

**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  
Docket No. CM-MP-2016-001

**RESPONSE TO REQUEST FOR STATUS  
CONFERENCE; NOTICE OF STATUS  
CONFERENCE**

**BACKGROUND**

On April 29, 2022, the Surface Water Coalition (“SWC”) filed with Idaho Department of Water Resources (“Department”) the *Surface Water Coalition’s Request for Status Conference* (“Request”) in the above-captioned matters.<sup>1</sup> The Request seeks a status conference on three issues.

First, the SWC “requests an update on the status of [the Department’s] and respective water districts’ actions to curtail diversions pursuant to those water rights as ordered [in the January 11, 2022 curtailment order] by the Director.” *Request* at 2.

Second, the SWC seeks a status conference related to the stipulated mitigation plan submitted by the SWC and the Idaho Ground Water Appropriators, Inc. (“IGWA”) and previously approved by the Director. *Id.* The plan committed signatory ground water districts to “a total ground water diversion reduction of 240,000 acre-feet annually.” *Id.* (citation omitted). IGWA’s recent performance report shows that the ground water districts only reduced their diversions by 122,784 acre-feet in 2021. *Id.* The SWC states, “IGWA and its junior priority ground water right members are not operating in accordance with the approved plan and are failing to mitigate the material injury to [SWC] members.” *Id.* at 3. The SWC asks the Director for a status conference “to address what actions he intends to take in 2022 in response to this non-compliance and enforcement of the order approving the mitigation plan.” *Id.*

Third, the SWC asks the Director to address a developing issue involving in the Water District 01 rental pool procedures. *See Id.* The Idaho Water Resource Board (“IWRB”) has delegated the authority to operate the Water District 01 rental pool to the Committee of Nine. Resol. to Reappoint Rental Pool Local Comm. & Approve Rental Pool Procs., *In re Approving Rental Pool Procs. for the Upper Snake River Rental Pool* (Idaho Water Res. Bd. May 10, 2019).

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<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.

RESPONSE TO REQUEST FOR STATUS CONFERENCE; NOTICE OF STATUS  
CONFERENCE—Page 1

Recently, the Committee of Nine modified its rental pool procedures. Watermaster Tony Olenichak has interpreted the procedures. The SWC takes issue with his interpretation and states “[t]he Watermaster’s interpretation [of the rental pool procedures] has created great uncertainty as to how rented or other non-spaceholder water will be handled for water right administration in 2022.” *Request* at 5. The SWC argues, “Given the pending deadlines for juniors regarding the Director’s Steps 1-3 Order (May 1st) and spaceholders for participation status (May 13th), the Director should address this issue and provide clarification as soon as possible. *See* I.C. 42-602.” *Id.*

## RESPONSE

The Director will grant the SWC’s request for a status conference regarding the Department’s curtailment efforts related to the January 11, 2022 curtailment order. The status conference will be set for May 25, 2022, at the time and location described below.

The Director will conditionally grant the SWC’s request for a status conference on the diversion reduction component of the mitigation plan. The SWC and IGWA submitted their June 30, 2015 settlement agreement to the Director for approval as a mitigation plan. *See* Surface Water Coal.’s & IGWA’s Stip. Mitigation Plan & Req. for Order, *In re IGWA’s Settlement Agreement Mitigation Plan*, No. CM-MP-2016-001 (Idaho Dep’t Water Res. March 9, 2016). The settlement agreement has been amended twice and each amendment has been approved by the Director. *See* Final Order Approv. Stip. Mitigation Plan, *In re IGWA’s Settlement Agreement Mitigation Plan*, No. CM-MP-2016-001 (Idaho Dep’t Water Res. May 2, 2016); Final Order Approv. Amend. to Stip. Mitigation Plan, *In re IGWA’s Settlement Agreement Mitigation Plan*, No. CM-MP-2016-001 (Idaho Dep’t Water Res. May 9, 2017). The original settlement agreement established a steering committee to review the signatory ground water districts’ progress towards the practices and goals in the agreement. In the *Second Addendum to Settlement Agreement*, the parties agreed to a specific process for addressing any alleged breach or noncompliance of the mitigation plan. Final Order Approv. Amend. to Stip. Mitigation Plan, *In re IGWA’s Settlement Agreement Mitigation Plan*, No. CM-MP-2016-001, ex. A (Idaho Dep’t Water Res. May 9, 2017) [hereinafter 2nd Addendum].

