

Nov 18, 2025

DEPARTMENT OF
WATER RESOURCES

Thomas J. Budge (ISB# 7465)
Elisheva M. Patterson (ISB#11746)
RACINE OLSON, PLLP
201 E. Center St. / P.O. Box 1391
Pocatello, Idaho 83204
(208) 232-6101 – phone
(208) 232-6109 – fax
tj@racineolson.com
elisheva@racineolson.com
Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

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

**IDAHO GROUND WATER
APPROPRIATORS, INC.'S MOTION
FOR SUMMARY JUDGMENT**

Idaho Ground Water Appropriators, Inc. (“IGWA”), by and through counsel, and pursuant to IDAPA 37.01.01.220.03, hereby moves for summary judgment in response to A&B Irrigation District’s (“A&B”) requests for hearing filed April 29 and July 24, 2025. This motion is supported by declarations of Sophia Sigstedt and Thomas J. Budge filed herewith. It is also supported by pleadings and orders filed in this contested case and in related contested cases cited in this motion.¹

¹ All pleadings and orders cited in this motion are part of the agency record in this Docket No. CM-DC-2010-001 unless a citation is given to a different docket. IGWA requests that the hearing officer take official notice pursuant to IDAPA 37.01.01.602 of all pleadings and orders cited in this motion. IDWR’s maintains an online repository of contested case pleadings and orders accessible via <https://idwr.idaho.gov/legal-actions/administrative-actions/>.

Introduction

A&B's hearing request filed April 29, 2025, challenges the *Final Order Regarding April 2025 Forecast Supply* issued April 16, 2025 ("April 2025 As-Applied Order"). (*A&B Irr. District's Req. for Hrg.*, Apr. 29, 2025.) Specifically, A&B requests a hearing to challenge the method used by the Director to calculate A&B's storage water mitigation obligation under the Surface Water Coalition ("SWC") delivery call. *Id.*

A&B's hearing request filed July 24, 2025, challenges the *Order Revising April 2025 Forecast Supply and Continuing May 16, 2025 Curtailment Order* issued on July 10, 2025 ("July 2025 As-Applied Order"). (*A&B Irr. District's Req. for Hrg.*, Jul. 24, 2025.) As with A&B's April hearing request, its July request challenges the method used by the Director to calculate A&B's storage water mitigation obligation under the SWC delivery call. *Id.*

As explained below, the hearing officer should issue summary judgment that A&B is barred by the doctrines of *res judicata*, "law of the case," and *quasi-estoppel* from challenging the method used by the Director to calculate A&B's proportionate storage water obligation.

Relevant Facts & Procedural History

A&B has an approved mitigation plan to protect its groundwater rights from curtailment under the SWC delivery call. A&B's plan was filed with the Department on May 21, 2015. (*A&B Irr. District's Amended Rule 43 Mit. Plan*, Docket No. CM-MP-2015-003 (May 21, 2015).) It proposed to mitigate injury to the SWC by several means, including the delivery of storage water. *Id.* at 3. The Director of the Idaho Department of Water Resources ("IDWR" or "Department") approved the plan on December 16, 2015. (*Final Order Approving Mit. Plan*, Docket No. CM-MP-2015-003 (Dec. 16, 2015).) Neither the plan nor the order approving it specifies how A&B's storage water mitigation obligation would be calculated.

On December 27, 2023, A&B filed a stipulation regarding its approved mitigation plan, which confirms A&B's ability to provide storage water as mitigation. (*Stip. Re. A&B Irr. District's Amended Rule 43 Mit. Plan*, Docket No. CM-MP-2015-003 (Dec. 27, 2023).) The Director issued an order approving the stipulation on January 10, 2025. (*Final Order Approving Amended Mit. Plan*, Docket No. CM-MP-2016-003 (Jan. 10, 2025).) Neither the stipulation nor the order approving it specify how A&B's storage water mitigation obligation would be calculated.

The Director calculates storage water mitigation obligations any time it issues a curtailment order under the SWC delivery call. Curtailment orders are issued when a “demand shortfall” is calculated under the Methodology Order governing the SWC delivery call. Each time the Director applies the Methodology Order, the Director issues which is commonly known as an “As-Applied Order.”

When an As-Applied Order calculates a “demand shortfall” to the SWC, the order includes a curtailment date that will be implemented against junior groundwater users who are not protected from curtailment by an approved mitigation plan. For groundwater users authorized to deliver storage water as mitigation, the As-Applied Order also identifies the amount of storage water the groundwater user must provide as mitigation to avoid curtailment, based on their proportionate share of the demand shortfall.

