

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF THE DISTRIBUTION  
OF WATER TO VARIOUS WATER RIGHTS  
HELD BY AND 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

**FINAL ORDER REGARDING  
IGWA’S 2022 MITIGATION PLAN  
COMPLIANCE**

IN THE MATTER OF IGWA’S SETTLEMENT  
AGREEMENT MITIGATION PLAN

This Final Order determines that, during the 2022 irrigation season, certain members of the Idaho Ground Water Appropriators, Inc. (“IGWA”)<sup>1</sup> breached the 2015 Settlement Agreement approved by the Director as a Mitigation Plan in 2016 and are therefore not currently in compliance with the plan. No curtailment order will issue at this time, however, given that the mid-season *July 2023 As-Applied Order* predicted that SWC members would not suffer a demand shortfall during the 2023 irrigation season.

**BACKGROUND**

**A. Procedural history of IGWA’s 2016 Mitigation Plan.**

In 2015, the Surface Water Coalition (“SWC”)<sup>2</sup> and IGWA executed the *Settlement Agreement Entered into June 30, 2015 Between Participating Members of the Surface Water Coalition and Participating Members of the Idaho Ground Water Appropriators, Inc.* (“SWC-IGWA Agreement”).

In October of 2015, the SWC and IGWA executed an *Addendum to Settlement Agreement* (“First Addendum”). Also, in October of 2015, the A&B Irrigation District (“A&B”) and IGWA entered into a separate agreement (“A&B-IGWA Agreement”).

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<sup>1</sup> For purposes of this order, references to IGWA include only the following eight ground water districts and one irrigation district, which are the signatories to the Mitigation Plan: Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Carey Valley Ground Water District, Fremont Madison Irrigation District, Jefferson Clark Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, and North Snake Ground Water District.

<sup>2</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.

On March 9, 2016, the SWC and IGWA submitted *Surface Water Coalition's and IGWA's Stipulated Mitigation Plan and Request for Order* ("First Stipulated Mitigation Plan") to the Director of the Idaho Department of Water Resources ("Department"). The First Stipulated Mitigation Plan was submitted in response to the SWC's delivery call (Docket No. CM-DC-2010-001). *First Stipulated Mitigation Plan* at 3.

On May 2, 2016, the Director issued the *Final Order Approving Stipulated Mitigation Plan* ("Order Approving Mitigation Plan"), which approved the parties' stipulated mitigation plan subject to conditions including the following: "a. All ongoing activities required pursuant to the Mitigation Plan are the responsibility of the parties to the Mitigation Plan."; and "b. The ground water level goal and benchmarks referenced in the Mitigation Plan are applicable only to the parties to the Mitigation Plan." *Order Approving Mitigation Plan* at 4.

On December 14, 2016, the SWC and IGWA executed the *Second Addendum to Settlement Agreement* ("Second Addendum"). The *Second Addendum* amended the SWC-IGWA Agreement by adding details concerning the implementation of certain sections, most notably sections 3.a (Consumptive Use Volume Reduction); 3.e (Ground Water Level Goal and Benchmarks), 3.m (Steering Committee), and 4.a. (Adaptive Water Management). *Compare SWC-IGWA Agreement §§ 3–4, with Second Addendum § 2*. The Second Addendum also explained the process by which the Steering Committee would address alleged breaches and further stated that, if the parties couldn't agree whether a breach had occurred, the Director was tasked with resolving the dispute and fashioning a remedy. *Second Addendum § 2.c.iii-iv*.

On February 7, 2017, the SWC and IGWA submitted the *Surface Water Coalition's and IGWA's Stipulated Amended Mitigation Plan and Request for Order* ("Second Stipulated Mitigation Plan"). The SWC and IGWA requested that the Director issue an order approving the Second Addendum as an amendment to the mitigation plan. *Second Stipulated Mitigation Plan ¶ 6*.

