

**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**

**ORDER DENYING IDAHO  
GROUND WATER  
APPROPRIATORS, INC.’S  
MOTION FOR SUMMARY  
JUDGMENT**

Idaho Ground Water Appropriators, Inc. has moved for summary judgment in response to A&B Irrigation District’s requests for hearing filed April 21 and July 24, 2025. Hearing has been set on the A&B requests which challenge the *Final Order Regarding April 2025 Forecast Supply* issued April 16, 2025. A&B challenges the method used by the Director to calculate A&B’s storage water mitigation obligation under the Surface Water Coalition (“SWC”) delivery call. The motion for summary judgment relies upon the record in this case and related contested cases, as well as Declarations submitted by Sophia Sigstedt and Thomas J. Budge which support the claim that positions taken by A&B in the past foreclose it from making the challenge in this proceeding. There is an extensive record that relates to the present proceeding.

**BACKGROUND**

On April 19, 2016, the Director of the Idaho Department of Water Resources (“Department”) issued the *Fourth Amended Final Order Regarding Methodology For Determining Material Injury To Reasonable In-Season Demand And Reasonable Carryover* and the *Final Order Regarding April 2016 Forecast Supply (Methodology Steps 1 – 3)*. Following the issuance of those orders, A&B requested a hearing on May 2, 2016 and raised the following issue:

To the extent the Director denies the above request for reconsideration to identify an accurate “proportionate share” regarding A&B’s junior priority ground water rights with respect to the predicted demand shortfall, including appropriately identifying all hydraulically connected junior ground water rights, A&B requests a hearing on the same pursuant to Idaho Code § 42- 170A(3).

*A&B Irrigation District’s Petition for Reconsideration and Request for Hearing Re: April 2016 As Applied Order*, at 4 (May 2, 2016) [hereinafter *2016 Request*].

On April 21, 2023, the Director amended the methodology and issued the *Fifth Amended Final Order Regarding Methodology For Determining Material Injury To Reasonable In-Season*

*Demand And Reasonable Carryover* (“*Fifth Methodology Order*”) which established nine steps for determining material injury to members of the SWC.<sup>1</sup> That same day, the Director issued the *Final Order Regarding April 2023 Forecast Supply Methodology Steps 1-3* (“*2023 April Forecast*”) and a *Notice of Hearing, Notice of Prehearing Conference, and Order Authorizing Discovery* (“*2023 Notice*”).

On May 5, 2023, the Department received the *Surface Water Coalition’s Request For Hearing And Statement Of Issues* (“*2023 SWC Request*”). That request identified several issues for hearing, and among those issues, A&B specifically asked the Director to consider:

- (1) Whether the [*2023 April Forecast*] identified proportionate share (458 acre-feet) of the predicted injury (75,200 acre-feet) to TFCC is calculated correctly based upon A&B’s actual diversion and use of water rights that are subject to the identified curtailment date (junior to December 30, 1953); 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 in identifying ground water rights subject to curtailment as outlined in the *Fifth Methodology Order*.

*2023 SWC Request*, at 2–3.

The Director held a hearing on the *Fifth Methodology Order* and the *2023 April Forecast* on June 6–9, followed by a *Post-Hearing Order Regarding Fifth Amended Methodology Order* (“*Post-Hearing Order*”) and the *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“*Sixth Methodology Order*”) issued on July 19, 2023.

On November 19, 2024, the Department received a *Joint Motion for Order Approving 2024 Stipulated Mitigation Plan* (“*2024 Plan*”) from the SWC and various Ground Water Districts.<sup>2</sup> The Director issued an amended approval of the plan on February 7, 2025.

Pursuant to the *Sixth Methodology Order*, the Director issued the *Final Order Regarding April 2025 Forecast Supply (Methodology Steps 1–3)* (“*April Forecast Supply Order*”) on April 16, 2025, finding that A&B must mitigate for its proportionate share of the predicted in season demand shortfall. *April Forecast Supply Order*, at 5 n.8

On April 29, 2025, A&B filed a request for hearing contesting the *April Forecast Supply Order* and identifying the following issues for hearing:

---

<sup>1</sup> The SWC is comprised 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 (“TFCC”).

<sup>2</sup> The Ground Water Districts are comprised of North Snake Ground Water District, Magic Valley Ground Water District, Carey Valley Ground Water District, Aberdeen-American Falls 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.