From the time A&B’s mitigation plan was first approved in 2015 to the present, the Director has calculated the proportionate storage water mitigation obligations of A&B and other groundwater users, including IGWA’s member ground water districts, using a steady-state application of ESPAM. (Sigstedt Decl., ¶¶ 6-7.)

A&B first challenged the Director’s calculation of its storage water mitigation obligation in 2016. On April 19, 2016, the Director issued its *Final Order Regarding April 2016 Forecast Supply* (“April 2016 As-Applied Order”), which predicted a demand shortfall of 44,200 acre-feet and calculated A&B’s proportionate share as 3,463 acre-feet. A&B challenged this determination by filing *A&B Petition for Reconsideration/Request for Hearing* on May 2, 2016.

On May 11, 2016, the Director issued an *Order on Petition for Reconsideration and Request for Hearing*, finding that A&B’s proportionate share should be adjusted downward because the Director had mistakenly considered groundwater use by non-A&B water rights within A&B’s service area. A&B did not further challenge the Director’s method for calculating A&B’s storage water mitigation obligation.

On April 21, 2023, the Director changed the methodology used to administer water rights under the SWC delivery call by issuing the *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Fifth Methodology Order”). Among other things, the Fifth Methodology Order changed the way the Director calculates curtailment dates in response to a demand shortfall, switching from a steady-state to a transient-state application of ESPAM. The Fifth Methodology Order did not

change the way mitigation storage obligations are calculated, which continued to be based on steady-state modeling.

Also on April 21, 2023, the Director issued the *Final Order Regarding April 2023 Forecast Supply* (“April 2023 As-Applied Order”), which calculated A&B’s storage water mitigation obligation as 498 acre-feet. (p. 5, fn. 5). Several parties, including A&B, challenged the Fifth Methodology Order and the April 2023 As-Applied Order. A&B submitted a statement of issues for hearing, including: (1) whether A&B’s proportionate storage water mitigation obligation calculated in the April 2023 As-Applied Order “is correctly based upon A&B’s actual diversion and use of water rights that are subject to the identified curtailment date;” and (2) whether “the steady-state use of the ESPAM 2.2 in identifying A&B’s proportionate share is consistent with the transient use of the model” for determining curtailment dates. (*SWC’s Req. for Hrg. and Stmt. of Issues* (May 5, 2023, pp. 2-3.))

A hearing was held June 6-9, 2023, after which A&B submitted a post-hearing brief. (*SWC Post-Hrg. Br.*, (June 16, 2023).) Among other things, A&B challenged the method used by the Director to calculate A&B’s proportionate share of the “demand shortfall” for the purpose of defining its storage water mitigation obligation. *Id.* at 12. The Director issued a *Post-Hearing Order Regarding Fifth Amended Methodology Order* on July 19, 2023, which did not grant the relief requested by A&B. A&B did not appeal that decision.

On April 18, 2024, the Director issued the *Final Order Regarding April 2024 Forecast Supply* (“April 2024 As-Applied Order”), which calculated A&B’s storage water mitigation obligation as 498 acre-feet. (p. 5, fn. 8). The method the Director employed was the same one used in the April 2023 As-Applied Order. (Sigstedt Decl., ¶ 6.) A&B did not challenge the April 2024 As-Applied Order.

On April 16, 2025, the Director issued the April 2025 As-Applied Order, which calculated A&B’s storage water mitigation obligation as 384 acre-feet. (p. 5, fn. 8.) This time, A&B challenged the method used by the Director to calculate its storage water mitigation obligation. (*A&B Irr. District’s Req. for Hrg.*, (April 29, 2025).) The Director subsequently issued the July 2025 As-Applied Order, and A&B again requested a hearing on the same issues. (*A&B Irr. District’s Req. for Hrg.* (Jul. 24, 2025).)

Related to the issue of how storage water mitigation obligations are calculated is the 2024 Stipulated Mitigation Plan (“2024 Plan”) between the SWC and IGWA’s member ground water

districts. A&B is a party to the 2024 Plan, which requires that the storage water mitigation obligations be calculated using steady-state modeling. The 2024 Plan was approved by the Director via the *Amended Final Order Approving Stipulated Mitigation Plan* issued February 7, 2025, in IDWR Docket No. CM-MP-2024-003.

