be responsive will be posted to the Department's publicly available website. To access, please visit: <https://idwr.idaho.gov/legal-actions/delivery-call-actions/SWC/>.

Request for Production 7: Produce true and correct copies of all 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.

Response to Request for Production No. 7: All documents the Department determines to be responsive will be posted to the Department’s publicly available website. To access, please visit: <https://idwr.idaho.gov/legal-actions/delivery-call-actions/SWC/>.

Request for Production 8: Produce true and correct copies of all 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.

Response to Request for Production No. 8: All documents the Department determines to be responsive will be posted to the Department’s publicly available website. To access, please visit: <https://idwr.idaho.gov/legal-actions/delivery-call-actions/SWC/>.

Request for Production 9: Produce true and correct copies of all 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.

Response to Request for Production No. 9: All documents the Department determines to be responsive will be posted to the Department’s publicly available website. To access, please visit: <https://idwr.idaho.gov/legal-actions/delivery-call-actions/SWC/>.

Request for Production 10: Produce true and correct copies of all 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.

Response to Request for Production No. 10: All documents the Department determines to be responsive will be posted to the Department’s publicly available website. To access, please visit: <https://idwr.idaho.gov/legal-actions/delivery-call-actions/SWC/>.

Request for Production 11: Produce true and correct copies of all 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.

Response to Request for Production No. 11: All documents the Department determines to be responsive will be posted to the Department’s publicly available website. To access, please visit: <https://idwr.idaho.gov/legal-actions/delivery-call-actions/SWC/>.

Request for Production 12: Produce true and correct copies of all documents relating to the extent, degree, or magnitude of beneficial use of water that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.

Response to Request for Production No. 12: All documents the Department determines to be responsive will be posted to the Department’s publicly available website. To access, please visit: <https://idwr.idaho.gov/legal-actions/delivery-call-actions/SWC/>.

Request for Production 13: Produce true and correct copies of all documents relating to projected, estimated, or potential crop loss or any other impairment of beneficial use of water within Twin Falls Canal Company as a result of the 75,200 acre-feet Demand Shortfall predicted by the April 2023 As-Applied Order.

Response to Request for Production No. 13: The Department has no such documents at this time.

Request for Production 14: Produce true and correct copies of all documents comparing the adverse effects of curtailment under the Fifth Methodology Order and/or April 2023 As-Applied Order, in the absence of approved mitigation plan, on beneficial use of the ESPA versus the benefits of curtailment to Twin Falls Canal Company.

Response to Request for Production No. 14: The Department has no such documents at this time.

Request for Production 15: Produce true and correct copies of all documents that reference or reflect the Department's review or consideration, in connection with the Fifth Methodology Order and/or the As-Applied Order, of any alleged non-compliance with, or breach of, the so-called IGWA-Surface Water Coalition Settlement Agreement approved as a mitigation plan in IDWR Docket No. CM-MP-2016-001.

Response to Request for Production No. 15: Objection. Issues pertaining to IGWA's non-compliance with the Settlement Agreement are outside the scope of this proceeding. IGWA's compliance is a separate administrative proceeding in a separate docket – Docket No. CM MP 2016-001. Without waiving any objections, including the General Objections, the Department responds that it has no such documents at this time.

Request for Production 16: Produce true and correct copies of all documents showing the proportionate shares of the projected demand shortfall of 75,200 acre-feet set forth in the April 2023 As-Applied Order attributable to, respectively, North Snake Ground Water District, Magic Valley Ground Water District, Carey Valley Ground Water District, Aberdeen-American Falls Area Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, and Henry's Fork Ground Water District, and all documents showing the calculation of their proportionate shares.

Response to Request for Production No. 16: The documents relevant to the calculation of IGWA's proportionate share of the predicted demand shortfall were posted to the Department's publicly available website on May 5, 2023. To access, please visit: <https://idwr.idaho.gov/legal-actions/delivery-call-actions/SWC/>. Regarding each Ground Water District's estimated distribution of proportionate shares, a table summarizing the results was provided to the parties in this case by email on May 5, 2023, at 4:14 pm. The supporting model files will be posted to the Department's publicly available website. To access, please visit: <https://idwr.idaho.gov/legal-actions/delivery-call-actions/SWC/>.

RESPONSE TO PUBLIC RECORDS REQUEST

Because the Department is providing the documents pursuant to the Groundwater Users' request for production, the Department will not be responding to the public records request. Moreover, public records requests are unavailable "to supplement, augment, substitute or supplant discovery procedures..." Idaho Code § 74-115(3).

DATED this 18th day of May 2023.



GARRICK L. BAXTER
Deputy Attorney General
Idaho Department of Water Resources

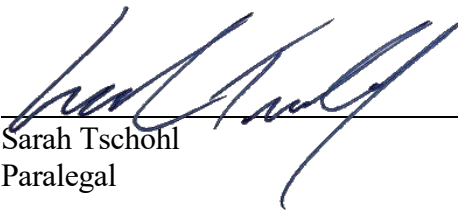
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of May 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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