- (1) Whether the [*April Forecast Supply Order*] identified proportionate share (384 acre-feet) of the predicted injury (63,000 acre-feet) to TFCC is calculated correctly based upon A&B's actual diversion and use of water rights that are subject to the identified curtailment date (junior to August 28, 1955).
- (2) Whether A&B should be allowed to mitigate for a portion of groundwater right 36-15127A (approximately 508.3 acres) that will be diverted [sic] used during the 2025 irrigation season, as opposed to mitigating for all 1,886.4 acres authorized by the water right.
- (3) 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 *Sixth Methodology Order*.
- (4) For other issues and matters that may [sic] discovered in this proceeding.

*A&B Req. for Hr'g*, at 1–2 (Apr. 2025) [hereinafter *April Hearing Request*].

On May 16, 2025, the Director issued the *Final Order Curtailing Ground Water Rights Junior to August 28, 1955* (“*May Curtailment Order*”), including several of A&B's ground water rights subject to curtailment. *May Curtailment Order*, at 4, attach. A, at 1.

On July 10, 2025, the Director issued an *Order Revising April 2025 Forecast Supply and Continuing May 16, 2025 Curtailment Order (Methodology Steps 5 & 6)* (“*July As-Applied Order*”) which revised the predicted in-season demand shortfall and updated A&B's proportionate share of the predicted injury to 5,039 acre-feet. *July As-Applied Order*, at 11 n.6.

On July 24, 2025, A&B filed another request for hearing, this time contesting the *July As-Applied Order* and identifying similar issues to the April request including:

- (1) Whether the [*July As-Applied Order*] identified proportionate share (5,039 acre-feet) of the predicted injury (75,300 acre-feet) to TFCC is calculated correctly based upon A&B's actual diversion and use of water rights that are subject to the identified curtailment date (junior to October 11, 1900).
- (2) Whether the steady-state use of the ESPAM 2.2 in identifying A&B's proportionate share of the estimated in-season demand shortfall is consistent with the transient use of the model in identifying ground water rights subject to curtailment as outlined in the *Sixth Methodology Order*.
- (3) Whether the Director's failure to implement the [*May Curtailment Order*] in accordance with Idaho law has injured A&B by subjecting its senior water right 36-2080 to curtailment and/or mitigation requirements during the 2025 irrigation season.
- (4) For other and further reasons as may be discovered prior to hearing. A&B reserves the right to identify additional issues as necessary in this proceeding.

*A&B Req. for Hr'g*, at 1–2 (July 2025) [hereinafter *July Hearing Request*].

On September 3, 2025, the Director issued an *Order Granting A&B Irrigation District's Requests for Hearing, Consolidating Proceedings for Hearing, and Appointing Hearing Officer; Notice Of Prehearing Conference* (“*Order Granting Hearing*”). The Director found that the issues identified in both of A&B’s hearing requests relate to or mirror each other and that “A&B has not previously been afforded an opportunity for a hearing to contest either the *April Forecast Supply Order* or *July As-Applied Order*.” *Order Granting Hearing*, at 4.

On September 11, 2025, the Director issued the *Order Revising July 2025 Forecast Supply (Methodology Step 7-8)* (“*September Order*”). The Director found that A&B satisfied its proportionate share obligation by delivering storage water to TFCC pursuant to a stipulation with the SWC and that A&B no longer needed to establish it could mitigate its proportionate share obligation. *September Order*, at 12 n.7.

On November 18, 2025, American Falls-Aberdeen Ground Water District (“AFA”) filed a *Motion to Reconsider Order Granting Hearing and Vacate Hearing or, Alternatively, to Clarify the Scope of Hearing; Request for Expedited Ruling; Brief in Support* (“*AFA Motion*”) with the Director. AFA requests that the Director reconsider the *Order Granting Hearing* and deny both of A&B’s hearing requests because A&B is barred from relitigating issues that were already subject to a prior Department hearing and that one issue is moot. *AFA Motion*, at 2. In the alternative, AFA asks the Director to clarify the scope of the hearing to limit the Hearing Officer’s consideration to issues related to calculating the in-season demand shortfall and to exclude issues involving a ground water management area or plan. *Id.* at 3. On that same date, the Hearing Officer received *Idaho Ground Water Appropriators, Inc.’s Motion for Summary Judgment* (“*IGWA Motion*”). IGWA argued that doctrines of *res judicata*, law of the case, and *quasi-estoppel* prevent A&B from now challenging how the Director calculates its proportionate share obligation. *IGWA Motion*, at 2.

