

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](mailto:jsimpson@martenlaw.com)  
[tthompson@martenlaw.com](mailto:tthompson@martenlaw.com)  
[abitzenburg@martenlaw.com](mailto: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](mailto:wkf@pmt.org)

*Attorneys 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  
PETITION FOR RECONSIDERATION /  
REQUEST FOR HEARING**

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 submits this

petition for reconsideration and request for hearing on the Director’s *Final Order Specifying Additional Actions* (“Adaptive Order”) issued on May 3, 2024.

## ARGUMENT

### **I. The Director Should Specify a Time Period to Meet the 2023 Benchmark and 2026 Goal and Require Additional Actions Accordingly.**

The Director issued the Adaptive Order in response to the Steering Committee’s failure to identify and recommend additional actions for the Ground Water Districts to perform to achieve the 2023 sentinel well benchmark. *See* Adaptive Order at 4. The Director, pursuant to parties’ stipulated process under the *Second Addendum* and the *Final Order Approving Amendment to Stipulated Mitigation Plan* (“2017 Order”), ordered the Districts to conserve an additional 12,000 acre-feet (5% of 240,000 acre-feet) during the 2024 irrigation and each year thereafter until the 2023 benchmark is achieved. *See id.* at 5. The Director’s Adaptive Order does not identify a timeframe or date as to when the 2023 benchmark must be achieved. Consequently, the Coalition does not have certainty as to when the aquifer level will be recovered to the level agreed to with the Ground Water Districts. Whereas the 2016 Mitigation Plan and Order adopted a seven-year implementation period to achieve the 2023 benchmark, that Districts did not meet that obligation by that time. By only ordering an additional 5% conservation obligation without a timeframe the Director has abused his discretion to implement the prior mitigation plan orders consistent with Idaho law. Stated another way, whereas the Coalition initially agreed to a 10-year timeframe to achieve the ultimate 2026 sentinel well goal, and assumed the risks of short water years in the interim, the Director has effectively extended that time period indefinitely. The Coalition respectfully requests the Director to reconsider the Adaptive Order and set a time period for both the 2023 benchmark and 2026 goal to be achieved by.

## II. Request for Hearing

The Coalition further requests a hearing on the Adaptive Order pursuant to Idaho Code § 42-1701A(3). The Coalition is an aggrieved person under the statute and has not been afforded an opportunity on the Director’s final order. Accordingly, the Coalition is entitled to an administrative hearing on the matter pursuant to Idaho law.

### CONCLUSION

Although the Director properly ordered additional conservation actions in the Adaptive Order, the quantity ordered should be reconsidered to ensure the 2023 benchmark and 2026 goal are achieved in a timely manner so that the Coalition receives the appropriate mitigation previously stipulated to and approved by the Director’s prior orders. The additional 5% conservation obligation does not specify a timeframe to achieve the identified goals and therefore leaves the parties without certainty as to when the ordered mitigation goals will be achieved. The Coalition respectfully requests the Director to reconsider the order accordingly.

DATED this 17<sup>th</sup> of May, 2024

#### MARTEN LAW LLP



Travis L. Thompson  
Abby R. Bitzenburg

*Attorneys 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

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

## CERTIFICATE OF SERVICE

I hereby certify that on this 17<sup>th</sup> day of May, 2024, I served a true and correct copy of the foregoing *Surface Water Coalition’s Petition for Reconsideration and Request for Hearing* on the following by the method indicated:

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

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