

**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

ORDER AUTHORIZING DISCOVERY

SCHEDULING ORDER

ORDER SUSPENDING IDAPA

37.01.01.354

**NOTICE OF PREHEARING
CONFERENCE AND HEARING**

BACKGROUND

On August 2, 2023, the Director of the Idaho Department of Water Resources issued his *Final Order Regarding IGWA’s 2022 Mitigation Plan Compliance* (“2022 Compliance Order”). 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 (collectively “Surface Water Coalition”) filed *Surface Water Coalition’s Petition for Reconsideration and Request for Hearing* (“SWC’s Petition”) with the Department. The *SWC’s Petition* requested a hearing on the *2022 Compliance Order* pursuant to Idaho Code § 42-1701A(3). *SWC’s Petition* at 6.

On September 6, 2023, the Director issued an *Order Granting Request for Hearing; Notice of Scheduling Conference*. On November 7, 2023, an initial scheduling conference was held by the Director and continued to December 12, 2023.

On December 12, 2023, the Director issued an order appointing Roger S. Burdick as the independent hearing officer in this matter and held a continued scheduling conference. On December 14, 2023, Hearing Officer Burdick issued a *Notice of Second Continued Scheduling Conference; Order Setting Deadlines* (“*Notice/Order*”). The order set deadlines for the parties “to file with the Department a written statement of proposed issues for hearing” and “to file a response to the statements of proposed issues.” *Notice/Order* at 3.

On December 27, 2023, all persons identified on the attached certificate of service were informed via email that attendance at the next scheduling conference would be mandatory for anyone wishing to participate as a party in the contested case. A second continued scheduling conference was held on December 28, 2023. During the scheduling conference, after some

discussion occurred and no objections were raised, Hearing Officer Burdick granted American Falls-Aberdeen Ground Water District's pending petition to intervene. For the record, the parties to the contested case were recognized as the Surface Water Coalition, Idaho Ground Water Appropriators, Inc., Bingham Ground Water District, Bonneville-Jefferson Ground Water District, and American Falls-Aberdeen Ground Water District. Hearing Officer Burdick provided notice that any additional petitions to intervene needed to be filed by 5 p.m. on December 28, 2023, to be considered timely. During the scheduling conference, having reviewed the parties' proposed hearing issue statements and responses, Hearing Officer Burdick identified the issues for hearing, established a hearing schedule, and authorized the parties to conduct and engage in discovery.

On December 28, 2023, the *Coalition of Cities' and City of Pocatello's Petition to Intervene* was timely filed.

ORDER

IT IS HEREBY ORDERED that the parties are authorized to conduct and engage in discovery pursuant to IDAPA 37.01.01.521 as of December 28, 2023.

IT IS FURTHER ORDERED that the following schedule is ADOPTED:

- | | |
|----------------------|--|
| Jan. 8, 2024 | Deadline for the parties to serve written discovery requests (interrogatories, requests for production, and requests for admission). |
| Jan. 22, 2024 | Deadline for the parties to serve answers to discovery. |
| Jan. 31, 2024 | Deadline for the parties to file a list of expert witnesses they intend to rely upon at the hearing, including names, addresses, and updated curricula vitae. Deadline for the parties to submit a list of lay witnesses they intend to rely upon at the hearing, including names, addresses, and a brief summary of their scope of testimony. |
| Feb. 12, 2024 | Deadline for the parties to file dispositive motions. Responses to dispositive motions are due within 14 days of the service date of a motion. Replies to responses will not be allowed. |
| Feb. 15, 2024 | Deadline for the parties to file expert reports. If a party intends to have an expert testify during the hearing, the expert needs to have authored a disclosed expert report. |
| Feb. 26, 2024 | Deadline for the parties to file a list of exhibits they intend to rely upon at the hearing. If any of the parties wish to propose joint/common exhibits, that should be reflected in their list of exhibits. The parties shall use the following reserved exhibit numbers: |

Exhibit Nos.	Assigned Party
1–99	Surface Water Coalition
100–199	Idaho Ground Water Appropriators
200–299	Bingham Ground Water District,
300–399	Bonneville-Jefferson Ground Water District
400–499	American Falls-Aberdeen Ground Water District

Feb. 29, 2024 Deadline for the parties to file rebuttal expert reports and file a list of rebuttal expert witnesses they intend to rely upon at the hearing, including names, addresses, and updated curricula vitarum.

