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DEPARTMENT OF  
WATER RESOURCES

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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

**DECLARATION OF  
THOMAS J. BUDGE**

I, Thomas J. Budge, declare the following:

1. I am one of the attorneys of record representing Idaho Ground Water Appropriators, Inc. (“IGWA”) in the above-captioned matter.
2. Attached hereto as Appendix A is an excerpt from *Surface Water Coalition’s Response Brief* filed January 19, 2024, in Ada County Case No. CV01-23-13173. This district court case was initiated by IGWA’s petition for judicial review of the Director’s July 19, 2023, *Post-Hearing Order Regarding Fifth Methodology Order*, in IDWR Docket No. CM-DC-2010-001, issued in response to challenges by IGWA, the SWC, and others to the Fifth Methodology Order and April 2023 As-Applied Order.

I declare under the penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 18th day of November, 2025.




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Thomas J. Budge

## CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November, 2025, I served the foregoing document on the persons below via email or as otherwise indicated:

  
Thomas J. Budge

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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

IDAHO GROUND WATER  
APPROPRIATORS, INC.,

Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER  
RESOURCES, and GARY SPACKMAN, in  
his capacity as Director of the Idaho  
Department of Water Resources,

Respondents,

and

AMERICAN FALLS RESERVOIR  
DISTRICT #2, MINIDOKA IRRIGATION  
DISTRICT, A&B IRRIGATION DISTRICT,  
BURLEY IRRIGATION DISTRICT,  
MILNER IRRIGATION DISTRICT, NORTH  
SIDE CANAL COMPANY, TWIN FALLS  
CANAL COMPANY, CITY OF  
POCATELLO, CITY OF BLISS, CITY OF  
BURLEY, CITY OF CAREY, CITY OF  
DECLO, CITY OF DIETRICH, CITY OF  
GOODING, CITY OF HAZELTON, CITY OF  
HEYBURN, CITY OF JEROME, CITY OF  
PAUL, CITY OF RICHFIELD, CITY OF  
RUPERT, CITY OF SHOSHONE, CITY OF  
WENDELL, BONNEVILLE-JEFFERSON  
GROUND WATER DISTRICT, and  
BINGHAM GROUND WATER DISTRICT,

Intervenors.

**Case No. CV01-23-13173**

IN THE MATTER OF DISTRIBUTION OF  
WATER TO VARIOUS WATER RIGHTS  
HELD BY AND FOR THE BENEFIT OF  
A&B IRRIGATION DISTRICT, AMERICAN

FALLS RESERVOIR DISTRICT NO. 2,  
BURLEY IRRIGATION DISTRICT,  
MILNER IRRIGATION DISTRICT,  
MINIDOKA IRRIGATION DISTRICT,  
NORTH SIDE CANAL COMPANY, AND  
TWIN FALLS CANAL COMPANY.

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## **SURFACE WATER COALITION'S RESPONSE BRIEF**

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### **Judicial Review from the Idaho Department of Water Resources**

Gary D. Spackman, Director  
Honorable Eric J. Wildman, Presiding

John K. Simpson, ISB #4242  
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(See Service Page for Remaining Counsel)

First, neither section (Art. XV § 4 and § 5) applies to the water user who has appropriated water directly from the water source. . . . Finally, neither section governs conjunctive management. . . . There is nothing in the wording of Article XV, § 7, that indicates that it grants the legislature or the Idaho Water Resource Board the authority to modify that portion of Article XV, § 3, which states, “Priority of appropriation shall give the better right as between those using the water” . . . The policy of securing the maximum use and benefit, and least wasteful use, of the State’s water resources applies to both surface and underground waters, and it requires that they be managed conjunctively.

150 Idaho at 805-807, 252 P.3d at 86-88.

Accordingly, any claims of error related to the Director’s application of the Ground Water Act or CM Rule 20 should be denied. Those provisions do not apply in the manner IGWA suggests and do not expose any errors in the Director’s *Sixth Order* and the continued conjunctive water right administration in this case. Further, the following legal doctrines prohibit IGWA’s attempts to re-challenge the methodology and the established burdens of proof and evidentiary standards adopted by the Idaho Supreme Court. *See A&B Irr. Dist.*, 155 Idaho at 655, 315 P.3d at 843.

## **II. Res Judicata and The Law of the Case Doctrines Preclude IGWA’s Alleged Defenses.**

IGWA attempts to impermissibly re-litigate certain defenses through its “substantive errors” portion of the opening brief. *See generally IGWA Br.* at 29-31, 36-44. These defenses, having been previously raised and litigated, are barred by both the *res judicata* and “law of the case” doctrines. In other words, IGWA cannot continue to regurgitate defenses that have already been denied by Idaho’s judiciary. The Court should reject IGWA’s arguments accordingly.

The doctrine of *res judicata* covers both claim preclusion and issue preclusion. *See Monitor Finance, L.C. v. Wildlife Ridge Estates, LLC*, 164 Idaho 555, 560, 433 P.3d 183, 188 (2019). Claim preclusion bars a subsequent action between the same parties upon the same claim or upon claims relating to the same cause of action. *See id.*

The three criteria are: 1) the original action ended in a final judgment on the merits; 2) the present claim involves the same parties; and 3) the present claim arises out of the same transaction or series of transactions as the original action. *See id.* The doctrine exists “to prevent the resurrection of a lawsuit already laid to rest.” *See Byrd v. Idaho State Bd. of Land Comm’rs*, 169 Idaho 922, 931, 505 P.3d 708, 717 (2022). Further, the doctrine applies to administrative proceedings as well. *See id.* All three of the criteria are met here and therefore the Court should apply *res judicata* to deny IGWA’s present appeal of the agency’s alleged “substantive errors.”