Pursuant to A&B’s request to extend response deadlines, the Hearing Officer issued an order extending the deadline for A&B to respond to the *AFA Motion* and the *IGWA Motion* to December 9, 2025. *Order Granting A&B’s Motion to Amend Deadlines; Setting Deadline to Provide Staff Memo*, at 3 (Nov. 25, 2025).

On December 9, 2025, the Department received *A&B Irrigation District’s Consolidated Response to AFA Motion / IGWA Motion for Summary Judgment* (“*A&B Response*”). A&B argues that it is not barred from litigating the issues raised because there was never a final judgment on the merits of those issues resulting from the 2023 hearing and that due process guarantees it a right to a hearing since its senior ground water right has never been curtailed prior to this year. *A&B Response*, at 3, 24.

On December 12, 2025, the Department received the *American Falls-Aberdeen Ground Water District’s Reply in Support of Motion to Reconsider Order Granting Hearing and Vacate Hearing or, Alternatively, to Clarify the Scope of Hearing; Request for Expedited Ruling* (“*AFA Reply*”), arguing that A&B cannot now raise due process arguments in this SWC delivery call proceeding.

On December 16, 2025, the Hearing Officer received *IGWA's Reply Brief* (“*IGWA Reply*”), reiterating its arguments raised in the *IGWA Motion* and arguing that judicial estoppel also precludes A&B from raising the same arguments now.

On December 22, 2025, the Director issued an *Order Denying American Falls-Aberdeen Ground Water District's Motion to Reconsider Order Granting Hearing* (“*Order Denying AFA Motion*”). The Director concluded that he would not consider the issues raised by AFA because there has been a hearing officer already assigned to this matter. *Order Denying AFA Motion*, at 3–4. In addition, the Director authorized the Hearing Officer to consider any arguments raised by AFA in its motion and reply. *Id.* at 4.

## FINDINGS OF FACT

1. On May 2, 2016, A&B raised similar issues to what it raised in 2023 and now regarding how its proportionate share of the mitigation obligation is calculated when the Director implements the methodology. *Compare 2016 Request*, at 4; *with 2023 SWC Request*, at 2–3; *April Hearing Request*, at 1–2; *July Hearing Request*, at 1–2.

2. On April 21, 2023, the Director revised the methodology that was in place from 2016 to 2022 when he issued the *Fifth Methodology Order*. *Fifth Methodology Order*, at 1–2. The Director changed the method for calculating curtailment dates by adopting a transient use of the ESPAM 2.2 model. *Id.* at 36.

3. Also on April 21, 2023, the Director issued the *2023 April Forecast* which identified A&B's proportionate share of the predicted in-season demand shortfall to be 458 acre-feet. *2023 April Forecast*, at 5.

4. Also on April 21, 2023, the Director anticipated that several parties associated with the SWC delivery call proceeding would request a hearing on the *Fifth Methodology Order*, so the Director issued the *2023 Notice* to preemptively schedule a hearing on that order. *2023 Notice*, at 1.

5. Following the issuance of those orders, several parties filed issue statements to be considered at the 2023 hearing, including the following issue statements filed by A&B:

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 upon A&B's actual diversion and use of water rights that are subject to the identified curtailment date (junior to December 30, 1953); 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 in identifying ground water rights subject to curtailment as outlined in the *Fifth Methodology Order*.

*2023 SWC Request*, at 2–3.

6. On June 6–9, 2023, the Director held a hearing on the matter on the various issues raised by the parties.

7. On July 19, 2023, the Director issued the *Post-Hearing Order* and the *Sixth Methodology Order*.

8. Following the hearing, the Director concluded that the transient model simulation is the appropriate method to calculate the curtailment dates. *Sixth Methodology Order*, at 38, 42, 44; *Post-Hearing Order*, at 25. Those orders did not address the issues raised by A&B.

9. On February 7, 2025, the Director issued an amended approval of the SWC and Ground Water Districts' *2024 Plan*.

10. In the *2024 Plan*, the Ground Water Districts agreed that “[e]ach District will secure its proportionate share of the storage water required [volume] based on their respective steady-state impact to the Near Blackfoot to Minidoka reach of the Snake River as defined by the current version of the ESPA Model.” *2024 Plan*, at 4.