On May 9, 2017, the Director issued the *Final Order Approving Amendment to Stipulated Mitigation Plan* ("Order Approving Amendment to Mitigation Plan"), approving the Second Addendum as an amendment to the parties' mitigation plan subject to the following conditions:

- a. While the Department will exert its best efforts to support the activities of IGWA and the SWC, approval of the Second Addendum does not obligate the Department to undertake any particular action.
- b. Approval of the Second Addendum does not limit the Director's enforcement discretion or otherwise commit the Director to a particular enforcement approach.

*Order Approving Amendment to Mitigation Plan* at 5.

IGWA’s obligations under the 2016 Mitigation Plan are found in the following six documents:

- (1) the SWC-IGWA Agreement;
- (2) the A&B-IGWA Agreement;
- (3) the First Addendum;
- (4) the Order Approving Mitigation Plan;
- (5) the Second Addendum; and
- (6) the Order Approving Amendment to Mitigation Plan.

**B. The SWC’s request to address IGWA’s purported breach in 2022.**

On April 13, 2023, the SWC sent a letter (“SWC’s 2022 Breach Letter to IDWR”) to the Director advising that certain IGWA members breached the Mitigation Plan in 2022. *SWC’s 2022 Breach Letter to IDWR* at 1–2. The SWC further advised that the Steering Committee met on April 12 (2023) but was unable to resolve the breach issue. *Id.* at 2.

The SWC requested that the Director evaluate the information, determine whether a breach has occurred, and issue an order specifying what actions the breaching parties must take or be subject to curtailment. *Id.* at 1.

Attached as Exhibit A to the *SWC’s 2022 Breach Letter to IDWR* was a letter IGWA wrote to the Steering Committee on April 1, 2023 (“IGWA’s 2022 Breach Letter to Steering Committee”), which included a spreadsheet, replicated below in Table 1, showing the water usage by IGWA members in 2022:

**Table 1:**

**2022 Usage Analysis**  
all values in acre-ft

	Target Conservation	Baseline	2022 Usage	Diversion Reduction	Accomplished Recharge/ Direct Delivery	Total Conservation	2022 Mitigation Balance
American Falls-Aberdeen	33,715	283,815	269,322	14,494	23,550	38,043	4,328
Bingham	35,015	277,011	269,088	7,923	516	8,438	-26,577
Bonneville-Jefferson	18,264	158,133	151,245	6,888	9,249	16,137	-2,127
Carey	703	5,671	1,889	3,782	5	3,787	3,084
Jefferson-Clark	54,373	445,393	408,112	37,281	7,647	44,928	-9,444
Henry’s Fork <sup>1</sup>	5,391	69,979	62,381	7,598	3,000	11,774	6,383
Madison <sup>2</sup>		78,095	76,919	1,176			
Magic Valley	32,462	256,188	218,759	37,429	3,378	40,807	8,345
North Snake <sup>3</sup>	25,474	208,795	174,838	33,957	3,395	37,352	11,878
A&B <sup>4</sup>	21,660	-	-	-	-	21,660	0
Southwest ID <sup>4</sup>	12,943	-	-	-	-	12,943	0
<b>Total:</b>	<b>240,000</b>	<b>1,783,080</b>	<b>1,632,553</b>	<b>150,527</b>	<b>50,739</b>	<b>235,869</b>	<b>-4,131</b>

**Notes:**

- (1) Includes mitigation for Freemont- Madison Irrigation District, Madison Ground Water District and WD100. Mitigating by alternative means.
- (2) Madison baseline is preliminary estimate, see note on district breakdown.
- (3) North Snake GWD baseline includes annual average of 21,305 acre-feet of conversions.
- (4) A&B ID and Southwest ID Total Conservation is unknown and assumed to meet target.