Summary Judgment Standard

Under Department rules of procedure, motions for summary judgment are governed by rule 56 of the Idaho Rules of Civil Procedure. Under I.R.C.P. 56(c), summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The Court should liberally construe all facts and draw all reasonable inferences in favor of the nonmoving party. *Iron Eagle Dev., LLC v. Quality Design Sys., Inc.*, 138 Idaho 487, 491 (2003). However, “the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). There must be sufficient evidence provided which would reasonably allow a jury to return a verdict in the favor of the party who is resisting the motion. *Gneiting v. Idaho Asphalt Supply, Inc.*, 130 Idaho 393, 396 (Ct. App. 1997).

Statement of Undisputed Facts

1. The Director has, since 2016, calculated storage water mitigation obligations under the Methodology Order using steady-state applications of ESPAM. (Sigstedt Decl., ¶¶ 6-7.)
2. The Methodology Order was substantially changed in 2023. Based on the new Methodology Order, the Director issued the April 2023 As-Applied Order which predicted a demand shortfall and calculated A&B’s proportionate storage water mitigation obligation.
3. A&B challenged the Director’s method for calculating A&B’s proportionate storage water mitigation obligation in the April 2023 As-Applied Order. The Director rejected A&B’s arguments, and A&B declined to appeal it.
4. The April 2024 As-Applied Order predicted a demand shortfall to the SWC and calculated A&B’s proportionate storage water mitigation obligation. A&B did not challenge the order.

5. On November 15, 2024, A&B and other parties executed the 2024 Plan, then submitted it to the Director for approval in IDWR Docket No. CM-MP-2024-003. The director approved it via the *Amended Final Order Approving Stipulated Mitigation Plan* issued February 7, 2025, in IDWR Docket No. CM-MP-2024-003.
6. The 2024 Plan expressly states that storage water mitigation obligations among the participating ground water districts should be based on steady-state application of ESPAM.

Argument

As explained below, the doctrines of *res judicata* and “law of the case” preclude A&B from challenging the method by which the Director calculates A&B’s proportionate storage water mitigation obligations because A&B could have and did raise these issues previously in this action. In addition, the *quasi-estoppel* doctrine precludes A&B from challenging the Director’s use of steady-state modeling to calculate storage water mitigation obligations because A&B agreed to the use of steady-state modeling in the 2024 Plan.

A. *Res Judicata*

Res judicata bars litigation of claims and issues that were or could have been litigated in a prior action. *Ferrell v. Brown*, 111 Idaho 1027, 1030 (Ct.App. 1986). The doctrine covers both claim preclusion and issue preclusion (collateral estoppel). *Elsaesser v. Riverside Farms, Inc.*, 170 Idaho 502, 508 (2022). It applies in administrative proceedings as well as judicial proceedings. *Byrd v. Idaho State Bd. of Land Comm’rs*, 169 Idaho 922, 931 (2022).

“Claim preclusion bars a subsequent action between the same parties upon the same claim or upon claims relating to the same cause of action.” *Id.* (quoting *Berkshire Invs., LLC v. Taylor*, 153 Idaho 73, 81 (2012)). There are three elements: “(1) the original action ended in final judgment on the merits, (2) the present claim involves the same parties as the original transaction, and (3) the present claim arises out of the same transaction or series of transactions as the original action.” *Id.* “When the three elements are established, claim preclusion bars every matter offered and received to sustain or defeat the claim but also as to every matter which might and should have been litigated in the first suit.” *Monitor Fin., L.C. v. Wildlife Ridge Estates, LLC*, 164 Idaho 555 (2019) (quoting *Magic Valley Radiology, P.A. v. Kolouch*, 123 Idaho 434, 437 (1993)).

The Department has applied the *res judicata* doctrine in prior contested cases involving the SWC delivery call. For example, in IDWR Docket No. CM-MP-2016-001, IGWA advocated for the use of a three-year baseline to measure compliance with groundwater conservation obligations under what is commonly known as the 2015 Mitigation Plan. The Department denied IGWA's argument based on *res judicata*, stating that "IGWA had an opportunity to request a hearing on the 2022 Compliance Order but failed to timely do so and that IGWA failed to raise the issue at other critical times." (*Order Denying IGWA's Request for Clarification of Order Denying IGWA's Motion to Vacate or Amend 2022 Compliance Order*, IDWR Docket No. CM-MP-2016-001 (May 28, 2024, p. 1.))