11. A&B is a signatory to the *2024 Plan* as a surface water user. *Id.* at 1.

12. In implementing the *Sixth Methodology Order*, the Director issued the *April Forecast Supply Order* and found that A&B's mitigation obligation for its proportionate share of the predicted in-season demand shortfall to TFCC is 384 acre-feet. *April Forecast Supply Order*, at 5 n.8.

13. In the *July As-Applied Order*, the Director found that A&B's mitigation obligation was 5,039 acre-feet.

14. In consolidating and simplifying, the *April Hearing Request* and the *July Hearing Request*, A&B raised similar issues to what it raised in the *2023 SWC Request*. Compare *April Hearing Request*, at 1–2; *July Hearing Request*, at 1–2; with *2023 SWC Request*, at 2–3.

15. On September 11, 2025, the Director issued the *September Order*, concluding that:

Given the nature of A&B's mitigation plan, the Department normally calculates A&B's proportionate share of the predicted IDS. However, A&B and the SWC entered into a stipulation to define A&B's mitigation obligation for the 2025 irrigation season. In the stipulation, A&B agreed to continue its ground water conversions projects and assign and deliver 1,252 acre-feet of storage water to TFCC. The Director has confirmed that 1,252 acre-feet of storage water has been assigned to A&B. Because the SWC agreed that the above actions satisfy A&B's obligation to the SWC for the 2025 irrigation season, A&B does not need to establish that they can mitigate for its proportionate share of the predicted IDS.

## LEGAL STANDARD

The Department’s Rules of Procedure (“Rules”), IDAPA 37.01.01, govern the pending motion in this case. Rule 220.03 authorizes motions for summary judgment and states that “Rule 56(a), (c), (d), (e), and (f) of the Idaho Rules of Procedure, apply to such motions before the agency.” IDAPA 37.01.01.220.03.

Summary judgment is appropriate “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Lee v. Litster*, 161 Idaho 546, 549, 388 P.3d 61, 64 (2017) (quoting I.R.C.P. 56(c)). The moving party bears the burden of establishing the absence of a genuine issue of material fact belongs to the moving party. *Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 719, 918 P.2d 583, 588 (1996).

If the movant meets its burden, the movant is entitled to summary judgment unless the nonmovant presents “specific facts that demonstrate the existence of a genuine issue for trial”—a “mere scintilla of evidence” or “slightest doubt as to the facts” will not do. *Haight v. Idaho Dep’t of Transp.*, 163 Idaho 383, 387, 414 P.3d 205, 209 (2018). “Disputed facts should be construed in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party.” *Major v. Sec. Equip. Corp.*, 155 Idaho 199, 202, 307 P.3d 1225, 1228 (2013). “If the evidence reveals no disputed issues of material fact, then only a question of law remains . . .” *Lee*, 161 Idaho at 549, 388 P.3d at 64 (quoting *Lapham v. Stewart*, 137 Idaho 582, 585, 51 P.3d 396, 399 (2002)).

## ANALYSIS

### **I. The Hearing Officer takes official notice of the pleadings and orders raised in the AFA Motion and the IGWA Motion that pertain to the SWC delivery call proceeding.**

Pursuant to Rule 602 of the Department’s Rules of Procedure, a Hearing Officer is authorized to take official notice of specific facts or materials. IDAPA 37.01.01.602. Given the historical context in which the SWC delivery call operates, and the fact that the parties have been the same over the decades, it is proper to take official notice of the pleadings and orders cited within the *AFA Motion*, the *IGWA Motion*, the *A&B Response*, and the various reply briefs. This includes the *2024 Plan* as it relates to the SWC delivery call proceeding where the parties are substantially similar.