IGWA also expressed in its letter to the Steering Committee that its usage report [Table 1] “does not purport to demonstrate compliance with the Agreement in 2022.” *IGWA’s 2022 Breach Letter to Steering Committee* at 2. The basis for IGWA’s position was that the Director had not yet issued his [*Amended*] *Final Order Regarding IGWA’s 2021 Compliance*, which would provide important interpretations to certain provisions in the 2016 Mitigation Plan germane to the breach issue.<sup>3</sup>

Meanwhile, on April 21, 2023, the Director issued his *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Fifth Methodology Order”), and his *Final Order Regarding April 2023 Forecast Supply* (“April 2023 As-Applied Order”) in the SWC delivery call matter (Docket No. CM-DC-2010-001). The *April 2023 As-Applied Order* predicted a shortfall for Twin Falls Canal Company, which would have resulted in mitigation requirements or curtailment for ground water rights with priority dates junior to December 30, 1953. The Director set the matter for a hearing June 6–10, 2023.

On April 24, 2023, the Director issued his *Amended Final Order Regarding Compliance with Approved Mitigation Plan* (“Amended Final Order Regarding IGWA’s 2021 Compliance”) in Docket No. CM-MP-2016-001. The Director concluded that the 2016 Mitigation Plan unambiguously required IGWA to reduce its ground water diversions by 240,000 acre-feet each year—meaning that averaging was prohibited—and also unambiguously prohibited IGWA from apportioning A&B Irrigation District (“A&B”) or Southwest Irrigation District (“Southwest”) a percentage of its annual reduction obligation. *Amended Final Order Regarding IGWA’s 2021 Compliance* at 1.

On April 28, 2023, a pre-hearing conference was held concerning recent methodology amendments to the Fifth Methodology Order. During the pre-hearing conference the SWC’s counsel raised IGWA’s purported breach in 2022. The Director advised he did not anticipate issuing an order on IGWA’s purported 2022 breach until after the hearing on the Fifth Methodology Order.

On June 6–9, 2023, a hearing was held concerning the Fifth Methodology Order.

On July 19, 2023, the Director issued his *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* as well his *Order Revising April 2023 Forecast and Amending Curtailment Order (Methodology Steps 5 & 6)* (“July 2023 As-Applied”) in the SWC delivery call matter (Docket No. CM-DC-2010-001). The *July 2023 As-Applied Order* predicted that SWC members would not suffer a mid-season shortfall. *July 2023 As-Applied Order* at 9.

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<sup>3</sup> The Director issued his *Amended Final Order Regarding IGWA’s 2021 Compliance* on April 24, 2023, or 12 days after the Steering Committee met to address IGWA’s purported breach in 2022.

## APPLICABLE LAW

Idaho Code § 42-602, addressing the authority of the Director over the supervision of water distribution within water districts, states:

The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director. The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

Idaho Code § 42-1805(8) authorizes the Director to “promulgate, adopt, modify, repeal and enforce rules implementing or effectuating the powers and duties of the department.”

Idaho Code § 42-603 grants the Director authority to adopt rules governing water distribution.

Pursuant to Chapter 52, Title 67, Idaho Code, and Idaho Code §§ 42-603 and 42-1805(8), the Department promulgated the Rules for Conjunctive Management of Surface and Ground Water Resources (“CM Rules”). IDAPA 37.03.11.000.

The CM Rules “prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right in an area having a common ground water supply.” IDAPA 37.03.11.001.

Under CM Rule 40.01, once the Director finds that material injury is occurring, he “shall” either:

- a. Regulate the diversion and use of water in accordance with the priorities of rights of the various surface or ground water users whose rights are included within the district, provided, that regulation of junior-priority ground water diversion and use where the material injury is delayed or long range may, by order of the Director, be phased-in over not more than a five-year (5) period to lessen the economic impact of immediate and complete curtailment; or
- b. Allow out-of-priority diversion of water by junior-priority ground water users pursuant to a mitigation plan that has been approved by the Director.

IDAPA 37.03.11.040.01.

CM Rule 42.02 states:

The holder of a senior-priority surface or ground water right will be prevented from making a delivery call for curtailment of pumping of any well used by the holder

of a junior-priority ground water right where use of water under the junior-priority right is covered by an approved and effectively operating mitigation plan.

IDAPA 37.03.11.042.02.

