

**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-MP-2016-001

**ORDER AUTHORIZING  
DISCOVERY; NOTICE OF HEARING**

IN THE MATTER OF IGWA’S SETTLEMENT  
AGREEMENT MITIGATION PLAN

On September 8, 2022, the Director of Idaho Department of Water Resources (“Department”) issued a *Final Order Regarding Compliance with Approved Mitigation Plan* (“Final Order”). The Final Order concluded that, in 2021, the Idaho Ground Water Appropriators, Inc. (“IGWA”) did not comply with the approved mitigation plan between the Surface Water Collation (“SWC”) and IGWA. Additionally, the Final Order approved the settlement agreement the parties filed with the Department on September 7, 2022, as an appropriate remedy for IGWA’s 2021 breach.

On September 22, 2022, IGWA timely filed with the Department a *Petition for Reconsideration and Request for Hearing* (“Petition”). The Petition requested the Director amend the Final Order to “withdraw those parts . . . that adjudicate IGWA’s contractual obligations under the Settlement Agreement . . .” *Petition* at 7. In the alternative, the Petition requests a hearing on “the merits of the Director’s decision.” *Id.*

In an Order dated October 13, 2022, the Director granted IGWA’s request for a hearing under Idaho Code § 42-1701A(3) and found IGWA’s petition for reconsideration moot pending the hearing.

The same order set a prehearing conference, which the Director held on November 10, 2022. During the prehearing conference, the Director and the parties discussed the hearing schedule, but there was little agreement on a path forward. For example, the SWC advocated for a hearing in January 2023 and IGWA advocated for a stay of further administrative proceedings. After hearing from the parties, the Director expressed his intention to move forward with the hearing that IGWA requested and was granted. Accordingly, the Department and the parties worked to identify hearing dates before the 2023 irrigation season. The Director finds that the hearing dates identified below are appropriate considering the parties’ statements during the prehearing conference and available dates identified by the parties’ counsel.

During the prehearing conference, the Director and parties also discussed the need for discovery ahead of the hearing. IGWA and the City of Pocatello stated that discovery would be necessary and appropriate. The Director stated that discovery could begin immediately, and the order below simply memorializes the Director's authorization.

### ORDER

**IT IS HEREBY ORDERED** that the parties are authorized to immediately conduct and engage in discovery pursuant to IDAPA 37.01.01.521.

**IT IS FURTHER ORDERED** that, pursuant to IDAPA 37.01.01.053, documents filed in this proceeding may be served on the parties and the Department via email. Service on the Department shall be made by email to [file@idwr.idaho.gov](mailto:file@idwr.idaho.gov). Service on the parties shall be made by email to the email addresses listed in the Certificate of Service below.

### NOTICE OF HEARING

**NOTICE IS HEREBY GIVEN** that the Department will hold a hearing on IGWA's compliance with its approved mitigation plan during the 2021 irrigation season. The hearing will be held on **February 8–10, 2023, beginning each day at 9:00 AM (MST), in Conference Rooms 602C and 602D at the Department's State Office**, located at 322 E. Front Street, 6<sup>th</sup> Floor, Boise, Idaho.

All parties who wish to participate in the hearing must be present in person. Remote participation will be allowed for those who wish to observe the hearing. To request remote participation information, contact Sarah Tschohl at the phone number or email listed below.

The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, as well as 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 hearing 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 hearing, please advise the Department no later than five (5) days prior to the hearing. 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, email [sarah.tschohl@idwr.idaho.gov](mailto:sarah.tschohl@idwr.idaho.gov).

Dated this 7<sup>th</sup> day of December 2022.

  
\_\_\_\_\_  
GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of December 2022, the above and foregoing, was served by the method indicated below, and addressed to the following:

<p>John K. Simpson          Travis L. Thompson          BARKER ROSHOLT &amp; SIMPSON, LLP          P. O. Box 63          Twin Falls, ID 83303-0063  <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a>  <a href="mailto:flt@idahowaters.com">flt@idahowaters.com</a>  <a href="mailto:nls@idahowaters.com">nls@idahowaters.com</a>  <a href="mailto:jf@idahowaters.com">jf@idahowaters.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>W. Kent Fletcher          FLETCHER LAW OFFICE          P.O. Box 248          Burley, ID 83318  <a href="mailto:wkf@pmt.org">wkf@pmt.org</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>Thomas J. Budge          Elisheva M. Patterson          RACINE OLSON          P.O. Box 1391          Pocatello, ID 83204-1391  <a href="mailto:tj@racineolson.com">tj@racineolson.com</a>  <a href="mailto:elisheva@racineolson.com">elisheva@racineolson.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>Kathleen Marion Carr          US Dept. Interior          960 Broadway Ste 400          Boise, ID 83706  <a href="mailto:kathleenmarion.carr@sol.doi.gov">kathleenmarion.carr@sol.doi.gov</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>David W. Gehlert          Natural Resources Section          Environment and Natural Resources Division          U.S. Department of Justice          999 18<sup>th</sup> St., South Terrace, Suite 370          Denver, CO 80202  <a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>Matt Howard          US Bureau of Reclamation          1150 N Curtis Road          Boise, ID 83706-1234  <a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>Sarah A Klahn          Somach Simmons &amp; Dunn          1155 Canyon Blvd, Ste. 110          Boulder, CO 80302  <a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a>  <a href="mailto:dthompson@somachlaw.com">dthompson@somachlaw.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>

<p>Rich Diehl  City of Pocatello  P.O. Box 4169  Pocatello, ID 83205  <a href="mailto:rdiehl@pocatello.us">rdiehl@pocatello.us</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Candice McHugh  Chris Bromley  MCHUGH BROMLEY, PLLC  380 South 4<sup>th</sup> Street, Suite 103  Boise, ID 83702  <a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a>  <a href="mailto:cmchugh@mchughbromley.com">cmchugh@mchughbromley.com</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Robert E. Williams  WILLIAMS, MESERVY, &amp; LOTHSPREICH, LLP  P.O. Box 168  Jerome, ID 83338  <a href="mailto:rewilliams@wmlattys.com">rewilliams@wmlattys.com</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Robert L. Harris  HOLDEN, KIDWELL, HAHN &amp; CRAPO, PLLC  P.O. Box 50130  Idaho Falls, ID 83405  <a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Randall D. Fife  City Attorney, City of Idaho Falls  P.O. Box 50220  Idaho Falls, ID 83405  <a href="mailto:rfife@idahofallsidaho.gov">rfife@idahofallsidaho.gov</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Tony Olenichak  IDWR—Eastern Region  900 N. Skyline Drive, Ste. A  Idaho Falls, ID 83402  <a href="mailto:Tony.Olenichak@idwr.idaho.gov">Tony.Olenichak@idwr.idaho.gov</a></p>	<input checked="" type="checkbox"/> Email
<p>Corey Skinner  IDWR—Southern Region  1341 Fillmore St., Ste. 200  Twin Falls, ID 83301-3033  <a href="mailto:corey.skinner@idwr.idaho.gov">corey.skinner@idwr.idaho.gov</a></p>	<input checked="" type="checkbox"/> Email
<p><b>COURTESY COPY TO:</b>  William A. Parsons  PARSONS SMITH &amp; STONE  P.O. Box 910  Burley, ID 83318  <a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a></p>	<input checked="" type="checkbox"/> Email

  


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Sarah Tschohl  
Paralegal