Mar. 6, 2024 Deadline for the parties to exchange and submit to the Department an electronic copy (via e-file email, USB thumb drive, or disc(s)) of their pre-marked, proposed exhibits. Each exhibit must be an independent document and all PDFs should be machine readable. Exhibits shall be pre-marked in the bottom right corner of every page and must include: 1) the name of the party proposing the exhibit; 2) the exhibit number; and 3) a page number (each exhibit shall start with page 1).

Mar. 11, 2024 Prior to the start of the hearing, the parties shall submit to the Department three physical copies of their pre-marked, proposed hearing exhibits. Exhibits shall be organized in binders that are labeled with the party’s name and include dividers that identify each exhibit by their number.

IT IS FURTHER ORDERED that, pursuant to IDAPA 37.01.01.051 and due to the impending discovery deadlines outlined in the above scheduling order, IDAPA 37.01.01.354 shall be suspended as it relates to the *Coalition of Cities’ and City of Pocatello’s Petition to Intervene*. Any party opposing the *Coalition of Cities’ and City of Pocatello’s Petition to Intervene* must file an objection by January 2, 2024. Responses to the objection must be filed by January 4, 2024.

NOTICE OF PREHEARING CONFERENCE

NOTICE IS HEREBY GIVEN that Hearing Officer Burdick will hold a prehearing conference in this matter on **February 26, 2024, at 10:00 a.m. (MT)**, at the Department’s State Office, located at 322 E. Front Street, 6th Floor, Conference Rooms 602C–D, Boise, Idaho. All parties must be present at the prehearing conference in person or by video conference. The parties shall come prepared to discuss any proposed settlement, the disposition of any pending motions, expectations outlined in the above scheduling order, and any other matters that could aid in the fair and efficient resolution of the contested case.

To join the conference via computer or smartphone, please click the following Webex link and follow the prompts:
<https://idahogov.webex.com/idahogov/j.php?MTID=md2bafbd35df750b6d9cf89b74e413253>.

To join the conference via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2631 877 4746.

The conference will be held in accordance with the provisions of Chapter 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 prehearing 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 accommodation should be directed to Sarah Tschohl, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4815, or email sarah.tschohl@idwr.idaho.gov.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that Hearing Officer Burdick will hold a hearing in this matter on **March 11–13, 2024**. Each hearing day will begin at **9:00 a.m. (MT)**. The hearing will take place at the Department's State Office, located at 322 E. Front Street, 6th Floor, Conference Rooms 602B–D, Boise, Idaho. All parties wishing to participate in the hearing shall be present in person. The issues for hearing are:

- 1) Did the Director error by not issuing an order specifying the actions needed to cure the 2022 breach of the 2016 Mitigation Plan¹ by certain ground water districts?
- 2) Did the Director error by not immediately issuing an order curtailing ground water districts that breached the 2016 Mitigation Plan in 2022?
- 3) Can the 2009 mitigation plan be used to cure the ground water districts' 2022 breach of the 2016 Mitigation Plan?
- 4) What action must be taken by the ground water districts to cure their 2022 breach of the 2016 Mitigation Plan?

The hearing will be held in accordance with the provisions of Chapter 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 hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodation to attend, participate in, or understand the hearing, please advise the Department no later than five (5) days before the hearing. Inquiries for special accommodation should be directed to Sarah Tschohl, Idaho

¹ The "2016 Mitigation Plan" as defined within the *2022 Compliance Order*.