### **II. A&B is not barred from litigating the issues it raised under the res judicata doctrine because there has not been a final judgment on the merits of its issues.**

In Idaho, res judicata applies in administrative proceedings. *Sagewillow, Inc. v. Idaho Dept. of Water Res.*, 138 Idaho 831,844 (2023). The purpose of res judicata is to prevent relitigation leading to inconsistent results, to serve the public interest and protect courts against

repetitious litigation, and to protect private interests from repeat claims. *Ticor Title Co. v. Stanion*, 144 Idaho 119, 123 (2007). Res judicata covers both claim preclusion and issue preclusion (i.e., collateral estoppel). *Id.*

**A. Claim preclusion does not apply because there has never been a final judgment on the merits on the issues A&B raised in 2023.**

IGWA claims that A&B raised issues pertaining to how the Director calculates its proportionate share of the storage water mitigation obligation to the SWC. *IGWA Motion*, at 7. Specifically, IGWA claims that A&B is barred from relitigating the issues under claim preclusion because (a) the same parties exist in the delivery call proceeding, (b) the methodology as-applied orders are the same transaction or occurrence, and (c) the 2023 hearing resulted in a final judgment on the merits on the issues A&B raised as well as other issues raised. *Id.*

A&B argues that the issues it raised in 2023 are not subject to res judicata because “it was not actually decided in a final judgment on the merits.” *A&B Response*, at 24. Specifically, A&B argues that the Director’s as-applied orders for implementing the *Sixth Methodology Order* do not address how ground water users’ mitigation obligations are apportioned. *Id.*

Claim preclusion prohibits a claim in a subsequent action when: “(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.” *Elsaesser v. Riverside Farms, Inc.*, 170 Idaho 502, 508 (2022) (quoting *Berkshire Invs., LLC v. Taylor*, 153 Idaho 73, 81 (2012)). The second and third elements are not at issue here as the parties in this matter have been the same or similar since the SWC delivery call commenced two decades ago, and A&B’s claims arise out of the same delivery call proceeding. As to the first element, a final judgment on the merits exists:

in an action between the same parties upon the same claim or demand, the former adjudication concludes parties and privies not only as to 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.

*Ticor Title*, 144 Idaho at 126 (quoting *Farmers Nat. Bank v. Shirey*, 126 Idaho 63, 70 (1994)) (alteration in original). The test does not require “the precise point or question in [the subsequent] action” to be “finally resolved and decided in the [prior] action.” *Farmers Nat. Bank*, 126 Idaho at 70.

The Director did not decide or resolve the issues A&B raised for the 2023 hearing in his *Post-Hearing Order* or the *Sixth Methodology Order*. The purpose of the hearing was to determine the appropriate model simulation for calculating the curtailment date, and the issue of how A&B’s proportionate share of the mitigation obligation was not discussed during the hearing. Accordingly, there was not a final judgment on the merits in 2023 discussing how A&B’s proportionate share was calculated. Therefore, claim preclusion does not bar A&B from raising the issues again now.

**B. Issue preclusion does not bar A&B from raising the issues now because the issues were never actually decided in 2023.**

IGWA argues that A&B is barred from relitigating the issues under the doctrine of issue preclusion because the Director’s issuance of the as-applied orders following the 2023 hearing actually decided the issues A&B raised by calculating A&B’s proportionate share of the mitigation obligation. A&B responds that issue preclusion does not apply in an administrative action when an agency fails to answer a disputed issue in a previous action.

Issue preclusion bars a party from relitigating issues when:

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

A&B raised substantively similar issues in 2016 and 2023, and the parties are the same in this SWC delivery call proceeding. There were discussions and statements made that support the request for summary judgment, but there was not a final judgment on the merits in 2023 involving these issues, and those issues that IGWA and AFA now seek to preclude have never actually been decided in previous litigation. Accordingly, issue preclusion does not bar A&B from litigating these issues now.

**III. The law of the case doctrine does not apply because there has never been a decision on the issues raised.**

IGWA argues that the law of the case doctrine bars A&B “from raising issues that were or could have been litigated in this proceeding.” A&B responds that IGWA inappropriately raised this issue because there has been no other appeal for judicial review on how ground water users’ mitigation obligations are apportioned. *A&B Response*, at 29–30.

The law of the case doctrine functions like stare decisis and “exists to avoid relitigating issues that have already been decided.” *Safaris Unlimited, LLC v. Jones*, 169 Idaho 644, 650–51 2021 (citing *Regan v. Owen*, 163 Idaho 359, 362 (2018)). The law of the case doctrine applies:

When “an appellate court states a principle of law in deciding a case, that rule becomes the law of the case and is controlling both in the lower court and on subsequent appeals as long as the facts are substantially the same.” Decisions on issues during one stage of the proceeding become precedent for later stages of the same litigation.