First, the appeal concerns the same parties, the Coalition, IGWA, and IDWR. Next, the claims arise out of the same transaction, the underlying delivery call proceeding and the Director’s methodology for administration. IGWA collaterally attacks the Director’s methodology for forecasting water supply, use of irrigated acreage, accounting for supplemental groundwater use, and calculating project efficiency and system improvements. *See IGWA Br.* at 32-39. IGWA also alleges the Director wrongly refused to deny the call on theories of “futile call” and “maximum beneficial use.” *See id.* at 39-44. All of these claimed errors and defenses were previously litigated and denied.<sup>23</sup> Moreover, any challenges to the methodology steps and underlying analysis were fully adjudicated in the 382 *Decision*. Consequently, the final criteria of a final judgment on the merits is met, and the Court can deny IGWA’s appeal of these issues accordingly. There simply is no legal basis to allow IGWA to continue to litigate defenses that have already been denied.

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<sup>23</sup> IGWA originally moved for summary judgment on “futile call” and its “maximum use” theories. *See Addendum C (Idaho Ground Water Appropriators’ Motion for Summary Judgment and Memorandum in Support*, Mar. 23, 2005). The Director denied IGWA’s motion. *See Addendum D (Order on Petition to Intervene and Denying Motion for Summary Judgment et al.*, Apr. 6, 2005). IGWA did not appeal the Director’s decision on these issues, and the resulting order on judicial review and the Supreme Court opinion constitute a final adjudication on the merits of IGWA’s claimed defenses. *See Order on Petition for Judicial Review* (Gooding County Dist. Ct., Fifth Jud. Dist., Case No 2008-551); *A&B Irr. Dist. v. IDWR*, 155 Idaho 640, 315 P.3d 828 (2013).



In addition to *res judicata*, the “law of the case” doctrine precludes IGWA from re-raising previously denied defenses and alleged errors in the methodology. The doctrine of “law of the case” is well established in Idaho and provides that “upon an appeal, the Supreme Court, in deciding a case presented states in its opinion a principle or rule of law necessary to the decision, such pronouncement becomes the law of the case, and must be adhered to throughout its subsequent progress both in the trial court and upon subsequent appeal.” *Swanson v. Swanson*, 134 Idaho 512, 515, 5 P.3d 973, 976 (2000); *see also*, *South Valley*, 2024 WL 136840, at \*15.

Idaho courts have applied the doctrine to preclude re-litigation of issues in cases that did not reach the Supreme Court during the first appeal. *See* 134 Idaho at 516, 5 P.3d at 977. Further, where a district court acts in an appellate capacity and there is no appeal to the Supreme Court, the rulings of the district court “become final rulings in the case, not subject to attack in this appeal, and which stated the law of the case that the magistrate—and even this appellate court—must follow in this appeal.” *Id.*; *see also*, 2024 WL 136840, at \*15 (“The doctrine prevents relitigating issues decided by a district court acting in its appellate capacity, even when an appeal was not taken to the Supreme Court”). The law of the case doctrine “prevents consideration on a subsequent appeal of alleged errors that might have been, but were not, raised in the earlier appeal.” *State v. Hawkins*, 155 Idaho 69, 72, 305 P.3d 513, 516 (2013).

IGWA’s claimed defenses of “futile call” and “maximum beneficial use” have been denied and do not preclude the Director’s continued conjunctive administration in this matter. IGWA did not appeal those prior denials<sup>24</sup> and the Idaho Supreme Court affirmed the Director’s ability to employ an adjustable “methodology” for administration of the call pursuant to the “established evidentiary standards, presumptions, and burdens of proof.” *See* 155 Idaho at 648-

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<sup>24</sup> *See supra* at 25, n. 23.

53, 315 P.3d at 836-41. Any alleged errors with the methodology framework and analysis were similarly addressed in the 382 *Decision*. Consequently, these decisions are “law of the case” and therefore preclude re-litigation IGWA’s alleged “substantive errors” and defenses.

Further, whereas this Court previously reviewed the methodology framework and the analyses and calculations used by the Director, IGWA cannot now claim errors related to the “baseline year,” “forecast supply,” and “system efficiency” issues that were previously litigated. *See IGWA Br.* at 32. The Director has updated the data based upon additional years, and IGWA cannot collaterally attack the underlying technique and analysis now. In short, both the *res judicata* and “law of the case” doctrines bar IGWA’s present arguments and the Court should deny its appeal accordingly.

### **III. Best Science Claims**

IGWA casts an overly broad argument that the *Clear Springs* Court “has instructed the Director use the ‘best science available’” in support of its claims related to the forecast supply, irrigated acres, and supplemental groundwater. IGWA distorts the Court’s evaluation of ESPAM in that case as standing for a new standard that the Director somehow violated.<sup>25</sup> IGWA further alleges the Director abused his discretion by not accepting its proposed changes to technical matters in the methodology. *See IGWA Br.* at 32. IGWA’s claim regarding its “more accurate methods” rings hollow, particularly in light of the standard of review under the Idaho APA.

On judicial review, courts cannot substitute their judgment for that of the agency as to the weight of the evidence on questions of fact. *See* I.C. § 67-5279(1); *Byrd v. Idaho State. Bd. of*

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<sup>25</sup> The issue in *Clear Springs* concerned the Groundwater Users’ claim that the Director failed to take into account a higher level of uncertainty in applying the model. *See* 150 Idaho at 812-15; 252 P.3d at 93-95. The Court found the Groundwater Users “failed to show that the Director abused his discretion in relying upon the model.” *Id.* The case did not, as IGWA implies here, create a new standard of review different than what is provided by Idaho’s APA. *See* I.C. § 67-5279.