Out of priority ground water user is proper only when “pursuant to a mitigation plan that has been approved by the Director.” IDAPA 37.03.11.040.01.b. Junior-priority ground water users “covered by an approved and effectively operating mitigation plan” are protected from curtailment under CM Rule 42. IDAPA 37.03.11.042.02.

### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

1. During the 2022 irrigation season, IGWA’s obligations were set forth in the following six documents, collectively referred to as the “2016 Mitigation Plan”:

- (1) the SWC-IGWA Agreement;
- (2) the A&B-IGWA Agreement;
- (3) the First Addendum;
- (4) the Order Approving Mitigation Plan;
- (5) the Second Addendum; and
- (6) the Order Approving Amendment to Mitigation Plan.

2. Of import here, the 2016 Mitigation Plan obligates IGWA members to reduce total diversions or recharge an equivalent volume of 240,000 acre-feet each year. *SWC-IGWA Agreement* § 3.a; *see also Amended Final Order Regarding IGWA’s 2021 Compliance* at 16.

3. The 2016 Mitigation Plan is unique in that it contemplates delays in analyzing IGWA’s mitigation efforts. The delays are inherent in the Steering Committee review process the parties agreed to in the Second Addendum.

4. The 2016 Mitigation Plan authorizes the Steering Committee to resolve alleged breaches. *See Second Addendum* § 2.c.iii. If the Steering Committee is unable to determine whether a breach has occurred, the Director is tasked with deciding and thereafter specifying actions the breaching party must complete to cure the breach or be subject to curtailment. *Id.* § 2.c.iv.

5. On April 12, 2023, the Steering Committee met but was unable to reach a consensus concerning whether IGWA breached the 2016 Mitigation Plan in 2022. *SWC’s 2022 Breach Letter to IDWR* at 2.

6. IGWA explicitly stated in its letter to the Steering Committee that its usage report [Table 1] “does not purport to demonstrate compliance with the Agreement in 2022.” *IGWA’s 2022 Breach Letter to IDWR* at 3. The basis for IGWA’s position was that as of April 1, 2023, the Director had not yet issued his [Amended] Final Order Regarding IGWA’s 2021 Compliance, which interpreted several important provisions of the 2016 Mitigation Plan,

including whether IGWA could assign A&B and Southwest a proportionate share of its 240,000 acre-foot reduction obligation.<sup>4</sup>

7. Table 1 (below) illustrates that, in its 2022 usage report, IGWA assigned A&B and Southwest a proportionate percentage of IGWA’s 240,000 acre-foot reduction obligation:<sup>5</sup>

**Table 1:**

**2022 Usage Analysis**  
all values in acre-ft

	Target Conservation	Baseline	2022 Usage	Diversion Reduction	Accomplished Recharge/ Direct Delivery	Total Conservation	2022 Mitigation Balance
American Falls-Aberdeen	33,715	283,815	269,322	14,494	23,550	38,043	4,328
Bingham	35,015	277,011	269,088	7,923	516	8,438	-26,577
Bonneville-Jefferson	18,264	158,133	151,245	6,888	9,249	16,137	-2,127
Carey	703	5,671	1,889	3,782	5	3,787	3,084
Jefferson-Clark	54,373	445,393	408,112	37,281	7,647	44,928	-9,444
Henry's Fork <sup>1</sup>	5,391	69,979	62,381	7,598	3,000	11,774	6,383
Madison <sup>2</sup>		78,095	76,919		1,176		
Magic Valley	32,462	256,188	218,759	37,429	3,378	40,807	8,345
North Snake <sup>3</sup>	25,474	208,795	174,838	33,957	3,395	37,352	11,878
A&B <sup>4</sup>	21,660	-	-	-	-	21,660	0
Southwest ID <sup>4</sup>	12,943	-	-	-	-	12,943	0
<b>Total:</b>	<b>240,000</b>	<b>1,783,080</b>	<b>1,632,553</b>	<b>150,527</b>	<b>50,739</b>	<b>235,869</b>	<b>-4,131</b>

**Notes:**

- (1) Includes mitigation for Freemont- Madison Irrigation District, Madison Ground Water District and WD100. Mitigating by alternative means.
- (2) Madison baseline is preliminary estimate, see note on district breakdown.
- (3) North Snake GWD baseline includes annual average of 21,305 acre-feet of conversions.
- (4) A&B ID and Southwest ID Total Conservation is unknown and assumed to meet target.