*Id.* at 651 (quoting *Swanson v. Swanson*, 134 Idaho 512, 516 (2000)).

The law of the case doctrine does not apply because there has never been a decision on the issues A&B raised in 2023, so no principle of law deciding those issues applies. Accordingly, the issues are not barred from litigation under the law of the case doctrine.

**IV. A&B is not barred from raising the issues under quasi-estoppel because A&B as a surface user under the 2024 Plan did not agree to calculate its storage water obligation as a ground water user under the plan.**

IGWA argues that the quasi-estoppel doctrine bars A&B from asserting a right that is inconsistent with a previous position it has taken. IGWA asserts that as a signatory to the *2024 Plan*, A&B cannot now argue that transient state modeling is more appropriate to measure storage water mitigation obligations because the *2024 Plan* applies steady-state modeling to allocate those obligations. A&B responds that its ground water rights and how its mitigation obligations are apportioned have nothing to do with the *2024 Plan*. Further, it participated in the plan as a SWC member. Consequently, the mitigation plan only protected the participating Ground Water Districts which did not include it.

The quasi-estoppel doctrine functions to “prevent[] 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 (2024) (quoting *Atwood v. Smith*, 143 Idaho 110, 114 (2006)). Quasi-estoppel applies when:

- (1) the offending party took a different position than his or her 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 he or she has already derived a benefit or acquiesced in.

*Id.* (quoting *Atwood*, 143 Idaho at 114).

The Ground Water Districts agreed to use steady-state modeling to calculate their share of the storage water obligations. *2024 Agreement*, at 4. Although A&B signed the *2024 Plan* as a surface water user, it did not agree to calculate its own ground water uses in the same manner as the other signatory Ground Water Districts. *Id.* at 1. The *2024 Plan* does not address how A&B calculates its storage water obligations as a ground water user. Accordingly, the issues A&B raises now are not inconsistent with the *2024 Plan*, so the issues are not barred from litigation under the quasi-estoppel doctrine.

**V. The issue of how the Director implements the curtailment orders is not moot because it is a matter of substantial public interest.**

AFA argues that the issue A&B raised regarding the Director’s implementation of the *May Curtailment Order* is moot because the *September Order* relieved A&B from its obligation

to establish it could mitigate for its proportionate share of the shortfall. A&B responds that the issue is not moot because (a) it has a legally cognizable interest in the matter due to how A&B's mitigation obligation fluctuates throughout the year, and (b) the issue is capable of repetition yet evades review given the as-applied orders change throughout the irrigation season and renew each year.

“A case is moot if it presents no justiciable controversy and a judicial determination will have no practical effect upon the outcome.” *In re Guardianship of Doe*, 157 Idaho 750, 754 (2014) (quoting *Goodson v. Nez Perce Bd. of Cnty. Comm'rs*, 133 Idaho 851, 853 (2000)). There are three exceptions to the mootness doctrine:

(1) when there is the possibility of collateral legal consequences imposed on the person raising the issue; (2) when the challenged conduct is likely to evade judicial review and thus is capable of repetition; and (3) when an otherwise moot issue raises concerns of substantial public interest.

*Id.* (quoting *Ameritel Inns, Inc. v. Greater Boise Auditorium Dist.*, 141 Idaho 849, 851–52 (2005)). A matter is capable of repetition yet evades review when “(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subject to the same action again.” *Mitchell v. Ramlow*, 174 Idaho 723, 727 (2024) (quoting *Murphy v. Hunt*, 455 U.S. 478, 482 (1983)).

The *September Order* relieved A&B of its obligation to establish that it could mitigate for its proportionate share of the predicted shortfall because A&B stipulated with the SWC to accept a certain amount of storage water to satisfy its obligation for the 2025 irrigation season only. *September Order*, at 12. It is not clear whether that issue is evading review because there may not be another stipulation in future seasons, so A&B is not precluded from raising the issue again.

A&B argues that “understanding [the Department’s] methodology and calculations as it applies amongst junior groundwater users is an important administrative matter that should be decided for purposes of future application.” *A&B Response*, at 28. Although the issue is capable of repetition and likely does not evade review, how the Department calculates the mitigation obligations and how it implements the curtailment order raises a substantial public interest given the methodology resets every irrigation season. Accordingly, the issue is not moot because it raises a substantial public interest for interested parties to have a decision on this issue.