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

Webex links are provided below for those who wish to only observe the hearing:

Hearing Day 1
Mar. 11, 2024

To observe via computer or smartphone, please click the following Webex link and follow the prompts:
<https://idahogov.webex.com/idahogov/j.php?MTID=m144c34d711c36280df4885f90859c2b1>.

To join via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2630 115 0779.

Hearing Day 2
Mar. 12, 2024

To observe via computer or smartphone, please click the following Webex link and follow the prompts:
<https://idahogov.webex.com/idahogov/j.php?MTID=m39ca5e212da0799ababcd7f49c6b748d>.

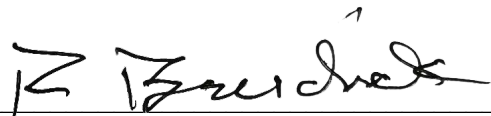
To join via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2634 375 8451.

Hearing Day 3
Mar. 13, 2024

To observe via computer or smartphone, please click the following Webex link and follow the prompts:
<https://idahogov.webex.com/idahogov/j.php?MTID=mdfde0f4ace4364d3f0dcf6656c8f2e3d>.

To join via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2633 397 3584.

DATED this 29th day of December 2023.



ROGER S. BURDICK
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of December 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

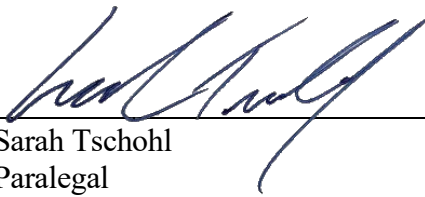
<p>John K. Simpson MARTEN LAW LLP P.O. Box 2139 Boise, ID 83701-2139 jsimpson@martenlaw.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Travis L. Thompson MARTEN LAW LLP P.O. Box 63 Twin Falls, ID 83303-0063 tthompson@martenlaw.com jnielsen@martenlaw.com</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 wkf@pmt.org</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 tj@racineolson.com elisheva@racineolson.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Sarah A Klahn Maximilian C. Bricker SOMACH SIMMONS & DUNN 1155 Canyon Blvd, Ste. 110 Boulder, CO 80302 sklahn@somachlaw.com mbricker@somachlaw.com vfrancisco@somachlaw.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC P.O. Box 3005 Idaho Falls, ID 83403 sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Dylan Anderson DYLAN ANDERSON LAW PLLC P.O. Box 35 Rexburg, Idaho 83440 dylan@dylanandersonlaw.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>

<p>Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83702 cmchugh@mchughbromley.com cbromley@mchughbromley.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
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Courtesy copies to:

<p>Robert E. Williams WILLIAMS, MESERVY, & LOTH SPEICH, LLP P.O. Box 168 Jerome, ID 83338 rewilliams@wmlattys.com</p>	<p><input checked="" type="checkbox"/> Email</p>
<p>Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405 rharris@holdenlegal.com</p>	<p><input checked="" type="checkbox"/> Email</p>
<p>Randall D. Fife City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 rfife@idahofallsidaho.gov</p>	<p><input checked="" type="checkbox"/> Email</p>
<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83205 rdiehl@pocatello.us</p>	<p><input checked="" type="checkbox"/> Email</p>
<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 david.gehlert@usdoj.gov</p>	<p><input checked="" type="checkbox"/> Email</p>
<p>Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@usbr.gov</p>	<p><input checked="" type="checkbox"/> Email</p>
<p>Tony Olenichak IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 Tony.Olenichak@idwr.idaho.gov</p>	<p><input checked="" type="checkbox"/> Email</p>

<p>Corey Skinner IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033 corey.skinner@idwr.idaho.gov</p>	<input checked="" type="checkbox"/> Email
<p>William A. Parsons PARSONS, LOVELAND, SHIRLEY & LINDSTROM, LLP P.O. Box 910 Burley, ID 83318 wparsons@pmt.org wparsons@magicvalley.law</p>	<input checked="" type="checkbox"/> Email



Sarah Tschohl
Paralegal