8. IGWA’s assignment to A&B and Southwest of a portion of its 240,000 acre-foot reduction obligation reduced the obligations of each IGWA member who signed the Mitigation Plan.

9. The Director concludes that, as addressed in detail in the Amended Final Order Regarding IGWA’s 2021 Compliance, IGWA’s assignment to A&B and Southwest of a proportionate share (34,603 acre-feet) of its 240,000 acre-foot reduction obligation was improper.

10. Table 2 summarizes IGWA’s 2022 performance with yellow highlighted columns added by the Director. The column labeled “IDWR Proportioning” redistributes the 34,603 acre-foot IGWA assigned to A&B and Southwest. The yellow highlighted “Target Conservation” column shows the reduction obligations after reapportioning the 34,603 acre-feet to IGWA members who were parties to the 2016 Mitigation Plan.

<sup>4</sup> The Director issued the Amended Final Order Regarding IGWA’s 2021 Compliance on April 24, 2023, or 12 days after the Steering Committee met to address IGWA’s purported 2022 breach.

<sup>5</sup> IGWA also sent its 2022 Performance Report directly to the Department.

**Table 2:**

2022 Usage Analysis											
all values in acre-ft											
	IGWA	[IGWA] Target	IDWR	IDWR Target	Baseline	2022 Usage	Diversion	Accomplished	Total	[IGWA] 2022	IDWR 2022
	Proportioning	Conservation	Proportioning	Conservation			Reduction	Recharge/ Direct Delivery	Conservation	Mitigation	Mitigation
										Balance	Balance
American Falls-Aberdeen	14.0%	33,715	16.4%	39,395	283,815	269,322	14,494	23,550	38,043	4,328	-1,352
Bingham	14.6%	35,015	17.0%	40,914	277,011	269,088	7,923	516	8,438	-26,577	-32,476
Bonneville-Jefferson	7.6%	18,264	8.9%	21,341	158,133	151,245	6,888	9,249	16,137	-2,127	-5,204
Carey	0.3%	703	0.3%	821	5,671	1,889	3,782	5	3,787	3,084	2,966
Jefferson-Clark	22.7%	54,373	26.5%	63,533	445,393	408,112	37,281	7,647	44,928	-9,444	-18,605
Henry's Fork <sup>1</sup>	2.2%	5,391	2.6%	6,299	69,979	62,381	7,598	3,000	11,774	6,383	5,475
Madison <sup>2</sup>	0.0%				78,095	76,919	1,176				0
Magic Valley	13.5%	32,462	15.8%	37,931	256,188	218,759	37,429	3,378	40,807	8,345	2,876
North Snake <sup>3</sup>	10.6%	25,474	12.4%	29,765	208,795	174,838	33,957	3,395	37,352	11,878	7,586
A&B <sup>4</sup>	9.0%	21,660	--	--	-	-	-	-	21,660	0	--
Southwest ID <sup>4</sup>	5.4%	12,943	--	--	-	-	-	-	12,943	0	--
<b>Total:</b>	<b>100%</b>	<b>240,000</b>	<b>100%</b>	<b>240,000</b>	<b>1,783,080</b>	<b>1,632,553</b>	<b>150,527</b>	<b>50,739</b>	<b>235,869</b>	<b>-4,131</b>	<b>-38,734</b>
Notes:											
(1) Includes mitigation for Freemont- Madison Irrigation District, Madison Ground Water District and WD100. Mitigating by alternative means.											
(2) Madison baseline is preliminary estimate, see note on district breakdown.											
(3) North Snake GWD baseline includes annual average of 21,305 acre-feet of conversions.											
(4) A&B ID and Southwest ID Total Conservation is unknown and assumed to meet target.											