Here, A&B seeks to litigate the method used by the Director to calculate A&B's proportionate storage water mitigation obligation to the SWC. As discussed above, the Director has been issuing As-Applied Orders that calculate A&B's proportionate storage water mitigation obligation since 2016. A&B challenged the Director's calculation in 2016 and again in 2023 after the Methodology Order was substantially revised. After the April 2023 As-Applied Order was issued, A&B requested a hearing on the following issues:

- 1) Whether the order's identified proportionate share (458 acre-feet) of the predicted injury (75,200 acre-feet) to TFCC is calculated correctly based on A&B's actual diversion and use of water rights that are subject to the identified curtailment date (junior to December 30, 1953).
- 2) Whether the steady-state use of the ESPAM 2.2 in identifying A&B's proportionate share is consistent with the transient use of the model in identifying ground water rights subject to curtailment as outlined in the *Fifth Methodology Order*.

(*Surface Water Coalition's Request for Hearing and Statement of Issues* (May 5, 2023), pp. 2-3.)

An evidentiary hearing was held on issues raised by A&B and others, resulting in a final judgment on the merits. (*Post-Hearing Order Regarding Fifth Methodology Order* (July 19, 2023).) The final order did not change the way A&B's proportionate storage water mitigation obligation is calculated, and A&B declined to appeal that ruling. Further, the same method was used in the April 2024 As-Applied Order, which A&B declined to challenge.

The parties to the April 2023 As-Applied Order and the April 2024 Order are the same parties to the 2025 As-Applied Orders being challenged now by A&B, and A&B's present claims arise out of the same transaction or series of transactions as the original action. Therefore,

the doctrine of claim preclusion prevents A&B from challenging the method used by the Director to calculate its proportionate storage water mitigation obligation.

The doctrine of issue preclusion doctrine also prevents A&B from challenging the method used by the Director to calculate its proportionate storage water mitigation obligation. The elements of issue preclusion are:

(1) the party against whom the earlier decision was asserted had a full and fair opportunity to litigate the issue decided in the earlier case; (2) the issue decided in the prior litigation was identical to the issue presented in the present action; (3) the issue sought to be precluded was actually decided in the prior litigation; (4) there was a final judgment on the merits in the prior litigation; and (5) the party against whom the issue is asserted was a party or in privity with a party to the litigation.

Elsaesser, 170 Idaho at 509 (quoting *Ticor*, 144 Idaho at 124).

The doctrine of issue preclusion prevents A&B from challenging the method used by the Director to calculate its proportionate storage water mitigation obligation because (1) A&B had a full and fair opportunity to litigate the issue in response to the April 2016 As-Applied Order, the April 2023 As-Applied Order, and the April 2024 As-Applied Order; (2) the issue decided in the prior As-Applied Orders is identical to the issue raised by A&B in the present action; (3) the issue sought to be precluded was actually decided in the prior As-Applied Orders; (4) there was a final judgment on the merits in the prior As-Applied Orders; and (5) A&B was a party to the prior As-Applied Orders.

Therefore, IGWA respectfully requests that the hearing officer grant summary judgment by ruling that the doctrine of *res judicata* bars A&B from challenging the method used by the Director to calculate its proportionate storage water mitigation obligation.

B. Law of the Case

In addition to *res judicata*, the “law of the case” doctrine precludes A&B from raising issues that it did or could have raised previously in the SWC delivery call case. 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 (2013). Previously in this case, A&B argued that the “law of the case” doctrine precluded IGWA from

raising issues that had previously been litigated.² By the same token, A&B is barred by that doctrine from raising issues that were or could have been litigated in this proceeding.

C. *Quasi-Estoppel*

The Idaho Supreme Court has held repeatedly that “the doctrine of quasi-estoppel prevents a party from asserting a right, to the detriment of another party, which is inconsistent with a position previously taken.” *Gomez v. Hurtado*, 174 Idaho 1002, 1014, 554 P.3d 53, 65 (2024) (quoting *Atwood v. Smith*, 143 Idaho 110, 114, 138 P.3d 310, 314 (2006)); see also *Hollingsworth v. Thompson*, 168 Idaho 13, 22-23, 478 P.3d 312, 321-22 (2020); *Trumble v. Farm Bureau Mut. Ins. Co. of Idaho*, 166 Idaho 132, 146, 456 P.3d 201, 215 (2019). *Quasi-estoppel* is “a broadly remedial doctrine, often applied ad hoc to specific fact patterns.” *Thomas v. Arkoosh Produce, Inc.*, 137 Idaho 352, 357, 48 P.3d 1241, 1246 (2002) The elements are:

1. The offending party took a different position than their original position; and
2. Either (a) the offending party gained an advantage or caused a disadvantage to the other party; (b) the other party was induced to change positions; or (c) it would be unconscionable to permit the offending party to maintain an inconsistent position from one they have already derived a benefit or acquiesced in.

