

John K. Simpson, ISB#4242
Travis L. Thompson, ISB#6168
Abby R. Bitzenburg, ISB#12198
MARTEN LAW LLP
163 Second Ave. West
P.O. Box 63
Twin Falls, Idaho 83303-0063
Telephone: (208) 733-0700
Email: jsimpson@martenlaw.com
tthompson@martenlaw.com
abitzenburg@martenlaw.com

W. Kent Fletcher, ISB#2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Email: wkf@pmt.org

*Attorney for American Falls
Reservoir District #2 and Minidoka
Irrigation District*

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls
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

Docket No. CM-MP-2016-001

**SURFACE WATER COALITION'S
RESPONSE TO IGWA'S MOTION IN
LIMINE TO EXCLUDE PAROL
EVIDENCE**

IN THE MATTER OF IGWA'S
SETTLEMENT AGREEMENT
MITIGATION PLAN

COME NOW, 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 (hereafter collectively referred to as "Surface Water Coalition" "SWC" or "Coalition"), by and through counsel of record, and hereby respond to the

Motion in Limine to Exclude Parol Evidence filed by the Idaho Ground Water Appropriators, Inc. (hereinafter collectively referred to as “IGWA”) on February 12, 2024. For the reasons set forth below, the Hearing Officer should either deny IGWA’s motion or wait and rule on the motion as to particular evidence or questions offered at hearing.

RESPONSE

IGWA seeks to prohibit SWC from introducing “any evidence, or question any witness, concerning whether the parties *intended* that the Settlement Agreement or the 2016 Mitigation Plan precludes IGWA from providing mitigation under the 2009 Mitigation Plan.” *IGWA Memo. in Support of Motion in Limine* at 4.

Although the Coalition agrees that questions concerning the interpretation of the *2016 Mitigation Plan* and orders approving that plan and its amendments are answered by the documents themselves, IGWA’s motion is overly broad at this point and may be erroneously used to prohibit certain relevant information from being introduced at hearing. For example, IGWA has previously argued that its annual compliance reports submitted to IDWR are “parol evidence” and therefore would presumably come under the purview of IGWA’s present motion.

It is for that reason the Coalition objects to IGWA’s motion at this stage of the proceeding and requests the Hearing Officer to either deny it or hold off and rule on particular evidence or questions at hearing. Further, while the Coalition agrees that the Hearing Officer should exclude information beyond the scope of this hearing, and reserves the right to make such a motion in limine, the full scope of what may or may not be offered, including through witnesses and exhibits, is not yet known. When such information is offered or attempted to be offered at the hearing, then the Hearing Officer will be in a better position to rule on such motions.

DATED this 26th of February, 2024

MARTEN LAW LLP



Travis L. Thompson
Abby R. Bitzenburg

*Attorney for A&B Irrigation District,
Burley Irrigation District, Milner Irrigation
District, North Side Canal Company, and
Twin Falls Canal Company*

FLETCHER LAW OFFICE



for

W. Kent Fletcher

*Attorney for Minidoka Irrigation
District and American Falls
Reservoir District #2*

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February, 2024, I served a true and correct copy of the foregoing *Surface Water Coalition’s Response to IGWA’s Motion in Limine to Exclude Parol Evidence* on the following by the method indicated:

<p>Hearing Officer Roger S. Burdick Garrick Baxter Sarah Tschohl State of Idaho Dept. of Water Resources 322 E Front St. Boise, ID 83720-0098 *** service by electronic mail roburd47@gmail.com garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov file@idwr.idaho.gov</p>	<p>Matt Howard U.S. Bureau of Reclamation 1150 N. Curtis Rd. Boise, ID 83706-1234 *** service by electronic mail only mhoward@usbr.gov</p>	<p>Tony Olenichak IDWR – Eastern Region 900 N. Skyline Dr., Ste. A Idaho Falls, ID 83402-1718 *** service by electronic mail only tony.olenichak@idwr.idaho.gov</p>
<p>T.J. Budge Elisheva Patterson Racine Olson P.O. Box 1391 Pocatello, ID 83204-1391 *** service by electronic mail only tj@racineolson.com elisheva@racineolson.com</p>	<p>Sarah A. Klahn Max C. Bricker Veva Francisco Somach Simmons & Dunn 2033 11th St., Ste. 5 Boulder, CO 80302 *** service by electronic mail only sklahn@somachlaw.com mbricker@somachlaw.com vfrancisco@somachlaw.com</p>	<p>David Gehlert ENRD – DOJ 999 18th St. South Terrace, Ste. 370 Denver, CO 80202 *** service by electronic mail only david.gehlert@usdoj.gov</p>
<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83201 *** service by electronic mail only rdiehl@pocatello.us</p>	<p>William A. Parsons Parsons, Smith & Stone LLP P.O. Box 910 Burley, ID 83318 *** service by electronic mail only wparsons@pmt.org</p>	<p>Corey Skinner IDWR – Southern Region 650 Addison Ave W, Ste. 500 Twin Falls, ID 83301-5858 *** service by electronic mail only corey.skinner@idwr.idaho.gov</p>
<p>W. Kent Fletcher Fletcher Law Offices P.O. Box 248 Burley, ID 83318 *** service by electronic mail only wkf@pmt.org</p>	<p>Kathleen Carr U.S. Dept. Interior, Office of Solicitor Pacific Northwest Region, Boise 960 Broadway, Ste. 400 Boise, ID 83706 *** service by electronic mail only kathleenmarion.carr@sol.doi.gov</p>	<p>Candice McHugh Chris M. Bromley McHugh Bromley, PLLC 380 South 4th Street, Ste. 103 Boise, ID 83702 *** service by electronic mail only cbromley@mchughbromley.com cmchugh@mchughbromley.com</p>
<p>Robert E. Williams Williams, Meservy & Lothspeich, LLP P.O. Box 168 Jerome, ID 83338 *** service by electronic mail only rewilliams@wmlattys.com</p>	<p>Robert L. Harris Holden, Kidwell, Hahn & Crapo, PLLC P.O. Box 50130 Idaho Falls, ID 83405 *** service by electronic mail only rharris@holdenlegal.com</p>	<p>Michael A. Kirkham City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 *** service by electronic mail only mirkham@idahofallsidaho.gov</p>

<p>Skyler Johns Steven Taggart Nathan Olsen Olsen Taggart PLLC P.O. Box 3005 Idaho Falls, ID 83403 *** service by electronic mail only sjohns@olsentaggart.com staggart@olsentaggart.com nolsen@olsentaggart.com</p>	<p>Dylan Anderson Dylan Anderson Law PLLC P.O. Box 35 Rexburg, ID 83440 *** service by electronic mail only dylan@dylanandersonlaw.com</p>	
---	--	--



Travis L. Thompson