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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,

IN THE MATTER OF IGWA’S SETTLEMENT
AGREEMENT MITIGATION PLAN

Docket No. CM-MP-2016-001

SWC ISSUES FOR HEARING

Pursuant to the *Notice of Second Continued Scheduling Conference; Order Setting Deadlines* dated December 14, 2023, A & B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (collectively “SWC”) submits the following issues for hearing on the *Final Order Regarding IGWA’s 2022 Mitigation Plan Compliance* (“2022 Compliance Order”):

1. The *Final Order Approving Amendment to Stipulated Mitigation Plan* dated May 9, 2017 (“2017 Mitigation Order”) is not an injury based order; rather it is a stipulated mitigation plan agreement adopted by the Director as a mitigation order and it requires long term annual actions by the party Ground Water Districts and sets benchmarks and an ultimate goal to restore sentinel well groundwater levels. If Ground Water Districts that are parties to the 2017 Mitigation Order fail to comply with the 2017 Mitigation Order, are they entitled to safe harbor by complying with a different Mitigation Order that addresses only one-year injury?

2. Can a Ground Water District have multiple mitigation plans approved in response to a delivery call? In this case a 2009 plan and a subsequent 2015 plan? If so, do they have to be in compliance with all of the plans to receive the benefits of a stipulated safe harbor provision? Can a Ground Water District pick and choose which plan it follows in a given year?

3. The Director found that four Ground Water Districts breached the 2017 Mitigation Order during the 2022 irrigation season and stated that those that breached were not entitled to safe harbor. See 2022 Compliance Order, p. 8. Are the Ground Water Districts that breached the 2017 Mitigation Order not entitled to safe harbor indefinitely until they cure the 2022 breach (and any subsequent breaches of the 2017 Mitigation Order)?

4. If Ground Water Districts that are parties to the 2017 Mitigation Order must comply with the 2017 Mitigation Order and breach the Order, should the Director issue an order setting forth a remedy to cure the breach and order curtailment if compliance does not take place? What additional information must be supplied to the Director to identify an appropriate remedy?

5. If the Director issues an order setting forth a remedy to cure a breach of the 2017 Mitigation Order, must the order consider and require a remedy that cures the long-term effect of the breach on the ESPA aquifer and sentinel well levels?

The SWC requests that the Hearing Officer address the foregoing issues at the time of hearing.

DATED this 19th day of December, 2023.

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s/ Travis L. Thompson
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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 2023, the above and foregoing was served by email as indicated below:

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