The first step is to have the steering committee review the available technical information. *2nd Addendum* ¶ 2.c.i. Then, if the steering committee finds a breach of one of the long-term practices of the plan (like the diversion reduction component), the steering committee is required to notify the breaching party in writing. *Id.* ¶ 2.c.iii. If the breaching party fails to cure the breach, the steering committee then reports the breach to the Director. *Id.* If the SWC and IGWA do not agree that a breach has occurred or cannot agree upon actions that must be taken by the breaching party to cure the breach, the steering committee will report this to the Director and ask the Director to determine if a breach has occurred. *Id.* ¶ 2.c.iv.

Under either paragraph 2.c.iii or 2.c.iv, any alleged breach should first be addressed by the steering committee and then a report from the steering committee should be submitted to the

Director. The Director understands that the steering committee plans to meet on May 18, 2022, to discuss this topic. The Director understands that time is of the essence and will expeditiously respond to address this issue.

If the parties comply with the process outlined in the 2nd Addendum and if the steering committee submits a report to the Director pursuant to paragraph 2.c.iv. by May 20, 2022, the Director will make this issue a topic of discussion for the May 25, 2022 status conference. If no report is submitted to the Director by May 20, 2022, this issue will not be addressed at the May 25, 2022 status conference.

Finally, the Director will not grant the SWC's request for a status conference on issues involving in the Water District 01 rental pool procedures. The procedures are outside the scope of the SWC delivery call proceeding and the approved mitigation plan. Furthermore, pursuant to Idaho Code § 42-1765 and Rule 40 of the Water Supply Bank Rules, the IWRB has delegated authority to prepare rental pool procedures to the Committee of Nine. The Committee of Nine has exercised its authority and adopted procedures. While the Director reviews the proposed procedures and the Board approves them, the responsibility to interpret the rules falls to the Committee of Nine. The Committee of Nine is the entity that should clarify the intent of their procedures.

### **NOTICE OF STATUS CONFERENCE**

The Director hereby notifies the parties that a status conference in this matter will be held on **May 25, 2022, at 10:00 a.m. (MST)**, at the Department's State Office, located at 322 E. Front Street, 6th Floor, Boise, Idaho. All parties to the matter must be represented at the status conference in person or by video conference. The purpose of the status conference is to discuss the Department's curtailment efforts related to the January 11, 2022 curtailment order. If the parties comply with the process outlined in the 2nd Addendum and if the steering committee submits a report to the Director pursuant to paragraph 2.c.iv. by May 20, 2022, non-compliance with the mitigation plan will be a topic discussed at the status conference.

To join the conference via computer or smartphone, please click the following Webex link, follow the prompts, and wait to be admitted by the meeting host: <https://idahogov.webex.com/idahogov/j.php?MTID=mf5699b0a637a95f944ba4496f0d35a01>.

To join the conference via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2452 356 7400.

The status conference will be held in accordance with the provisions of Chapter 17, Title 42, and Chapter 52, Title 67, Idaho Code, and the Department's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at <https://adminrules.idaho.gov/rules/current/37/index.html>.

The conference will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations to attend, participate in, or understand the conference, please advise the Department no later than five (5) days before the conference. Inquiries for special accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone: (208) 287-4815.

Dated this 5<sup>th</sup> day of May 2022.

  
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GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of May 2022, the above and foregoing, was served by the method indicated below, and addressed to the following:

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