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DEPARTMENT OF
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STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

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

**MEMORANDUM IN SUPPORT OF
IGWA'S MOTION IN LIMINE TO
EXCLUDE PAROL EVIDENCE**

IN THE MATTER OF IGWA'S
SETTLEMENT AGREEMENT
MITIGATION PLAN

Idaho Ground Water Appropriators, Inc. ("IGWA"), submits this memorandum pursuant to rule 220.02.b of the Rules of Procedure of the Idaho Department of Water Resources ("Procedural Rules") in support of *IGWA's Motion In Limine to Exclude Parol Evidence* filed concurrently herewith.

Legal Standard for Motions to Exclude Evidence

Procedural Rule 600 provides that the presiding officer is not bound by the Idaho Rules of Evidence, but may "exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by

statute, rule or recognized in the courts of Idaho.” IDAPA 37.01.01.600. “All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs.” *Id.* Procedural Rule 412.02 authorizes the hearing officer to “rule upon objections to evidence.” IDAPA 37.01.01.600.

The Parol Evidence Rule

The “parol evidence rule” applies in cases involving written contracts that are “integrated.” *Steel Farms, Inc. v. Croft & Reed, Inc.*, 154 Idaho 259, 267, 297 P.3d 222, 230 (2012). A contract is integrated if it is “complete, definite and certain in all its material terms, or contain provisions which are capable in themselves of being reduced to certainty.” *Hoffman v. Bd. of the Loc. Improvement Dist. No. 1101*, 163 Idaho 464, 469, 415 P.3d 332, 337 (2017). “A written contract containing a merger clause is integrated for purposes of the parol evidence rule.” *Id.*; quoting *Steel Farms*, 154 Idaho at 267, 297 P.3d at 230.

When a written agreement is integrated, “questions of the parties’ intent regarding the subject matter of the agreement may only be resolved by reference to the agreement’s language.” *Steel Farms*, 154 Idaho at 267, 297 P.3d at 230. The premise of the rule “is that the written agreement itself is the best evidence of the intention of the parties.” 29A Am. Jur. 2d Evidence § 1078.

If the terms of a written agreement are ambiguous, parol evidence may be considered for the limited purpose of clarifying “the true intent of the contracting parties.” *Int’l Eng’g Co. v. Daum Indus., Inc.*, 102 Idaho 363, 365, 630 P.2d 155, 157 (1981). In the absence of ambiguity, the parties are prohibited from presenting extrinsic information concerning the meaning or effect of the agreement. *Id.* (citing *J.R. Simplot Co. v. Chambers*, 82 Idaho 104 (1960)). In any case, extrinsic evidence is inadmissible to “vary, contradict, enlarge, or diminish” the terms of the agreement. *Reynolds Irr. Dist. v. Sproat*, 69 Idaho 315, 326, 206 P.2d 774, 781 (1948); *Steel Farms*, 154 Idaho at 267, 297 P.3d at 230.

Importantly, the parol evidence rule “is a rule of substantive law, not a rule of evidence.” *Porcello v. Est. of Porcello*, 167 Idaho 412, 422, 470 P.3d 1221, 1231 (2020). “[P]arol evidence is excluded because the law requires the terms of the agreement to be found in the writing itself.” *Id.* at 422, 470 P.3d at 1231. Accordingly, the rule is not found in the Idaho Rules of Evidence.

Since the parol evidence rule is a matter of substantive law, and not a rule of evidence, Procedural Rule 600 does not give Department hearing officers discretion to ignore the rule or allow evidence to be admitted in violation of the rule.

Argument

The Notice of Hearing issued in this matter on December 29, 2023, and the Amended Notice of Hearing issued January 23, 2024, identify four issues for hearing. Issue 2 is: “Did the Director err by not immediately issuing an order curtailing Ground Water Districts that breached the 2016 Mitigation Plan in 2022?” The Director did not order curtailment of ground water district patrons in 2023 because IGWA provided mitigation under a separate mitigation plan known as the Storage Water Plan, as explained in the *Memorandum in Support of IGWA’s Motion for Summary Judgment* filed concurrently herewith. The Surface Water Coalition (“SWC”) has argued that the 2016 Mitigation Plan precludes IGWA from providing mitigation under its Storage Water Plan.

As explained below, the 2016 Mitigation Plan consists of a settlement agreement that is integrated. Therefore, interpretation of the 2016 Mitigation Plan must be based strictly on the language of the written documents, and the parol evidence rule precludes the SWC from submitting extraneous evidence or testimony of the parties’ intent.

The corpus of the 2016 Mitigation Plan is the *Settlement Agreement Entered Into June 30, 2015 Between Participating Members of the Surface Water Coalition and Participating Members of Idaho Ground Water Appropriators, Inc.* (the “2015 Settlement Agreement”). The Settlement Agreement, along with subsequent addenda, were submitted to the Director as a stipulated mitigation plan pursuant to CM Rule 43. The Director issued a *Final Order Approving Stipulated Mitigation Plan* on May 2, 2016, followed by a *Final Order Approving Amendment to Stipulated Mitigation Plan* on May 9, 2017 (collectively, the “2016 Mitigation Plan”).

The Settlement Agreement was not used to generate a separate mitigation plan document that the parties submitted to the Director for approval; rather, the Settlement Agreement itself was the mitigation plan. Accordingly, the Director’s order approving IGWA’s and the SWC’s joint petition for approval of the mitigation plan defines the “Mitigation Plan” as the Settlement Agreement. (*Final Order Approving Stipulated Mitigation Plan*, p. 1, ¶ 2, May 2, 2016.) In substance, the 2016 Mitigation Plan and the Settlement Agreement are one and the same. Interpretation of the 2016 Mitigation Plan requires interpretation of the Settlement Agreement

The IGWA-SWC Settlement is integrated, containing the following merger clause:

9. **Entire Agreement.**

This Agreement sets forth all understandings between the parties with respect to the SWC delivery call. There are no understandings, covenants, promises, agreements, conditions, either oral or written between the parties other than those contained herein. The parties expressly reserve all rights not settled by this Agreement.

(2015 Agreement, p. 5, Decl. of Elisheva Patterson., Ex. B.) Therefore, “questions of the parties’ intent regarding the subject matter of the agreement may only be resolved by reference to the agreement’s language.” *Steel Farms*, 154 Idaho at 267, 297 P.3d at 230.

As demonstrated in the *Memorandum In Support of IGWA’s Motion for Summary Judgment* filed concurrently herewith, there are no terms in the Settlement Agreement and 2016 Mitigation Plan that preclude ground water districts from complying with the 2009 Mitigation Plan or any other mitigation plan. Therefore, the parol evidence rule precludes the Surface Water Coalition from introducing any evidence, or question any witness, concerning whether the parties *intended* that the Settlement Agreement or 2016 Mitigation Plan precludes IGWA from providing mitigation under the 2009 Mitigation Plan.

Conclusion

For the foregoing reasons, IGWA respectfully requests that the hearing officer make an evidentiary ruling *in limine* that the effect of the 2016 Mitigation Plan on the 2009 Mitigation Plan must be determined solely by the language of the Settlement Agreement and the Director’s orders approving the 2016 Mitigation Plan, and that no party may introduce extrinsic evidence of the parties’ intent concerning the same.

RESPECTFULLY SUBMITTED this 12th day of February, 2024.

RACINE OLSON, PLLP

By: 
Thomas J. Budge
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2024, I served the foregoing document on the persons below via email at the address shown:


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