## **VI. It is not necessary to address A&B’s due process argument.**

A&B argues that its “water right 36-2080 has never been subject to curtailment and [the Department] has never apportioned a mitigation requirement to that water right until July 2025.” *A&B Response*, at 21. As a result, A&B argues that “due process requires a hearing prior to curtailing a junior groundwater right for the first time, in this case A&B’s 1948 water right 36-2080.” *A&B Response*, at 25 (emphasis in original) (citing *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 815 (2011)).

A hearing will be held which satisfies A&B's concerns. The relevance and effect upon water right 36-2080 will be addressed.

**VII. The doctrine of judicial estoppel does not bar A&B from raising the issues because it has not deliberately shifted positions.**

IGWA argues that judicial estoppel bars A&B from raising the issues because it has on several occasions asked the Director to resist perpetual relitigation. The purpose of judicial estoppel is "to prevent abuse of the judicial process by deliberate shifting of positions to suit the exigencies of a particular action." *Heinze v. Bauer*, 145 Idaho 232, 235 (2008). There has never been a decision on the issues A&B raised in 2023, and A&B is not requesting a second hearing on the decisions that the Director made following the issuance of the *Sixth Methodology Order*. Accordingly, judicial estoppel does not bar A&B from raising the issues now.


**Conclusions of Law**

The *IGWA Motion* is denied, and this matter will continue forth at the hearing scheduled for January 14 through 16, 2025 on the issues that A&B raised in its *April Hearing Request* and *July Hearing Request*.

**ORDER**

IT IS HEREBY ORDERED that the *Idaho Ground Water Appropriators, Inc.'s Motion for Summary Judgment* is DENIED.

DATED this 2nd day of January 2026.

  
\_\_\_\_\_  
GERALD F. SCHROEDER  
Hearing Officer

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of January 2026, the above and foregoing, was served by the method indicated below, and addressed to the following:

Travis L. Thompson PARSONS BEHLE & LATIMER PO Box 63 Twin Falls, ID 83303-0063 <a href="mailto:tthompson@parsonsbehle.com">tthompson@parsonsbehle.com</a>	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Abby R. Bitzenburg PARSONS BEHLE & LATIMER PO Box 63 Twin Falls, ID 83303-0063 <a href="mailto:abitzenburg@parsonsbehle.com">abitzenburg@parsonsbehle.com</a>	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Norman M. Semanko Garrett M. Kitamura PARSONS BEHLE & LATIMER 800 W. Main Street, Suite 1300 Boise, Idaho 83702 <a href="mailto:nsemanko@parsonsbehle.com">nsemanko@parsonsbehle.com</a> <a href="mailto:gkitamura@parsonsbehle.com">gkitamura@parsonsbehle.com</a>	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Thomas J. Budge RACINE OLSON PO Box 1391 Pocatello, ID 83204-1391 <a href="mailto:tj@racineolson.com">tj@racineolson.com</a> <a href="mailto:tessa@racineolsen.com">tessa@racineolsen.com</a>	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Sarah A Klahn Maximilian C. Bricker Somach Simmons & Dunn 1155 Canyon Blvd, Ste. 110 Boulder, CO 80302 <a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a> <a href="mailto:mbricker@somachlaw.com">mbricker@somachlaw.com</a>	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC PO Box 107 Boise, ID 83702 <a href="mailto:cmchugh@mchughbromley.com">cmchugh@mchughbromley.com</a> <a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a>	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC PO Box 3005 Idaho Falls, ID 83403 <a href="mailto:sjohns@olsentaggart.com">sjohns@olsentaggart.com</a> <a href="mailto:nolsen@olsentaggart.com">nolsen@olsentaggart.com</a> <a href="mailto:staggart@olsentaggart.com">staggart@olsentaggart.com</a>	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email

**COURTESY COPIES VIA EMAIL TO:**

Craig Chandler	Corey Skinner
IDWR—Eastern Region	IDWR—Southern Region
<a href="mailto:craig.chandler@idwr.idaho.gov">craig.chandler@idwr.idaho.gov</a>	<a href="mailto:corey.skinner@idwr.idaho.gov">corey.skinner@idwr.idaho.gov</a>

Sara Ajeti  
Deputy Attorney General