

**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 GRANTING REQUEST  
FOR HEARING; NOTICE OF  
SCHEDULING CONFERENCE**

IN THE MATTER OF IGWA'S SETTLEMENT  
AGREEMENT MITIGATION PLAN

**BACKGROUND**

On August 2, 2023, the Director of the Idaho Department of Water Resources ("Department") issued his *Final Order Regarding IGWA's 2022 Mitigation Plan Compliance* ("2022 Compliance Order"). The 2022 Compliance Order determined that Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, and Jefferson Clark Ground Water District breached IGWA's 2016 Mitigation Plan during the 2022 irrigation season and would not be entitled to protection under the mitigation plan in response to a curtailment order. *2022 Compliance Order* at 8–9.

On August 16, 2023, 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 filed *Surface Water Coalition's Petition for Reconsideration and Request for Hearing* ("SWC's Petition") with the Department. The SWC's Petition requests that the Director "reconsider the 2022 Compliance Order and order non-complying juniors within the four districts to curtail pumping under their junior rights." *SWC's Petition* at 4. In addition, pursuant to Idaho Code § 42-1701A(3), the SWC's Petition requests a hearing on the 2022 Compliance Order. *Id.* at 6.

On August 22, 2023, *IGWA's Response to SWC's Petition for Reconsideration and Request for Hearing* ("IGWA's Response") was filed with the Department. IGWA's Response requests the Director deny the SWC's Petition. *IGWA's Response* at 2.

## ANALYSIS AND CONCLUSIONS OF LAW

Idaho Code § 42-1701A(3) provides in relevant part:

Unless the right to a hearing before the director . . . is otherwise provided in by statute, any person aggrieved by any action of the director, including any decision, determination, order or other action . . . 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 parties have not previously been afforded an opportunity for a hearing on the 2022 Compliance Order and are entitled to a hearing pursuant to Idaho Code § 42-1701A(3). The Director will grant the hearing request and set a scheduling conference in the matter.<sup>1</sup>

## NOTICE OF SCHEDULING CONFERENCE

The Director hereby notifies the parties that a scheduling conference in this matter will be held on **November 7, 2023, at 9:30 a.m. (MST)**, at the Department's State Office, located at 322 E. Front Street, 6th Floor, Conference Rooms 602C–D, Boise, Idaho. The Department has not yet assigned a hearing officer to the matter. Notice of hearing officer assignment will be provided to the parties prior to the scheduling conference.

The parties to the matter must be represented at the scheduling conference in person or by video conference. The purpose of the conference is to schedule a hearing on the Department's 2022 Compliance Order.

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=ma493c4ca589243601c9baa31497f4e65>.

To join the conference via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2632 121 6572.

The conference will be held in accordance with the provisions of Chapters 2 and 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/37/370101.pdf>.

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

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<sup>1</sup> Because the Director is granting the request for a hearing on the 2022 Compliance Order, the petition to reconsider the same order is moot and will not be addressed in this order.

Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4815, or email [sarah.tschohl@idwr.idaho.gov](mailto:sarah.tschohl@idwr.idaho.gov).

**ORDER**

IT IS HEREBY ORDERED that the Surface Water Coalition's request for a hearing on the 2022 Compliance Order is GRANTED.

DATED this 6th day of September 2023.



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MATHEW WEAVER  
Director

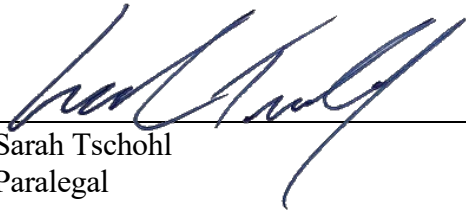
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of September 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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| <p>John K. Simpson<br/> MARTEN LAW LLP<br/> P.O. Box 2139<br/> Boise, ID 83701-2139<br/> <a href="mailto:jsimpson@martenlaw.com">jsimpson@martenlaw.com</a></p>   | <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br/> <input checked="" type="checkbox"/> Email</p> |
| <p>Travis L. Thompson<br/> MARTEN LAW LLP<br/> P.O. Box 63<br/> Twin Falls, ID 83303-0063<br/> <a href="mailto:tthompson@martenlaw.com">tthompson@martenlaw.com</a><br/> <a href="mailto:jnielsen@martenlaw.com">jnielsen@martenlaw.com</a></p>   | <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br/> <input checked="" type="checkbox"/> Email</p> |
| <p>W. Kent Fletcher<br/> FLETCHER LAW OFFICE<br/> P.O. Box 248<br/> Burley, ID 83318<br/> <a href="mailto:wkf@pmt.org">wkf@pmt.org</a></p>  | <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br/> <input checked="" type="checkbox"/> Email</p> |
| <p>Thomas J. Budge<br/> Elisheva M. Patterson<br/> RACINE OLSON<br/> P.O. Box 1391<br/> Pocatello, ID 83204-1391<br/> <a href="mailto:tj@racineolson.com">tj@racineolson.com</a><br/> <a href="mailto:elisheva@racineolson.com">elisheva@racineolson.com</a></p>  | <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br/> <input checked="" type="checkbox"/> Email</p> |
| <p>David W. Gehlert<br/> Natural Resources Section<br/> Environment and Natural Resources Division<br/> U.S. Department of Justice<br/> 999 18th St., South Terrace, Suite 370<br/> Denver, CO 80202<br/> <a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></p>  | <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br/> <input checked="" type="checkbox"/> Email</p> |
| <p>Matt Howard<br/> US Bureau of Reclamation<br/> 1150 N Curtis Road<br/> Boise, ID 83706-1234<br/> <a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a></p>  | <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br/> <input checked="" type="checkbox"/> Email</p> |
| <p>Sarah A Klahn<br/> Maximilian C. Bricker<br/> Somach Simmons &amp; Dunn<br/> 1155 Canyon Blvd, Ste. 110<br/> Boulder, CO 80302<br/> <a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a><br/> <a href="mailto:mbricker@somachlaw.com">mbricker@somachlaw.com</a><br/> <a href="mailto:dthompson@somachlaw.com">dthompson@somachlaw.com</a></p> | <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br/> <input checked="" type="checkbox"/> Email</p> |