11. The Director finds that, as Table 2 illustrates, when the 34,603 acre-feet are re-apportioned to IGWA members who were parties to the 2016 Mitigation Plan, collectively IGWA was 38,734 acre-feet short of its reduction obligation in 2022.

12. The Director also finds that, as shown in Table 2, Carey Ground Water District, Henry's Fork/ Madison Ground Water District, Fremont Madison Irrigation District, Magic Valley Ground Water District, and North Snake Ground Water District satisfied their proportionate mitigation obligations in 2022.

13. The Director further finds that, as outlined in Table 3, printed below, four IGWA ground water districts failed to satisfy their proportionate share of IGWA's 240,000 acre-feet conservation obligation in 2022. Table 3 also lists the deficiency volume for each of the four IGWA members who failed to satisfy their respective mitigation obligations in 2022.

**Table 3:**

Ground Water District	Deficiency (acre-feet)
American Falls-Aberdeen	1,352
Bingham	32,476
Bonneville-Jefferson	5,204
Jefferson-Clark	18,605
<b>Total</b>	<b>57,637</b>



14. In a delivery call under the CM Rules, out-of-priority diversions by junior ground water users is allowable only “pursuant to a mitigation plan that has been approved by the Director.” IDAPA 37.03.11.040.01.b. Junior-priority ground water users “covered by an approved and effectively operating mitigation plan” are protected from curtailment under CM Rule 42. IDAPA 37.03.11.042.02; *see also SWC-IGWA Agreement* § 5 (“No ground water user participating in this Settlement Agreement will be subject to a delivery call by the SWC members as long as the provisions of the Settlement Agreement are being implemented.”).

15. Because American Falls-Aberdeen, Bingham, Bonneville-Jefferson, and Jefferson-Clark failed to satisfy their proportionate share of the mitigation obligation in 2022, the 2016 Mitigation Plan does not protect these four IGWA members from a curtailment order.

16. The midseason *July 2023 As-Applied Order* predicted that SWC members would not suffer a demand shortfall during the 2023 irrigation season. *July 2023 As-Applied Order* at 9. Accordingly, curtailing ground water use by American Falls-Aberdeen, Bingham, Bonneville-Jefferson and Jefferson Clark is unwarranted at this time.

### ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that:

(1) IGWA members Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, and Jefferson Clark Ground Water District failed to satisfy their proportionate share of IGWA’s mitigation obligation in 2022 and are therefore not in compliance with IGWA’s 2016 Mitigation Plan.

(2) Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, and Jefferson Clark Ground Water District will not be entitled to the protection of IGWA’s 2016 Mitigation Plan in response to a curtailment order.<sup>6</sup>

DATED this 2<sup>nd</sup> day of August 2023.

  
GARY SPACKMAN  
Director

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<sup>6</sup> The Second Addendum call for the Director to also “issue an order specifying actions that must be taken by the breaching party to cure the breach . . .” *Second Addendum* at 3. The parties have failed to provide the Director with sufficient information to make this determination at this time.

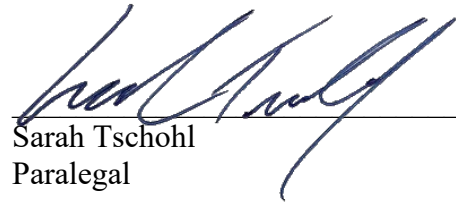
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of August 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

<p>John K. Simpson  MARTEN LAW LLP  P.O. Box 2139  Boise, ID 83701-2139  <a href="mailto:jsimpson@martenlaw.com">jsimpson@martenlaw.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
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<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>
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<p>David W. Gehlert  Natural Resources Section  Environment and Natural Resources Division  U.S. Department of Justice  999 18th 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>
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Sarah Tschohl  
Paralegal

## **EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER**

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code.

### **REQUEST FOR HEARING**

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

### **APPEAL OF FINAL ORDER TO DISTRICT COURT**

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.