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Irrigation District, Milner Irrigation District,  
North Side Canal Company, and Twin Falls  
Canal Company*

**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 )  
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IN THE MATTER OF IGWA'S )  
SETTLEMENT AGREEMENT )  
MITIGATION PLAN )  
\_\_\_\_\_ )

Docket No. CM-DC-2010-001  
Docket No. CM-MP-2016-001

**SURFACE WATER COALITION'S  
NOTICE OF STEERING  
COMMITTEE IMPASSE / REQUEST  
FOR STATUS CONFERENCE**

COME NOW, 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 (collectively hereafter referred to as the “Surface Water Coalition”, “Coalition”, or “SWC”), by and through their counsel of record, and hereby provide the following notice and request related to the above-captioned matters.

**I. Ground Water Districts’ Compliance with Approved Mitigation Plan**

The Director approved the stipulated mitigation plan submitted by SWC and IGWA on May 2, 2016. *See Final Order Approving Stipulated Mitigation Plan.* Pursuant to the plan the signatory<sup>1</sup> ground water districts and their members agreed to “a total ground water diversion reduction of 240,000 acre-feet annually.” *See Order at 2.* On Friday April 1, 2022, counsel for IGWA submitted the districts’ 2021 performance report. As detailed in that report, the signatory ground water districts only performed 56,953 acre-feet in diversion reductions and 65,831 acre-feet in recharge for a total of 122,784 acre-feet. IDWR recently submitted its verification report on June 30, 2022. *See Brian Ragan June 30, 2022 Memo.* IDWR’s numbers differed from IGWA’s in that IDWR assumed (0) diversion for various wells within Carey Valley and North Snake Ground Water Districts. *See id. at 3, Table 2 Notes.* Further, IDWR’s reduction calculations were significantly different than IGWA’s resulting in IDWR using a diversion reduction value of 66,586 acre-feet compared to IGWA’s number of 56,952 acre-feet. The Coalition requests further review of this issue given the large disparity. IDWR also used a smaller recharge value which was 1,514 acre-feet less than IGWA’s. *See Memo at 5, Table 4.*

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<sup>1</sup> The nine signatory ground water districts are Aberdeen-American Falls, Bingham, Bonneville-Jefferson, Carey Valley, Fremont Madison Irrigation District, Jefferson-Clark, Madison, Magic Valley, and North Snake. A&B Irrigation District and Southwest Irrigation District are not part of the districts’ obligation under the settlement agreement or mitigation plan. IGWA has erroneously included A&B and SWID as part of its 240,000 af calculations every year, but until this year the nine districts have exceeded the 240,000 af reduction requirement. The Coalition expressly requests the Director to address this issue as well.

Regardless, even assuming IDWR's number is correct (which the Coalition disputes and requests further review and audit), the nine signatory ground water districts' 2021 actions were at least 109,097 acre-feet short of what is required by the stipulated mitigation plan and the Director's order approving the same. Consequently, 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 the Coalition members. *See* CM Rule 40.05. The over-pumping in 2021 has caused additional depletions to reach gains which have resulted in reduced water supplies to the Coalition's storage and natural flow water rights, both through the winter of 2021-22 and throughout the 2022 irrigation season.

The Surface Water Coalition requests the Director to address what actions he intends to take in response to this non-compliance and enforcement of the order approving the mitigation plan.

## **II. Steering Committee Impasse**

In the *Response to Request for Status Conference*, the Director noted the following:

The first step is to have the steering committee review the available technical information. . . . 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.

*Response* at 2.

The Steering Committee held meetings on May 18<sup>th</sup>, June 27<sup>th</sup>, and most recently on July 13<sup>th</sup>. The above-referenced technical information was reviewed and the SWC stated its position that a breach occurred due to the signatory ground water districts' non-performance of the long-term diversion reduction actions in 2021. IGWA disagreed.

Accordingly, SWC hereby provides the Director with the requested notice that the Steering Committee reached an impasse and did not agree that a breach occurred in 2021.

**REQUEST FOR STATUS CONFERENCE**

The Coalition respectfully requests the Director set a status conference to address the above following issues regarding IGWA’s approved mitigation plan:

- 1) IGWA’s annual diversion reduction requirement (annual or average?)
- 2) What that requirement is? (240,000 af or something less?)
- 3) Whether IGWA complied in 2021 based upon its technical information and IDWR’s review of the same (as identified in April 1 and June 30 reports)
- 4) Disparity in those reports (what was the actual number for both diversion reduction and recharge that occurred in 2021)
- 5) Director’s planned action in response to IGWA’s non-compliance with mitigation plan.

The Coalition is fully committed to the Settlement Agreement, the stipulated mitigation plan, and their effective and successful implementation. To Coalition would request a status conference be set as soon as possible to address the above pending issues.