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| <p>Rich Diehl<br/> City of Pocatello<br/> P.O. Box 4169<br/> Pocatello, ID 83205<br/> <a href="mailto:rdiehl@pocatello.us">rdiehl@pocatello.us</a></p>   | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input checked="" type="checkbox"/> Email |
| <p>Candice McHugh<br/> Chris Bromley<br/> MCHUGH BROMLEY, PLLC<br/> 380 South 4th Street, Suite 103<br/> Boise, ID 83702<br/> <a href="mailto:cmchugh@mchughbromley.com">cmchugh@mchughbromley.com</a><br/> <a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a></p>   | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input checked="" type="checkbox"/> Email |
| <p>Robert E. Williams<br/> WILLIAMS, MESERVY, &amp; LOTHSPREICH, LLP<br/> P.O. Box 168<br/> Jerome, ID 83338<br/> <a href="mailto:rewilliams@wmlattys.com">rewilliams@wmlattys.com</a></p>   | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input checked="" type="checkbox"/> Email |
| <p>Robert L. Harris<br/> HOLDEN, KIDWELL, HAHN &amp; CRAPO, PLLC<br/> P.O. Box 50130<br/> Idaho Falls, ID 83405<br/> <a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a></p>  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input checked="" type="checkbox"/> Email |
| <p>Randall D. Fife<br/> City Attorney, City of Idaho Falls<br/> P.O. Box 50220<br/> Idaho Falls, ID 83405<br/> <a href="mailto:rfife@idahofallsidaho.gov">rfife@idahofallsidaho.gov</a></p>  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input checked="" type="checkbox"/> Email |
| <p>Skyler C. Johns<br/> Nathan M. Olsen<br/> Steven L. Taggart<br/> OLSEN TAGGART PLLC<br/> P.O. Box 3005<br/> Idaho Falls, ID 83403<br/> <a href="mailto:sjohns@olsentaggart.com">sjohns@olsentaggart.com</a><br/> <a href="mailto:nolsen@olsentaggart.com">nolsen@olsentaggart.com</a><br/> <a href="mailto:staggart@olsentaggart.com">staggart@olsentaggart.com</a></p> | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input checked="" type="checkbox"/> Email |
| <p>Dylan Anderson<br/> Dylan Anderson Law PLLC<br/> P.O. Box 35<br/> Rexburg, Idaho 83440<br/> <a href="mailto:dylan@dylanandersonlaw.com">dylan@dylanandersonlaw.com</a></p>  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input checked="" type="checkbox"/> Email |
| <p>COURTESY COPY TO:<br/> Tony Olenichak<br/> IDWR—Eastern Region<br/> 900 N. Skyline Drive, Ste. A<br/> Idaho Falls, ID 83402<br/> <a href="mailto:Tony.Olenichak@idwr.idaho.gov">Tony.Olenichak@idwr.idaho.gov</a></p>   | <input checked="" type="checkbox"/> Email   |

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| <p>COURTESY COPY TO:<br/>Corey Skinner<br/>IDWR—Southern Region<br/>1341 Fillmore St., Ste. 200<br/>Twin Falls, ID 83301-3033<br/><a href="mailto:corey.skinner@idwr.idaho.gov">corey.skinner@idwr.idaho.gov</a></p> | <p><input checked="" type="checkbox"/> Email</p> |
| <p>COURTESY COPY TO:<br/>William A. Parsons<br/>PARSONS SMITH &amp; STONE<br/>P.O. Box 910<br/>Burley, ID 83318<br/><a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a></p>                                       | <p><input checked="" type="checkbox"/> Email</p> |

  
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Sarah Tschohl  
Paralegal