

**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 DENYING IGWA'S MOTION
IN LIMINE AND MOTION TO TAKE
OFFICIAL NOTICE**

IN THE MATTER OF IGWA'S
SETTLEMENT AGREEMENT
MITIGATION PLAN

BACKGROUND

On February 12, 2024, Idaho Ground Water Appropriators, Inc. ("IGWA") filed *IGWA's Motion in Limine to Exclude Parol Evidence* ("Motion in Limine") along with a supporting memorandum and declaration, and *IGWA's Motion for Hearing Officer to Take Official Notice [of] Department Files* ("Motion to Take Official Notice").

On February 26, 2024, the Surface Water Coalition ("SWC") and American Falls-Aberdeen Ground Water District ("AFAGWD") opposed IGWA's *Motion in Limine* by filing *Surface Water Coalition's Response to IGWA's Motion in Limine to Exclude Parol Evidence*, and *American Falls-Aberdeen Ground Water District's Brief in Response to IGWA's Motion for Summary Judgment and IGWA's Motion in Limine*, respectively. No party has responded to IGWA's *Motion to Take Official Notice*.

The Hearing Officer considered the arguments of counsel and the record presently before the Hearing Officer and for the reasons stated below, the Hearing Officer DENIES IGWA's *Motion in Limine* and *Motion to Take Official Notice*.

ANALYSIS

A. Motion in Limine

IGWA has moved the Hearing Officer to prevent the SWC from "introducing any evidence, or question[ing] 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." *Mem. In Supp. Of IGWA's Mot. in Limine to Exclude Parol Evid.* at 4. IGWA's argument relies on the parol evidence rule. *Id.* at 2-3.

It is within the Hearing Officer's discretion to "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.

However, as the Supreme Court stated in *State v. Hester*:

[M]otions in limine seeking advanced rulings on the admissibility of evidence are fraught with problems because they are necessarily based upon an alleged set of facts rather than the actual testimony which the trial court would have before it at trial in order to make its ruling.

114 Idaho 688, 700, 760 P.2d 27, 39 (1988). A hearing officer may, in the exercise of discretion, choose to defer the ruling until the case unfolds and the evidence is offered in context. *Id.*; see also § 3:2. Motions in limine, Idaho Trial Handbook § 3:2 (2d ed.).

At this time, the Hearing Officer does not find a basis to exclude the broad category of evidence IGWA seeks to prevent the SWC from introducing. IGWA's motion is, therefore, DENIED. However, should specific evidence be offered in context the Hearing Officer may reconsider his decision.

B. Motion to Take Official Notice

IGWA has also moved the Hearing Officer to take official notice of sixty four (64) documents including filings, orders, and notices lodged in various matters before the Department. See *Motion to Take Official Notice* at 3-5.

The Department's Rule of Procedure 602 provides in relevant part: "The presiding officer may take official notice of any facts that could be judicially noticed in the courts of Idaho, of generally recognized technical or scientific data or facts within the agency's specialized knowledge and records of the agency." IDAPA 37.01.01.602.


Taking official notice is a matter of the hearing officer's discretion. At this time, the Hearing Officer does not find the agency records that IGWA requests the Hearing Officer to officially notice to be relevant. Therefore, the Hearing Officer DENIES IGWA's *Motion to Take Official Notice*.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that:

- (1) Idaho Ground Water Appropriators, Inc.'s Motion in Limine to Exclude Parol Evidence is DENIED.
- (2) Idaho Ground Water Appropriators, Inc.'s Motion for Hearing Officer to Take Official Notice [of] Department Files is DENIED.

DATED this 12th day of March 2024.



ROGER S. BURDICK
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March 2024, the above and foregoing, was served by the method indicated below, and addressed to the following:

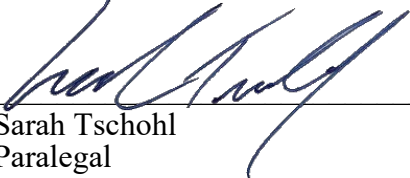
John K. Simpson MARTEN LAW LLP P.O. Box 2139 Boise, ID 83701-2139 jsimpson@martenlaw.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Travis L. Thompson Abigail R. Bitzenburg MARTEN LAW LLP P.O. Box 63 Twin Falls, ID 83303-0063 tthompson@martenlaw.com abitzenburg@martenlaw.com jnielsen@martenlaw.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318 wkf@pmt.org	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Thomas J. Budge Elisheva M. Patterson RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 tj@racineolson.com elisheva@racineolson.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
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	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
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	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email

Dylan Anderson DYLAN ANDERSON LAW PLLC P.O. Box 35 Rexburg, Idaho 83440 dylan@dylanandersonlaw.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
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Courtesy copies to:

Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83702 cmchugh@mchughbromley.com cbromley@mchughbromley.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Robert E. Williams WILLIAMS, MESERVY, & LOTHSPEICH, LLP P.O. Box 168 Jerome, ID 83338 rewilliams@wmlattys.com	<input checked="" type="checkbox"/> Email
Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405 rharris@holdenlegal.com	<input checked="" type="checkbox"/> Email
Michael A. Kirkham City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 mkirkham@idahofallsidaho.gov	<input checked="" type="checkbox"/> Email
Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83205 rdiehl@pocatello.us	<input checked="" type="checkbox"/> Email
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	<input checked="" type="checkbox"/> Email
Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@usbr.gov	<input checked="" type="checkbox"/> Email

<p>Craig Chandler IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 Craig.Chandler@idwr.idaho.gov</p>	<input checked="" type="checkbox"/> Email
<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