DATED this 21<sup>st</sup> day of July, 2022.

**BARKER ROSHOLT & SIMPSON LLP**



John K. Simpson  
Travis L. Thompson

*Attorneys for A&B Irrigation District,  
Burley Irrigation District, Milner Irrigation  
District, North Side Canal Company, and  
Twin Falls Canal Company*

**FLETCHER LAW OFFICE**



W. Kent Fletcher

for

*Attorneys for Minidoka Irrigation  
District and American Falls  
Reservoir District #2*

## CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> day of July, 2022, I served a true and correct copy of the foregoing *Surface Water Coalition’s Notice of Steering Committee Impasse / Request for Status Conference* on the following by the method indicated:

<p>Director Gary Spackman Garrick Baxter Sarah Tschohl State of Idaho Dept of Water Resources 322 E Front St. Boise, ID 83720-0098 *** service by electronic mail</p> <p><a href="mailto:gary.spackman@idwr.idaho.gov">gary.spackman@idwr.idaho.gov</a> <a href="mailto:garrick.baxter@idwr.idaho.gov">garrick.baxter@idwr.idaho.gov</a> <a href="mailto:sarah.tschohl@idwr.idaho.gov">sarah.tschohl@idwr.idaho.gov</a></p>	<p>Matt Howard U.S. Bureau of Reclamation 1150 N. Curtis Rd. Boise, ID 83706-1234 *** service by electronic mail only</p> <p><a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a> <a href="mailto:emcgarry@usbr.gov">emcgarry@usbr.gov</a></p>	<p>Tony Olenichak IDWR – Eastern Region 900 N. Skyline Dr., Ste. A Idaho Falls, ID 83402-1718 *** service by electronic mail only</p> <p><a href="mailto:tony.olenichak@idwr.idaho.gov">tony.olenichak@idwr.idaho.gov</a></p>
<p>Randy Budge T.J. Budge Racine Olson P.O. Box 1391 Pocatello, ID 83204-1391 *** service by electronic mail only</p> <p><a href="mailto:randy@racineolson.com">randy@racineolson.com</a> <a href="mailto:tjb@racineolson.com">tjb@racineolson.com</a></p>	<p>Sarah A. Klahn Dylan Thompson Somach Simmons &amp; Dunn 2033 11<sup>th</sup> Street, Ste. 5 Boulder, CO 80302 *** service by electronic mail only</p> <p><a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a> <a href="mailto:dthompson@somachlaw.com">dthompson@somachlaw.com</a></p>	<p>David Gehlert ENRD – DOJ 999 18<sup>th</sup> St. South Terrace, Ste. 370 Denver, CO 80202 *** service by electronic mail only</p> <p><a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></p>
<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83201 *** service by electronic mail only</p> <p><a href="mailto:rdiehl@pocatello.us">rdiehl@pocatello.us</a></p>	<p>Robert E. Williams Williams, Meservy &amp; Lothspeich, LLP P.O. Box 168 Jerome, ID 83338 *** service by electronic mail only</p> <p><a href="mailto:rewilliams@wmlattys.com">rewilliams@wmlattys.com</a></p>	<p>Corey Skinner IDWR – Southern Region 650 Addison Ave. W., Ste. 500 Twin Falls, ID 83301 *** service by electronic mail only</p> <p><a href="mailto:corey.skinner@idwr.idaho.gov">corey.skinner@idwr.idaho.gov</a></p>
<p>Robert L. Harris Holden, Kidwell, Hahn &amp; Crapo. PLLC P.O. Box 50130 Idaho Falls, ID 83405 *** service by electronic mail only</p> <p><a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a></p>	<p>Kathleen Carr US Dept Interior, Office of Solicitor Pacific Northwest Region, Boise 960 Broadway, Ste. 400 Boise, ID 83706 *** service by electronic mail only</p> <p><a href="mailto:kathleenmarion.carr@sol.doi.gov">kathleenmarion.carr@sol.doi.gov</a></p>	<p>Candice McHugh Chris Bromley McHugh Bromley, PLLC 380 South 4<sup>th</sup> Street, Ste. 103 Boise, ID 83702 *** service by electronic mail only</p> <p><a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a> <a href="mailto:cmchugh@mchughbromley.com">cmchugh@mchughbromley.com</a></p>

<p>Randall D. Fife City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 *** service by electronic mail only  <a href="mailto:rfife@idahofallsidaho.gov">rfife@idahofallsidaho.gov</a></p>	<p><b><i>COURTESY COPY TO:</i></b> William A. Parsons Parsons, Smith &amp; Stone LLP P.O. Box 910 Burley, ID 83318 *** service by electronic mail only  <a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a></p>	
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