Atwood, 143 Idaho at 114.

Here, A&B agreed in the 2024 Plan that steady-state modeling is the appropriate method for allocating storage water mitigation obligations among groundwater users. This agreement was made more than a year after the Fifth Methodology Order had been issued. Notwithstanding the change in the Fifth Methodology Order from steady-state to transient-state modeling for the purpose of calculating curtailment dates under the Methodology Order, A&B agreed that steady-state modeling is the appropriate method for calculating storage water mitigation obligations. A&B now seeks to argue for transient-state modeling, a position directly contrary to its prior agreement in the 2024 Plan.

A&B gained an advantage and/or derived a benefit by agreeing to the use of steady-state modeling to define storage water mitigation obligations in the 2024 Plan. Without that provision, the ground water districts would not have agreed to the 2024 Plan, and A&B would not be the beneficiary of mitigation provided by the districts under the 2024 Plan.

² Surface Water Coalition’s Response Brief, Ada Co. Case No. CV01-23-13173 (Jan. 19, 2024) (Excerpt attached as Appx. A, Budge Decl.).

IGWA and its member ground water districts relied on the use of steady-state modeling to define storage water mitigation obligations in the 2024 Plan, and the Director approved the 2024 Plan on that basis. Allowing A&B to change its position would upend the 2024 Plan and the settled expectations of all parties, to the detriment of IGWA and its member ground water districts.

To IGWA's members, A&B's conduct appears to be in bad faith—seeking to retain the benefits of the Plan while attacking its core terms. A&B's challenge here is an indirect attack on the 2024 Plan itself. This is precisely the type of conduct Idaho's *quasi-estoppel* doctrine is designed to prevent.

Conclusion

For the foregoing reasons, IGWA respectfully requests that the Hearing Officer grant summary judgment in favor of IGWA by ruling that A&B is barred by the doctrines of *res judicata*, “law of the case,” and *quasi-estoppel* from challenging the method used by the Director to calculate its storage water mitigation obligations under the Methodology Order.

Dated this 18th day of November, 2025.

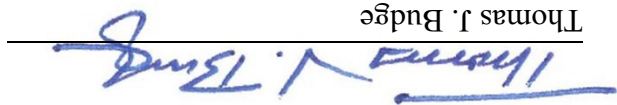
RACINE OLSON, PLLP

By: 

Thomas J. Budge
Attorneys for IGWA

I hereby certify that on this 18th day of November, 2025, I cause the foregoing document to be served on the persons below via the method below:

CERTIFICATE OF SERVICE


Thomas J. Budge

<p>Gerald F. Schroeder Garrick Baxter Sarah Tschohl IDAHO DEPT. OF WATER RESOURCES 322 E Front St. Boise, ID 83720-0098</p>	<p>gerald_23107@msn.com garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov file@idwr.idaho.gov</p>
<p>Travis Thompson Abigail R. Bitzenburg PARSONS BEHLE & LATIMER P.O. Box 63 Twin Falls, ID 83303-0063</p>	<p>ttompson@parsonsbehle.com abitzenburg@parsonsbehle.com</p>
<p>Norman M. Semanko Garrett M. Kitamura PARSONS BEHLE & LATIMER 800 W. Main St., Suite 1300 Boise, ID 83702</p>	<p>nsemanko@parsonsbehle.com gkitamura@parsonsbehle.com</p>
<p>Skyler C. Johns Nathan Olsen Steve Taggart OLSEN TAGGART PLLC 1449 E 17th St, Ste A P.O. Box 3005 Idaho Falls, ID 83403</p>	<p>sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com</p>
<p>Sarah A Klahn Maximilian C. Bricker SOMACH SIMMONS & DUNN 2033 11th Street, Ste 5 Boulder, Co 80302</p>	<p>sklahn@somachlaw.com mbricker@somachlaw.com vfrancisco@somachlaw.com</p>

Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83702	cbromley@mchughbromley.com cmchugh@mchughbromley.com
---	--

COURTESY COPIES TO:

Corey Skinner IDWR – Southern Region 650 Addison Ave W., Ste. 500 Twin Falls, ID 83301-5858	corey.skinner@idwr.idaho.gov
Craig Chandler IDWR – Eastern region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402	craig.chandler@idwr.idaho.gov